

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.31348 of 2017

A.Selvaraji

.. Petitioner

vs.

Bharat Heavy Electricals Limited,
Boiler Auxiliaries Plant,
Ranipet - 632 406,
Vellore District.

.. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring that Rule 17 of the Standing Order of the respondent is arbitrary violating Article 14 of the Constitution of India and direct the respondent to rectify his date of birth as 17.10.1962 as per the birth certificate dated 03.07.2014 issued by the Sub Registrar, Walaja Nagar in M.S.No.748 of 2014 and M.S.No.858 of 2014 instead of his date of birth 17.8.1960 registered in the Service Record of the respondent in pursuance of his representation dated 05.7.2014.

For Petitioner : Mr.P.Rathanavel

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

This writ petition has been filed by an employee of Bharat Heavy Electrical Limited seeking declaration that Rule 17 of the Standing Order of Bharat Heavy Electrical Limited (hereinafter referred to as "BHEL") is arbitrary and violative of Article 14 of the Constitution of India. The writ petitioner has also sought directions on BHEL to rectify the date of birth entered in the service records of

the petitioner on the basis of a birth certificate dated 03.7.2014 issued by the Sub Registrar, Walaja Nagar in M.S.No.748 of 2014 and M.S.No.858 of 2014.

2. It appears that the petitioner was appointed as a Welder Grade-II in M.P. Shop (Production) by BHEL. At the time of his appointment, the date of birth of the petitioner was recorded as 17.8.1960 on the basis of the date of birth recorded in his Secondary School Leaving Certificate.

3. According to the petitioner, the aforesaid date of birth is not correct. His actual date of birth is 17.10.1962. He is seeking change of date of birth in his service records on the basis of a birth certificate issued in the year 2014.

4. The petitioner joined the service in the year 1993. The birth date was entered on the basis of his Secondary School Leaving Certificate in the year 1993. Change of date of birth has been sought on the basis of a birth certificate issued in the year 2014, which is not even contemporaneous.

5. Rule 17 of the Standing Orders provides as follows:

"17. Date of Birth:

Every employee must declare on his first appointment or on being required to do so by the Management, his date of birth according to the Christian Era and produce confirmatory documentary evidence, e.g. Matriculation Certificate or Municipal/Police/Birth Certificate etc., and in the absence thereof, such evidence as may be acceptable to the Management. If any employee is unable to produce documentary evidence of his age, he shall make a written declaration regarding his age. The date of birth once recorded in the Service Book/sheet of the employee as stated above will not be altered except in the case of clerical error, or on production of proof acceptable to the management provided that the proof is produced within one year of the date on which the original date of birth was recorded in the service book/sheet."

6. As per the Standing Orders, any rectification and/or alteration may be done on production of proof within one year of the date on which the original date of birth was recorded in the service book.

7. In our view, a Rule which provides for declaration of date of birth and sets time limit for rectification of any error in recording of the date of birth is neither arbitrary nor discriminatory nor violative of Article 14 of the Constitution

of India. The grounds in support of the prayer for declaration of Rule 17 of the Standing Orders as ultra vires are wholly misconceived and devoid of merit. The challenge fails.

8. In *State of Maharashtra and another v. Gorakhnath Sitaram Kamble and others*, reported in (2010) 14 SCC 423, the Hon'ble Supreme Court held that date of birth of government servants who had entered into service on or after 16.8.1981 could not be changed after five years of joining in view of Rule 38(2)(f) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981, which provided as follows:

"Rule 38(2)(f): When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error."

The Hon'ble Supreme Court set aside the order of the High Court under appeal holding that the approach of the High Court in rewriting the Rules could not be approved or sustained. By necessary implication, the Supreme Court upheld the validity of a Rule setting a time limit for rectification of the date of birth recorded at the time of appointment in service.

The writ petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

bbr

TO

The Board of Directors,
Bharat Heavy Electricals Limited,
Ranipet - 632 406,
Vellore District.

W.P.No.31348of 2017

RR(CO)
EU(09/01/2018)