

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2333 of 2017

Matukdhari Yadav S/o Jamuna Prasad Aged About 59 Years
Occupation- Service, Category- III, S. L. P. Central Hospital
Vishrampur Area, S E C L Vishrampur Area, House No. 163
Yadavpara, Ganeshpur, Silphili, Surajpur, Distt. Surajpur,
(Chhattisgarh).

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through The Chairman Cum Managing Director, Seepat Road Bilaspur, (Chhattisgarh).
2. The General Manager, S E C L Area Vishrampur, Distt- Surajpur, (Chhattisgarh).
3. The Regional Personnel Manager, S E C L Vishrampur, Area Vishrampur Distt- Surajpur, (Chhattisgarh).
4. The Establishment Incharge S E C L Vishrampur Area, Vishrampur, Distt- Surajpur, (Chhattisgarh).

----Respondents

For petitioner : Mr. Rakesh Pandey, Advocate

For Respondents : Mr. Vinod Deshmukh , Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

12/09/2017

Heard.

1. The petition is directed against order dated 27-03-2017 by which petitioner has been informed that he would be attaining the age of superannuation of 60 years on 17-09-2017 and would retire in the afternoon of 30th September, 2017.
2. The petitioner was appointed on the post of General Majdoor category I in the service of respondent vide order dated 29-10-1992. It is the case of the petitioner that at the time of entry into service, a declaration was given on 20th November, 1992 that his date of birth

is 05-06-1958. On 18-09-1992, when the petitioner was medically examined prior to his appointment, his date of birth was mentioned as 05-06-1958 as disclosed by the petitioner. In the salary receipt issued to the petitioner, his date of birth is recorded as 05-06-1958. However, by impugned communication, for the first time, to petitioner's utter surprise, it is declared that his date of birth is 18-09-1957. The petitioner made a representation but the respondent did not pass any order in favour of petitioner, giving rise to this petition.

3. Learned counsel for the petitioner argued that in the declaration given at the time of entry into service, medical certificates, Pay slips, the petitioner's date of birth was always recorded as 05-06-1958 and without any notice to the petitioner or enquiry made, all of a sudden, his date of birth was changed. Therefore, the action of the respondent is illegal and the petitioner was entitled to continue in service till he attain age of superannuation of 60 years, taking 05-06-1958 as his date of birth.
4. Per contra, Learned counsel for the respondent would submit that the petition is not maintainable because the petitioner has raised dispute with regard to the age at the fag end of his service, therefore, petition is liable to be dismissed on the ground of delay and laches. It is next submitted that petitioner being a workman under Industrial disputes Act, 1947, he has an alternative remedy of raising an industrial dispute before the appropriate Tribunal. Therefore, for this additional reason, the petition is liable to be dismissed. On merits it was contended that in the original record maintained under section 48 of the mines Act 1952, at the time of appointment, on the basis of disclosure made by the petitioner, his date of birth was recorded as 18-09-1957. The petitioner signed the said documents in confirmation of his declared date of birth. It is further submitted that 18-09-1957 is recorded as the date of birth in the service book of the petitioner which has been accepted by the petitioner by signing the same. Next submission is that in the form PS-3 regarding particulars of the family filed on 29-05-1998, the petitioner again declared his date of birth as 18-09-1957 with the signature. It is next contended that as per report of initial medical examination under form-O, referable to rule 29(B) of the Mines Rules, 1955 date of birth of the petitioner as assessed by the board was 35 years as on 11-09-1992 which was also accepted and

signed by the petitioner which would mean that petitioner accepted 18-09-1957 as his date of birth. Petitioner's copy of form-O entry filed by the petitioner as annexure P-5 is an interpolation of original form-O documents as submitted by the petitioner and correct document is filed by the respondents as annexure R- 4.

5. From the submissions of learned counsel for the parties, pleadings and various documents regarding date of birth of the petitioner filed by both the sides, this Court finds that there are variation in records maintained by respondent authorities, with regard to the age of the petitioner. In a situation like this respondents have laid down the procedure to be followed for determination of the correct date of birth, as contained in implementation instructions No. 76 produced before the Court for perusal and consideration to record perusal. The said instruction in clause (B)- ii provides that if there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. It further provides that after being satisfied on the merits of the case appropriate action for correction through Determination Committee/Medical Board may be taken.
6. It is found that there are variation in the official records only. Therefore, it would be proper that the authorities examine the entire case of the petitioner afresh in accordance with the implementation instruction 76 with reference to the documents which have been referred in this case, filed by the petitioner as well as by the respondent which shall receive due consideration and thereafter the authority shall take appropriate decision as to which of the records maintained by respondents are authentic so as to act upon. If the authority finds it necessary, it may also refer to the matter either to the Medical Board or to the Age Determination Committee, as may be considered necessary. The petition is finally disposed off. The decision shall be taken within an outer limit of 4 months from the date of receipt of the copy of this order.

Sd/-

(Manindra Mohan Shrivastava)

Judge