

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.2551 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is filed questioning the orders, dated 02.06.2007, of the 2nd respondent-General Manager, Sngareni Collieries Company Limited; and, the consequential proceedings, dated 02.06.2007. By the first mentioned orders it was held that the date of birth of the petitioner is 10.06.1948, despite the claim of the petitioner that his date of birth is 10.06.1952. By virtue of the second proceedings it was held that the petitioner attains the age of superannuation, that is, the age of 60 years as on 10.06.2008 and that he is to retire from service of the Company with effect from 01.07.2008.

2. I have heard the submissions of *Sri Venkateswar Varanasi*, learned counsel for the writ petitioner, and of *Sri Nandigam Krishna Rao*, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed as Badli Filler in Sngareni Collieries Company Limited (hereinafter, 'Company'). His date of birth is 10.06.1952. And, the said date of birth was mentioned in his Transfer Certificate, which was produced at the time of his appointment. During the course of his services, he was promoted as Shot Firer in the year 1974; as Overman in the year 1979; and, as Junior Mining Officer on 01.06.2007. He discharged his duties to the satisfaction of his superiors. While so, the Chairman and Managing Director of the respondent Company, vide proceedings, dated 02.06.2007, intimated to the petitioner that he will be attaining the age of superannuation, i.e., 60 years, as on 10.06.2008 and consequently, he has to

retire from service of the Company with effect from 01.07.2008. On that, the petitioner approached the Company with a copy of his Secondary School Certificate, wherein, his date of birth was mentioned as 10.06.1952 and claimed that he is entitled to continue in service for another period of four years. However, his representations were not accepted and the orders and consequential orders, which are impugned in this writ petition, were passed. The IX class Transfer Certificate based on which the petitioner was initially appointed in the service of the Company also clearly discloses that his date of birth is 10.06.1952. Even though the petitioner produced the SSC certificate also, the Company is not permitting him to continue in service. In fact, several other employees of his age group who were appointed along with him were allowed to continue in service even without production of any certificates. His Periodical Medical Examination reports, Gas Testing Certificate, Srdar's certificate issued under Coal Mines Regulations, 1957, Shot-Firer's certificate issued under Coal Mines Regulations, 1957, and, Overman's certificate issued under Coal Mines Regulations, 1957, disclose that his date of birth as 10.06.1952. There are relevant Rules and procedures for review/determination of the date of birth in respect of the existing employees. In that regard, there is a Circular, dated 01.08.1988. Further, as per the Implementation Instruction No.76 of the Joint Bipartite Committee for Coal Industry (JBCCI), there is a provision for review or determination of date of birth in respect of the existing employees. And, as per the said instructions, the educational certificates and the statutory certificates, wherein, the management certifies the date of birth, shall be treated as authentic record. Whenever 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. The Management is entitled to take steps for correction of the date of birth through Age determination done by the Committee or Medical Board. In the case of the petitioner, the

Medical Examination Report, dated 28.11.2003, issued by the Deputy Chief Medical Officer, Area Hospital, Bellampally Area, Adilabad District, also discloses that the date of birth of the petitioner is 10.06.1952. Therefore, the said date of birth is to be incorporated in the service record of the petitioner. And, as per the said date of birth, the petitioner is having still four more years of service as on the date of the filing of the writ petition on 31.01.2008.

4. On the other hand, the case of the respondents, in brief, is this:

The petitioner was appointed as Badli Filler on 21.09.1970. At that time, he declared that his qualification is VIII class. He had submitted a Transfer Certificate, wherein, his date of birth was recorded as 10.06.1948. He had initially submitted an application, dated 20.06.1970, for an unskilled job. In that application, he declared his date of birth as 10.06.1948. The same was entered in his Service Register at the time of his appointment. The petitioner submitted his SSC Certificate and in the said certificate, the date of birth of the petitioner is mentioned as 10.06.1952 and the same date of birth is recorded in the statutory certificates, i.e., Gas testing, Srdar, Shot firer and Overman certificates. As there is variation in his date of birth, his case was reviewed in accordance with the Implementation Instruction No.76 of JBCCI. The petitioner appeared before the Area Age Determination Committee on 27.04.2007. The Area Age Determination Committee opined that at the time of appointment, the petitioner declared his qualification as VIII pass and submitted a copy of Transfer Certificate wherein his date of birth was recorded as 10.06.1948 and that in application for unskilled job, he had declared his date of birth as 10.06.1948 and as such in the Initial Medical Examination (IME), the Medical Officer has mentioned against the column 'Date of Birth/ Age' as 'Certificate'. The same date of birth was also recorded in the petitioner's Coal Mine's Provident Fund Nomination Form. Further, the

petitioner has acquired SSC in April 1974, i.e., after his appointment into services. Hence, the committee confirmed the date of birth of the petitioner as 10.06.1948. As per the rules of the company, the petitioner was informed well in advance, that is on 02.06.2007, about his due date of retirement as 10.06.2008, on attaining the age of superannuation on 10.06.1948 and that he would be retiring from the services of the Company with effect from 01.07.2008. The contention of the petitioner that since his appointment into the company, his date of birth was shown in the records as 10.06.1952 is incorrect. The said allegation is denied. The allegation that the Deputy Chief Medical Officer, Area Hospital, Bellampalli, issued certificate showing his date of birth as 10.06.1952 is not tenable. The employees working in the underground mines are required to undergo Periodical Medical Examination once in five years and this examination will be done to ascertain the fitness of the individual to continue in underground service. As such, the medical examination done by the Deputy Chief Medical Officer on 22.11.2003 is only a periodical medical examination for declaring the petitioner's fitness for underground service. Therefore, the officers of the Company are justified in informing the petitioner that he would be attaining the age of 60 years as on 10.06.2008 and that he has to retire from the Company on 01.07.2008. The Courts consistently did not allow correction of date of birth even though such correction was sought on the basis of a decree of a civil Court. Hence, the writ petition may be dismissed.

