

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3268 of 2008

Reserved on 12.04.2018

Delivered on 16.07.2018

Kedarnath, aged about 57 years, S/o late Sampat, R/o Central Hospital, Manendragarh, District Korea, CG

---Petitioner

Versus

1. South Eastern Coal Field Ltd. through its Chairman cum Managing Director, Seepat Road, Bilaspur (CG)
2. Deputy Chief Medical officer (I/C), Central Hospital, Manendragarh, District Korea (CG)
3. The General Manager, South Eastern Coalfield Ltd. Hasdeo Area, District Korea (CG)

---Respondents

For petitioner	:	Shri Parag Kotecha, Advocate
For Respondents	:	Shri V. R. Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. The present Writ Petition has been filed questioning the notice – Annexure-P/4 dated 15/02/2008 whereby the respondents had intimated the petitioner of his retirement on attaining the age of superannuation with effect from 31/07/2008.
2. The issue raised by the petitioner in the present Writ Petition is in respect of the date of birth of the petitioner.

3. According to the petitioner, his date of birth is 01/02/1951 and as per his date of birth, he should have been retired on 31/01/2011 and on the contrary the department has accepted his date of birth to be 01/08/1948 based upon which, the notice of retirement has been issued.
4. The relevant facts for adjudication of the petitioner is that, the petitioner was appointed with the respondents as a mechanical fitter helper – category (II) in 1977. While entering the service, his date of birth registered in the B-Form which is a statutory record under the Mines Act showed his date of birth as 01/08/1948. In 1987, the respondents had got the service record prepared once again and while filling the details of the particulars of the petitioner he had entered his date of birth as 01/02/1951.
5. According to the petitioner, as per this service record prepared in the year 1987, the respondents ought to have permitted the petitioner to continue in employment till January-2011. However, without any substantial material and any correction being made in document Ex-P/3 which is a service record prepared in 1987, they have arbitrarily issued the impugned notice – Annexure-P/4 retiring the petitioner much earlier than his attaining the age of superannuation.
6. According to the petitioner, after having received the impugned notice dated 15/02/2008, the petitioner had sent a legal notice to the respondents claiming for treating his date of birth to be 01/02/1951 and in the process sought for his employment to be continued till January-2011.
7. In support of his contention, the petitioner relied upon the school certificate of his middle school reflecting his date of birth to be 01/02/1951 so also the petitioner also brought on record the national vocational trade certificate of having successfully cleared the course of the trade turner

wherein also his date of birth as per the school record was entered as 01/02/1951. In addition, the petitioner had also undertaken an ITI course from ITI, Korba wherein also his date of birth was reflected as 01/02/1951.

8. With all the aforesaid documents and certificates in possession of the petitioner, it was contended by the petitioner that the respondents could not have granted a premature retirement to the petitioner and thus prayed for an appropriate direction to the respondents for grant of suitable relief in the light of the aforesaid facts and circumstances of the case.

9. The petitioner in support of his contention also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bharat Coking Coal Ltd. & Ors. v. Chhota Birsa Uranw [2014 12 SCC 570]***.

10. Per contra, Shri Vivek Ranjan Tiwari, the counsel appearing for the respondents opposing the petition submits that all the relevant records available with the respondents particularly the statutory registers reflected the date of birth of the petitioner to be 01/08/1948. The counsel for the respondents referred to the portion of B-form pertaining to the petitioner wherein the date of birth at the time of appointment was entered as 01/08/1948. This entry was accepted by the petitioner and he had also put his signature on the said document. He further contended that, even in the last pay certificate available in the record dated 06/05/1993 & 07/05/1990, the date of birth of the petitioner was entered as 01/08/1948.

11. Likewise, even in the form PS-3 which is again a statutory record maintained in the Mines giving details of the particulars of the family reflected his date of birth to be 01/08/1948 and also showed the age of family members also. The nomination forms filled up by the petitioner and which are all again a statutory record maintained in the department bares

his date of birth 01/08/1948 and all these records both PS-3 as well as PS-4 collectively marked as Annexure-R/4 also bares the signature of the petitioner, which would reflect that the petitioner was well aware of the date of birth entered in service record to be 01/04/1948 and during the said period, the petitioner never raised an objection to the said entry of the alleged erroneous date of birth, nor did the petitioner ever raised a dispute in this regard and therefore the petitioner now after the receipt of the notice of retirement at the fag end of his service career could not have raised a dispute. It was also contended that, the case of the petitioner was also scrutinize as per II-76 which is a guideline maintained by the management for settling the dispute pertaining to the date of birth and as per those guidelines also, the petitioner could not cogently established his claim for correction of his date of birth from 01/08/1948 to 01/02/1951 and the Writ Petition thus being devoid of merits deserves to be rejected.

