

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 221 of 2013**

Anwar Ali S/o Asgar Ali, aged about 44 years, presently working on the post of Asst. Former Mechanical Grade-C, Churcha West Colliery, District Korea (CG)

---- Petitioner**Versus**

1. South Eastern Coalfields Ltd. through the Chairman-cum-Managing Director, Seepat Road, Post, PS & District Bilaspur (CG)
2. The Chief General Manager, Baikunthpur Area, SECL Baikunthpur, Post & PS Baikunthpur, District Korea (CG)
3. The Sub Area Manager, Churcha Colliery Churcha, SECL, Post & PS Churcha, District Krea (CG)

---- Respondents

For Petitioner	:	Shri A. N. Pandey, Advocate
For Respondents	:	Shri B. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.07.2018**

Challenge in the present writ petition is to the order dated 16.01.2013 Annexure P-1 whereby the claim of the petitioner for correction of his date of birth has been rejected.

2. Present is the second round of litigation. The earlier round of litigation was WPS No. 4062 of 2012 which stood disposed of on 12.09.2012 wherein it was directed that the respondents would consider the case of the petitioner for change of date of birth in the light of their own instructions/policy (Implementation Instruction No.76). Thereafter

the matter was reconsidered by the Department and the impugned order has been passed.

3. The contention of the petitioner is that he was appointed in the year 1978 and at the time of appointment he had produced documents pertaining to his date of birth including the school leaving certificate etc. wherein his date of birth was reflected as 27.01.1959 whereas the Department for reasons best known or by mistake has entered his date of birth as 27.01.1953. Based upon which the petitioner has been retired from service w.e.f. January, 2013. According to the petitioner, the date of birth of his elder brother who was working with the same respondent was 16.12.1955 and the petitioner being younger brother his date of birth has been mentioned as 27.01.1953. Thus, there is a clear mistake in the date of birth which has been entered in the Service Book.

4. Counsel for the petitioner submits that the petitioner since 1987 when for the first time he came to know of his erroneous date of birth has been making repeated representations to the respondents for correction of his date of birth but till date the same has not been rectified by the respondents. He relied upon Annexure P-3 which are the documents in respect of the education that he has undertaken and in all these documents, his date of birth has been reflected as 27.01.1959. Given the facts, counsel for the petitioner prayed for a direction to the respondent to amend the date of birth of the petitioner in the service record and treat him to be in service till January, 2019. He further prayed for quashment of the impugned order Annexure P-1 dated 16.01.2013 the notice of retirement on the basis of which he has been retired from service w.e.f. January, 2013.

5. Counsel for the respondents, however, opposing the petition submits that the present is a petition which suffers from delay and laches. According to the respondents, the entire records available with them most of which are statutory records as per the provisions of the Mines Act wherein the date of birth of the petitioner has been mentioned as 27.01.1959. He submits that the petitioner was fully aware of his date of birth being 27.01.1959 and that he at no point of time on an earlier occasion had raised a dispute so far as his date of birth is concerned. According to the respondents, the petitioner for the first time filed a writ petition at the fag end of his career when he was to retire w.e.f. January, 2013 itself. Even if the earlier round of litigation is taken into consideration, according to the respondents even that was at the belated stage i.e. the writ petition was of September, 2012 and not a very old petition, just a couple of months before his retirement as per office record. Thus, prayed for dismissal of the writ petition.

6. Having heard the contentions put forth on either side and on perusal of the record, admittedly the petitioner stood appointed with the respondents in 1978. The entire record/documents maintained with the respondents do not have any ambiguity so far as the date of birth of the petitioner is concerned and in every document, the date of birth mentioned has been mentioned as 27.01.1953. The petitioner also has put his signatures on the said documents which establishes the fact that the date of birth as 27.01.1953 was acceptable to him.

7. Now the basis on which the date of birth which has been sought to be corrected by the petitioner is the educational certificates which the petitioner has annexed with the writ petition which are the mark sheet of

Secondary School Examination, the Middle School Marksheet and a document which is the transfer certificate from High School, Dumri, District Giridih (Jharkhand). Perusal of all three documents would show that the same have been obtained between 2007-2010 i.e. much after the petitioner was given appointment with the respondent. The representations which have been collectively enclosed as Annexure P-4 again prima facie appear to be doubtful for the reason that the endorsement of the seal of the Department and the entries made in the said document seems to have been made on the same date though different dates have been put therein. It appears that these documents have been got obtained only for the purpose of filing of the present writ petition. Moreover, while filing of the objection for the first time in 1987 and the petitioner having not received a favourable order even then the petitioner waited till the fag end of his career i.e. the period of about more than 25 years for filing of the writ petition which again would attract the doctrine of delay and laches.

