

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT APPEAL No.1347 of 2017

15.09.2017

Between:

Md.Afzal

..Appellant

and

The Singareni Collieries Company Limited,
represented by its Chairman and Managing Director,
Khammam and others

..Respondents

Counsel for the appellant: Mr.Srinivasa Rao Putluri

Counsel for the respondents: Mr.J.Sreenivasa Rao,
standing counsel for Singareni Collieries Company Limited

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The appellant, who worked as Badli Filler in respondent No.1 company, filed W.P.No.9674 of 2015 for declaring the action of the respondents in approving his date of birth as 27.06.1955 instead of 07.02.1963 as illegal and arbitrary. He sought for a consequential direction to the respondents to continue him in service upto 06.02.2023 by taking his date of birth as 07.02.1963. The said writ petition having been dismissed by the learned Single Judge, he has filed the present writ appeal.

2. It is the pleaded case of the appellant that at the time of his appointment as Badli Filler on 19.07.1981, he produced his Class-IX Transfer Certificate (T.C.) showing his date of birth as 07.02.1963, but ignoring the same, his date of birth was entered in his service register as 27.06.1955 based on the purported assessment of his age by the medical board. It is his further case that he obtained Secondary School Certificate (S.S.C.) in the year 1982, as per which, his date of birth was shown as 07.02.1963. While the appellant has not raised any dispute with regard to his date of birth till the time of his nearing retirement, in response to the one year notice of superannuation given by the respondents on 13.05.2014 informing the appellant that he is due to retire on 01.07.2015, for the first time, disputing his date of birth, he has made a representation on 31.12.2014 to the respondents. However, the respondents have not agreed for review of the appellant's date of birth and accordingly, decided to superannuate him by taking his date of birth as 27.06.1955 as entered in his service register. A couple of months before the scheduled superannuation, the appellant filed the aforementioned writ petition. The learned Single Judge, while dismissing the writ petition, relied upon

the judgments of the Apex Court in State of Tamil Nadu vs. T.V.Venugopalan¹ and State of Madhya Pradesh vs. Premlal Shrivastava², in order to derive support to the view that change of date of birth in service record at the fag end of career can be permitted only in exceptional cases on irrefutable proof; that the Court or the Tribunal should be loath to allow correction of date of birth in service record of the incumbent at the fag end of his career unless it is satisfied by irrefutable proof of date of birth and real injustice has been caused to the incumbent; and that when date of birth was recorded after entry into service and countersigned by the government servant, it would not be permitted to be challenged by the government servant at the fag end of his service.

3. Though the appellant has claimed that at the time of his joining service, he produced Class-IX T.C., he has not filed any proof in support thereof. On the contrary, the age of the appellant was entered into service register in the absence of his producing any certificate based on the assessment of his age made by the medical board. According to the appellant, he is not an illiterate as he passed S.S.C. in the year 1982. This being so, he is not expected to remain quiet, at least after he obtained Secondary School Certificate in the year 1982. It is not the pleaded case of the appellant that at any time after the year 1982, he has made any effort to send a copy of the Secondary School Certificate for the purpose of keeping the same on record of the respondents. Being a person, who passed S.S.C., it cannot be assumed that the appellant is ignorant of his date of birth entered in his service record. Admittedly, he did not raise any demur in this regard. Even after one year notice was received by him on 13.05.2014, the appellant did not protest till

¹ (1994) 6 SCC 302

² (2011) 9 SCC 664

31.12.2014, when for the first time he has raised dispute about his date of birth. In our opinion, irrespective of whether his claim that his date of birth is incorrectly entered in service register being true or not, the abovementioned conduct of the appellant in not being diligent to get his date of birth corrected till the fag end of his career, disentitles him to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. If such belated claims are entertained by the Courts, there is every likelihood of every employee raising a dispute at the fag end of his career subjecting the employer to avoidable litigation.

4. The learned counsel for the appellant has placed heavy reliance on the decision of the Apex Court in *Basanti Prasad vs. Chairman, Bihar School Examination Board*³. In *Basanti Prasad* (3 supra), it was held that when the delay is satisfactorily explained by the employee in his approaching the Court and when no third party rights are involved, it was not proper to dismiss the writ petition on the ground of delay/laches. In our opinion, the decision in *Basanti Prasad* (3 supra) has no application to the facts of the present case as the appellant failed to offer satisfactory explanation for his not raising the dispute relating to his entry of date of birth in service record for more than thirty-three years.

5. In our opinion, on the facts of this case, the learned Single Judge has rightly declined to exercise the discretionary jurisdiction in favour of the appellant. Hence, we do not find any error apparent on the face of record for interference with the order of the learned Single Judge.

6. The Writ Appeal is, accordingly, dismissed.

³ (2009) 6 SCC 791

7. As a sequel to dismissal of the writ appeal, W.A.M.P.No.2476 of 2017 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

15th September, 2017
GHN