5. Learned counsel for the petitioner relied upon the following decisions:

- (i) R.Sudhakar v. APSRTC, Musheerabad, Hyderabad¹
- (II) Sanikommo Venkateswara Reddy v. Sngareni Collieries Co. Ltd., Kothagudem and others²
- (iii) Iswarlal Mohanlal Thakkar v. Paschim Gujarat VIJ Company Ltd.³

¹ 2015 (6) ALD 626

² 2015 (6) ALD 634

³ (2014) 6 Supreme Court Cases 434

(iv) Mohd. Yunus Khan v. U.P.Power Corporation Limited⁴

6. Learned counsel for the respondents relied upon the following decisions:

(i) Sundilla Lingaiah v. Singareni Collileries Co. Ltd.⁵

(ii) Mane Anjaiah v. The Singareni Collieries Company Limited⁶

(iii) State of T.N v. T.V.Venugopalan⁷

(iv) Commissioner of Collegiate Education, Hyderabad v. V.Narayana Reddy and another⁸

(v) G.M.Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others⁹

(vi) State of Madhya Pradesh v. Premlal Shrivastava¹⁰

(vii) Rolla Sathaiah v. Singareni Collieries Co. Ltd, Hyderabad¹¹

(viii) Burn Standard Co. Ltd v. Dinabandhu Majumdar¹²

(ix) Madamsetty Ravinder v. Singareni Collieries Co. Ltd., Kothagudem, Khammam District¹³

7. I have gone through all the decisions cited. In view of the narrow compass of the factual matrix and the fairly well settled legal position, it is necessary to turn to the facts and deal with the facts in accord with the settled legal position. The fact of the matter is that at the time of joining the service, the petitioner submitted a Transfer Certificate, wherein, his date of birth was recorded as 10.06.1948. He had initially submitted an application, dated 20.06.1970, for an unskilled job. In that application, he declared his

⁴ (2009) 1 Supreme Court Cases 80

⁵ 2016 (6) ALD 734

⁶ W.P.No.13566 of 2011, dated 17.10.2016

⁷ (1994) 6 Supreme Court Cases 302

⁸ 2006(5) ALD 492 (DB)

⁹ (2008) 8 Supreme Court Cases 696

¹⁰ (2011) 9 Supreme Court Cases 664

¹¹ 2014(4) ALD 226

¹² AIR 1995 SUPREME COURT 1499

¹³ 2015 (6) ALD 320

date of birth as 10.06.1948. The same was entered in his Service Register at the time of his appointment. The same date of birth was entered in petitioner's Coal Mine's Provident Fund Nomination Form. Thus, his date of birth was entered, at the inception, in the Service Records as 10.06.1948. There is no negligence of the employer in the matter; and there was no *bona fide* mistake in either furnishing the details or in entering the same in the service record of the petitioner. Though his SSC certificate discloses his date of birth as 10.06.1952, it is undisputed that petitioner studied X class after joining the service and after his date of birth as furnished by him was entered in the service record. Therefore, the subsequent entries, if any, made based on the date of birth entry in the SSC certificate, in any documents other than the service record have no importance and significance, *prima facie*. Further, the question - whether the date of birth as entered in his service record is correct or not - is a disputed question and requires investigation. A Committee concerned of the department having examined the claim of the petitioner, in detail, with reference to the records and department's Rules and procedures rejected his claim. The petitioner appeared before the said committee on 27.04.2007 is undisputed. Be that as it may. The next important question is as to whether the petitioner is entitled to seek correction of his date of birth in his service record belatedly and approach the Court at the far end of the service and claim that he is entitled to further continue in service. The answer to the question is no longer *res integra*. Time and again the Supreme Court has expressed the view that if a Government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights. [(See: *Union of*

India v. Harnam Singh: (1993) 2 SCC 162); and, *State of M.P. v. Premlal Shrivastava*: (AIR 2011 SC 3418)]. In this context, this Court may profitably reproduce a passage from the decision in *Union of India v. C. Rama Swamy and Ors.*: (1997) 4 SCC 647:

In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to access suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned.
(Underlining and emphasis is of this Court)

Having regard to the factual aspect taken cognizance and the aforesaid fairly well settled legal position, this Court finds that request for correction of the recorded date of birth after lapse of a long time of the petitioner's induction into the service cannot be granted. This Court having regard to the facts of the case finds that this is not a fit case to exercise discretionary and equitable jurisdiction under Article 226 of the Constitution of India.

8. In the result the writ petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

21st April, 2017
RAR

M. SEETHARAMA MURTI, J