8. So far as the Implementation Instruction No. 76 is concerned, it clearly is a mechanism of the respondents to resolve the date of birth of the employees working with the respondent Company. The said procedure has been accepted by even the Supreme Court in a catena of decisions wherein it has been held that the finding of the age determination committee on the basis of II No. 76 cannot be said to be arbitrary or illegal. In the instant case also when we compare the instructions given in II No. 76 with the case of the petitioner, it would reveal that the said instructions stand divided into two parts; one is for determination of age at the time of appointment and second is for

review the determination of date of birth in respect of the employees already working with the respondents.

9. In the instant case, it is B part of II No. 76 which would be applicable. For ready reference clause B (I) (a) and B (ii) are reproduced hereunder:

“(B) (i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

(ii) Wherever 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 after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board received within a month. If age is not, however, computerized, still the same will be intimated to the employee concerned and the Unit within a month.”

10. The Division Bench of this High Court in the case of **South Eastern Coalfields Ltd., Bilaspur and others Vs. Sampat Kumar Chauhan** reported in **2015 (5) C.G.L.J. 328 (DB)** has in paragraphs- 13 & 14 very categorical terms held as under:

“13. This Court in exercise of powers of judicial review is concerned with the decision making process by the Appellants and not the merits of the decision itself. We do not find any infirmity in the decision making process by the ADC in its decision dated 27.08.2012. The order is reasoned and speaking discussing the materials

considered by it. The respondent does not alleged that the ADC has taken into consideration irrelevant materials or failed to consider relevant materials. The order states he could not submit proof of having produced matriculation certificate at the time of appointment. The Statutory Form 'B' Register both at New Raj Nagar and Raj Nagar signed by the Respondent mentions his date of birth as 14.12.1952. The ADC rightly did not give precedence to entries in the service register. Moreover, the ADC adequately discusses that while other entries in the service register were in blue ink, only the date of birth was in red ink and in a different handwriting raising doubts about the same. The order of the ADC has not been quashed or set aside. It is not permissible in exercise of judicial review to arrive at a different conclusion on basis of the same materials merely because it was possible to do so.

14. The limits of the power for judicial review was considered in *Haryana Financial Corporation Vs. Jagdamba Oil Mills*¹ as follows:-

“10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A. K. Kraipak Vs. Union of India*. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have “a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred” (as per Lord Diplock in *Secy. Of State for Education and Science Vs. Metropolitan Borough Council of Tameside*, All ER at p.695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene....”

11. The supreme Court, in respect of the cases where the dispute of

¹ (2002) 3 SCC 496

date of birth has been raised at the time of issuance of notice of retirement, in a series of decisions specifically held that the Court should be reluctant in entertaining the writ petitions filed at the fag end of the service career of the employees. It would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of Union of India Vs. Harnam Singh reported in (1993) 2 SCC 162 where in paragraph-7 & 15 it has been held as under:

“7.A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age.

15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was

also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him.”

- 12.** In the case of *Burn Standard Co. Ltd. and others Vs. Dinabandhu Majumdar and another*, (1995) 4 SCC 172, the Supreme Court in paragraph-10 held as under:

“10. Entertaining by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under [Article 226](#) of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service

career to get it corrected by availing of the extraordinary jurisdiction of a High Court.”

- 13.** The Supreme Court in the case of Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another reported in (2010) 6 SCC 482 in paragraph-20 held as under:

“20. By applying the ratio of the abovenoted judgments, we hold that the suit filed by Respondent 1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial court committed a serious error by passing a decree in favour of Respondent 1 and the lower appellate court and the High Court repeated the same error by refusing to set aside the decree passed by the trial Court.”

- 14.** In the case of State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others, (2010) 14 SCC 423, in paragraph-12 it has been held as under:

“12. Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years.”

- 15.** The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Prem Lal Shrivastava, (2011) 9 SCC 664, in paragraphs – 7 & 8 held as under:

“7. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book

at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this 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 Vs. Harnam Singh).”

16. In the light of the judicial pronouncements referred to in the preceding paragraphs and also taking note of the fact that the petitioner in the instant case has for the first time filed a writ petition before this Court in the earlier round of litigation in September, 2012 and prior to it except for the bald allegation of having made objection/representations to the authorities which too prima facie appear to be doubtful, there does not appear to be any cogent strong sufficient material available with the petitioner by which the date of birth of the petitioner as entered in the service record could be doubted. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**