12. Having heard the contentions put forth on either side and on perusal of record what clearly reflect from the pleadings and documents produced with the Writ Petition is that, the petitioner admittedly came in employment under the respondents in the year 1977 and undisputedly while entering the service, the B-form register was entered wherein his date of birth was reflected as 01/08/1948. The petitioner accepting the same has put his signature also. In addition to the B-form, the other service record maintained with the management also reflected the date of birth of the petitioner to be 01/08/1948 and in most of these record also, the petitioner has put his signature accepting the entries.

13. It appears that the entire dispute arose when the petitioner in the year 1987 when he was made to fill up the service record once again along with the other employees of the company. He has filled his date of

birth as 01/02/1951. The concerned official under the respondents who had accepted this revised service record has also made certain entries in the original B-form register pertaining to the petitioner wherein in the remarks column, his date of birth has been entered as 01/02/1951. Though this entry in the B-form register as also in the revised service record was without any decision taken by the higher authorities in the department, nor was it with the approval of the respondents and the authorities concerned were also not aware of such entry being made in the service record and they proceed as per the record treating his date of birth to be 01/08/1948 and accordingly issued the notice of retirement 6 months before his actual retirement i.e. by the impugned notice – Annexure-P/4.

14. From the record it appears that there are various entries which have been made in different registers maintained in the respondent establishment wherein the date of birth of the petitioner has been entered as 01.08.1948. All these documents, like Form-B register and Form-PS/3 & PS/4 which pertain to providing of particulars of the family and the nomination forms which are filled up by the petitioner are statutory records under the Mines Act and Rules and bear the signature of the petitioner. Though the petitioner claims to have got a school certificate with him which was issued prior to his joining the services of the respondents but in the service record, for the reasons best known to him, the same was not placed by the petitioner at the time of appointment. Further, the periodical last pay certificates issued in favour of the petitioner upon his being transferred from one colliery to another colliery reflect his age as 29 years as on 01.08.1977 i.e. the date of appointment. While issuance of any of these documents, all of which bear the signature of the petitioner and he has not raised any objection so far as the date of birth is concerned. It is

also pertinent to mention that the provident funds of the employees working in the coal mines are managed and maintained by the Coal Mines Provident Fund department which is a separate Central Govt. establishment. As per the records maintained in the Coal Mines Provident Fund office also, the date of retirement of the petitioner was entered as July, 2008 which would establish that his date of birth was that of 01.08.1948. From the record what appears is that in all the statutory records which have been maintained with the respondents, the date of birth of the petitioner has been mentioned as 01.08.1948 and in all these statutory forms/registers which are maintained by the employer bear the signature of the petitioner which would show that he was aware of the date of birth entered in his service record.

15. The petitioner seems to be banking upon the primary school certificate issued before his appointment with the respondents. Likewise, he also relies upon the vocational trade certificate which again he claims to have obtained prior to his appointment. However, what cannot be brushed aside is that the petitioner has not got all those educational qualifications entered in his service records at the time of appointment and somehow, at a later stage, he has got an entry made in the remarks column showing his date of birth to be 01.02.1951 as per school certificate. Surprisingly, the column dealing with the date of birth reflects his date of birth as 01.08.1948 where there has been no correction whatsoever. Even in the subsequent documents which have been maintained with the office of the respondents, his date of birth was accepted to be 01.08.1948 which again was never disputed by the petitioner and it is only after the notice of retirement which was served

upon the petitioner that he raised a dispute by issuing a legal notice and thereafter filing the writ petition.

16. 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.”

17. 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. Entertainment 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.”

18. 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.”

19. 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.”

20. The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Premlal 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)."

21. Given the aforesaid legal position as it stands it clearly reflects that in the instant case also, in the Form-B register and in all other statutory forms and registers, the date of birth of the petitioner has been shown as 01.08.1948. Except for the school certificate which the petitioner had obtained prior to his employment and which was not produced at the time of employment, there does not appear to be any strong document available with the petitioner seeking for correction of his date of birth. Moreover, there is a considerable delay in his part in approaching the Court seeking for a correction.
22. For the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned notice of retirement or for that matter for issuance of a writ commanding a correction on his date of birth. The writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE