

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 17098 of 2014

Date: 07-04-2017

Between :

D Sathyanarayana S/o Narsimha Rao
RK 5 Incline, Srirampur Area
R/o Krishna Colony, Near Mancherla
Adilabad.

....Petitioner

And

The Singareni Collieries Company Limited
Rep by its CMD, Corporate Office,
Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 17098 of 2014

ORAL ORDER:

Heard learned counsel for petitioner Sri A K Jaya Prakash Rao and learned standing counsel for respondents Sri Nandigam Krishna Rao.

2. In this writ petition, petitioner challenges notice dated 14.12.2012 informing the petitioner that as per the service record, his date of birth is 26.2.1957 and he is due for retirement on attaining the age of superannuation on 28.2.2017.

3. Facts which are necessary for consideration of the issue are as under:

4. Petitioner joined service as Badli Filler on 19.3.1981, he was promoted as Coal Filler on 1.4.1983 and earned further promotion as Short Firer, C-Grade Short Firer, Mining Sirdar and Senior Mining Sirdar. At the time of institution of the writ petition, he was working as Senior Mining Sardar. At the time of entry into the service, petitioner's age was assessed as 24 years as on 26.2.1981 and based on the said assessment, his date of birth is recorded as 26.2.1957. According to petitioner, he failed in Matriculation before joining service but after joining service, he passed SSC. In the School Leaving Certificate prior to joining service and in the SSC, his date of birth is recorded as 1.3.1960. In Form-O, Gas Testing Certificate dated 11.5.1989, Short Firer Certificate dated 12.4.1989 and Mining Sirdar certificate dated 22.2.1990 the date of birth of petitioner is reflected as 1.3.1960.

Even in the B-Register, an endorsement is made showing his date of birth as 1.3.1960. By relying on these documents, petitioner asserts that it is illegal to retire him from service on 28.02.2017 and that he is entitled to continue till 28.02.2020.

5. Learned counsel for petitioner submitted that at the time of joining service, petitioner has produced his school leaving certificate, which discloses the date of birth of petitioner as 1.3.1960 and erroneously, wrong date of birth was entered. However, having realized that wrong entry was made earlier, an endorsement was made showing the date of birth as 1.3.1960 in B-Register, but erroneously interpolation was made in the year 2004 reflecting the date of birth as 26.2.1957 and such action is illegal. By placing reliance on Implementation Instruction No.76 of Joint Bipartite Committee for Coal Industry (for short JBCCI) on the procedure for determination of age of the employee, learned counsel for petitioner would submit that the date of birth as recorded in the SSC certificate is authentic and should be acted upon. Even other wise, the date of birth as reflected in Mining Sirdar certificate should be accepted as authentic. When the Implementation Instructions are clear and categorical, his date of birth ought to have been reflected as per the date of birth shown in the said certificates; not reflecting the date of birth correctly and retiring the petitioner is illegal and amounts to arbitrary exercise of power. Respondents cannot ignore their own record, which reflects the correct date of birth in the B-Register.

6. In support of the contentions urged, learned counsel for petitioner placed reliance on plethora of decisions of this Court, the High Court of Jharkhand and Supreme Court:

Boddu Laxmi Rajam Vs. Singareni Collieries Company Limited and others¹, Iqbal Hussain Vs. Central Power Distribution Company of A.P. Ltd, Hyderabad and another², K.Narasimha Chary Vs. General Manager (Personnel) Singareni Collieries Company Ltd, Kothagudem and others, Sanikommu Venkateswara Reddy Vs. Singareni Collieries Company Ltd, Kothagudem and others³, B. Komaraiah Vs. The Singareni Collieries Co Ltd & another⁴, Bharat Coking Coal Limited Vs. Chhota Birsa Uranw⁵, Iswarlal Mohanlal Thakkar Vs Paschim Gujarat Vij Company Limited and another⁶, Premlata Devi Vs Central Coalfields Ltd and Ors⁷, The Singareni Collieries Company Ltd Vs B Venkateswarlu⁸, Elpula Bhoomaiah Vs. Singareni Collieries Co Ltd⁹ and Sundilla Lingaiah Vs Singareni Collieries Company Limited¹⁰.

7. Learned counsel for respondents contended that since petitioner did not produce proof in support of date of birth at the time of joining the service, as per the procedure envisaged by the company and even according to JBCCI Implementation Instruction No.76, age assessed by the Medical Officer was recorded in the service register. The Medical Officer assessed the age of petitioner

¹ 2011 (2) ALD 493

² 2008 (5) ALD 128

³ 2015 (5) ALD 233

⁴ 1992 (2) ALT 198

⁵ (2014) 12 SCC 570

⁶ (2014) 6 SCC 434

⁷ 2015 Lawsuit(Jhar) 1203

⁸ WA No. 1621 of 2008 dt 11.6.2009

⁹ 2011 (6) ALD 244

¹⁰ 2016 (4) ALT 407

as 24 years as on 26.02.1981. Petitioner has authenticated the age determined. Therefore, it is not open to him to turn- around and contend that wrong entry of date of birth was made. He would further submit that having regard to the request made by the petitioner, he was referred by the Area Age Determination Committee to the Apex Medical Board and the Apex Medical Board has examined and affirmed the earlier entry made in the service record. Same was communicated to the petitioner vide proceedings dated 3.2.2004. As per the age assessment made by Apex Medical Board, petitioner was also informed that suitable entries would be made in the B-Register and accordingly entry was made. He, therefore, submitted that it is not a case of interpolation but reflection of subsequent decision as communicated to the petitioner. He further submitted that the age recorded in Form-0, Gas Testing Certificate and Mining Sirdar Certificate are based on the entry of date of birth in SSC, which was obtained after joining service and, therefore, they cannot be relied to undertake correction in the service record. He submit that Implementation Instruction 76 prescribe that for an illiterate the date of birth in the service record is to be entered based on the assessment made by the Medical Officer and same procedure was followed in the instant case. Part-(B) deals with review/ determination of date of birth in respect of existing employees. According to Part (B) 1 (a) if there is no variation, there is no requirement to reopen the issue. If there is a variation, the matter should be referred to Age Determination Committee/Medical Board. In the instant case, the case of petitioner was referred to Apex Medical Board and Apex Medical Board assessed the age of

the petitioner as 24 years on 26.2.1981. In terms of Part –(B), the assessment made by the Apex Medical Board is final and binding. Petitioner does not challenge the decision communicated to him vide proceedings dated 3.2.2004 and kept quiet till retirement notice is issued on 14.12.2012. He would therefore submit that on the ground of inordinate delay and laches, writ petition is liable to be dismissed. It is not a case where petitioner was suddenly informed of his retirement and was not aware of the date of birth as reflected in his service record.

8. In support of his contentions, learned standing counsel for relied upon the following decisions:

Rolla Sathaiah Vs. Singareni Collieries Company Limited, Hyderabad and another¹¹, Mane Anjaiah Vs. Singareni Collieries Company Limited¹², order of Division Bench in Desini Venkataiah Vs. Singareni Collieries Company Limited¹³ and G.M., Bharat Coking Coal Limited, West Bengal Vs. Shib Kumar Dushad and others¹⁴.

9. The decisions relied by the learned counsel on principle of law, needs no reiteration.

10. The issue for consideration is whether petitioner is entitled to seek correction of date of birth in service records ?

11. I have carefully considered the decisions relied by the learned counsel.

¹¹ 2014 (4) ALD 226

¹² W P No. 13566 of 2011 dated 17.10.2016

¹³ WA No. 886 of 2012 dated 18.7.2012

¹⁴ (2000) 8 SCC 696

12. In substance the contention of learned counsel for petitioner is, the employer has to correct the entry of date of birth in service records by duly accepting the entries made in the SSC certificate and certificates issued by competent authority under the Mines Act and not correcting the date of birth is ex-facie illegal and, therefore, in the facts of this case delay in filing the writ petition is not fatal to deny continuation in service till he actually attains 60 years of age.

13. To appreciate the said contention, three aspects need to be noticed; (i) no material is placed on record to show that at the time of entry into service petitioner produced school leaving certificate and contrary to the entry on the said certificate, date of birth was recorded. Categorical assertion of employer that no such certificate was produced is not controverted; (ii) by memo dated 3.2.2004, petitioner was informed that Apex Medical Board has certified age assessment as recorded in Service Register as 24 years as on 26.2.1981 is accurate and as asserted by respondent-company, petitioner accepted the determination of age by Apex Medical Board and did not protest till this writ petition is filed; and (iii) this writ petition is filed after 10 years from 3.2.2004 and two years after he was informed about his date of retirement i.e. 28.2.2017. No material is placed on record to show that after 3.2.2004 petitioner has protested against affirming his age as 24 years as on 26.2.1981 but no action was taken by employer. It is appropriate to note that there is no whisper on communications dated 21.01.2004 and 03.02.2004, where under earlier age determination was affirmed.

14. It is also appropriate to note that petitioner was informed vide proceedings dated 21.01.2004 and 03.02.2004 that the Apex Medical Board affirmed age determined by the Medical Officer at the time of joining service. Petitioner was also informed that entry of date of birth in SSC obtained in March 1992 cannot be accepted since the same was obtained after joining service. Petitioner was also informed that entry of date of birth in the Mining Sirdar Certificate was based on the entry of date of birth in SSC and, therefore, the correction cannot be made based on said certificates. It is also relevant to note that endorsement was made at the bottom of the two proceedings that same would be incorporated in the service book.

15. At this stage, it is also appropriate to note that at the time of joining service, petitioner was subjected to medical examination and Medical officer in his report dated 26.2.1981 recorded the age of the petitioner as 24 years, petitioner made an endorsement '*As I am unable to submit the documentary proof of my age, I accept the age fixed by the Medical Officer*'. There is no whisper in the affidavit filed in support of the writ petition the undertaking given by petitioner at the time of joining service. There is no whisper of communication of the proceedings dated 21.1.2004 and 3.2.2004.

16. As learned counsel for petitioner vehemently contended that there was interpolation in B-Register, original record was summoned and verified. On verification, it was seen that the assertion of the learned counsel for petitioner is not true and there was no interpolation. As per the proceedings dated

21.1.2004 and 3.2.2004 relevant endorsement was made in the service register on 7.2.2004 showing the date of birth of the petitioner as 26.2.1957. The forceful submission of the learned counsel for petitioner was on the endorsement at the bottom of first page of B-Register showing the date of birth as 1.3.1960. On a careful consideration of original record on the said entry, it is seen that on 23.1.1987 it is recorded that '*date of birth- 1.3.1960 – as per the SSC certificate*'. This would show that this endorsement is made duly taking note of what is recorded in the SSC certificate. There is no interpolation as sought to be contended by the learned counsel for petitioner.

17. It is also appropriate to note that on 2.12.1992 petitioner filled the family particulars with pen in form for ES Family Pension Scheme, 1971. On the backside of the said form, petitioner has stated that he certifies the particulars given in the form as correct. The said certification was witnessed by two other persons. Against column No.7, date of birth entered was 26.2.1957. On the same day, he has also filled in Form-A under Coal Mines Provident Fund. This material clinchingly shows that there was no arbitrary exercise of power and based on the record and declarations given by the petitioner, date of birth was recorded and affirmed.

18. The determination of age by the respondent company in the year 2004 was also based on the Implementation Instruction No.76 of JBCCI. The instructions hold that once such assessment is made by the Apex Medical Board, the same is binding on the employee and employer. Be that as it may, petitioner did not

protest on the said entry when it was communicated to him and till notice of retirement was issued on 14.12.2012.

19. The facts in W.A.No.886 of 2012 are identical to the facts of this case. The writ petition was dismissed by the learned single Judge on the ground of delay in approaching the Court. The Division Bench held as under:

“It is to be noticed that the variation in the date of birth of the writ petitioner was noticed by the company way back in the year 2003 when it was found that there were certain alterations in his Identity and service book and Form-B register. Accordingly, as provided under Singareni Collieries Company Limited Age Retirement Rules, the dispute was referred to the Area Age Determination Committee. The said Committee after making the necessary enquiry, by proceedings dated 20.10.2003 determined the age of the writ petitioner as 23 years as on 06.06.1975. It is not in dispute that the said report of the Committee was communicated to the writ petitioner. It is also relevant to note that as per Clause-5 of para-B of the above said Rules, the decision of the Committee shall be binding on both and it shall be final. Though the writ petitioner is very well aware of the said fact, he has not chosen to take any steps to question the decision of the Committee before the competent forum and the present writ petition came to be filed only in the year 2012 after receiving the proceedings dated 02.06.2011 informing him that he would attain the age of superannuation on 06.06.2012.

.....

In view of the undisputed fact that the decision of the Committee dated 20.10.2003 was communicated to the petitioner immediately after the said decision was taken, the learned single Judge was justified in concluding that the writ petitioner being guilty of delay and latches on all accounts was not entitled to any relief. The said order being in accordance with law, we do not find any justifiable reason to interfere with the same.”

(emphasis supplied)

20. **Sundilla Lingaiah** was also a belated claim and writ petition was filed one year after the notice of retirement was issued and just about the time of retirement. This Court considered the precedent decisions on the subject of correction of entry of date of birth in service record, more particularly several decisions concerning same employer, and rejected the claim for correction of

date of birth. This Court held that petitioner could not have waited for one year after notice of retirement was served to file writ petition.

21. This writ petition is filed 10 years after the intimation of affirmation of age as originally assessed. No explanation is furnished for invoking the jurisdiction of this Court after 10 years. Those proceedings are not under challenge. In the case on hand, writ petition is filed on 23.6.2014 i.e., after 18 months of notice of retirement. Learned counsel for petitioner sought to shift the blame on the employer for not correcting the date of birth, to cover up the latches on the part of the petitioner in filing instant writ petition. In the facts of this, I am in agreement with the view taken by learned single Judge of this Court in **Sundilla Lingaiah** on delayed claim.

22. It is settled principle of law that even if an employee has a valid service grievance and employer has denied the service benefit to which employee is legally entitled, he cannot sleep over such right and make a belated claim. The delay and latches, more particularly in service disputes, are fatal to a claim.

23. In **State of Madhya Pradesh Vs. Premlal Shrivastava**¹⁵, Supreme Court found upon entertaining belated claims to correction of entry of date of birth in service record. Supreme Court held:

“10. In *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect

¹⁵ (2011) 9 SCC 664

recording of date of birth in their service book on the eve of their retirement.

11. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990 i.e. 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1-6-1942 and not 30-6-1945. It had come on record of the Tribunal that at the time of the respondent's medical examination, his age as on 27-9-1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1-6-1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting the respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated.

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

24. In **Eastern Coalfields Limited Vs. Bajrangi Rabidas**¹⁶

Supreme Court held as under:

".....It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised "to reach injustice wherever it is found". In *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425 : (1955) 2 SCR 1], **it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The**

¹⁶ (2014) 13 SCC 681

powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play..... (paragraph 19).”

(emphasis supplied)

25. In the above analysis of facts and law, no case is made out to issue direction to correct the date of birth entry in the service record of petitioner. The writ petition is also hit by delay and laches. I see no merit in the writ petition. For all the aforesaid reasons, writ petition fails. It is accordingly dismissed.

Having regard to the same, miscellaneous petitions, if any pending, are closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 07-04-2017
tvk/kkm

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