

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 1408 of 2009**

1. Chhattisgarh State Electricity Board, now Chhattisgarh State Power Generation Company Ltd. through Additional Chief Engineer (Civil) Chhattisgarh Power Generation Company Ltd., Korba, (West)
2. Chhattisgarh State Electricity Board now Chhattisgarh Power Generation Company Ltd. through Additional Superintending Engineer (Civil) Chhattisgarh Power Generation Company Ltd. Korba (West)

---- Petitioners**Versus**

1. Netram Rathore S/o Chhedilal Rathore, R/o Chhattisgarh State Electricity Board Colony F/777, Kailash Vihar, Jamnipali, Korba (CG)
2. State Industrial Court, Chhattisgarh Bench at Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri N. K. Vyas, Advocate
For Respondent no.1	:	Shri Vinod Deshmukh with Shri K. P. S. Gandhi, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/02/2018**

Present is a petition by the employer assailing the order dated 07.11.2008 passed by the State Industrial Court, Chhattisgarh Bench at Bilaspur in Civil Appeal No. 01/CGIR Act/A/II/2008. Vide the impugned order, the learned Industrial Court setting aside the order of the Labour Court has granted relief to respondent no.1 employee with correction of his date of birth as 30.06.1958 instead of 30.03.1956 as recorded in the service record giving the benefit of two years three months to the employee.

2. The facts of the case in brief are that respondent no.1 Netram Rathore was appointed by the petitioners in the year 1975 as a temporary worker. In due course of time, his services were regularized in the year 1989. While

regularizing his services, the date of birth was mentioned as 30.03.1956. It was the contention of the employee that while his services were being regularized, his date of birth was mentioned as 30.06.1958 but the employer has wrongly entered the date of birth as 30.03.1956. As per 30.03.1956, the date of birth which is mentioned in the service book, the employee will retire on 31.03.2018.

3. On 01.04.2003, the employee filed a claim case before the Labour Court under the provisions of Section 31 (3) of Chhattisgarh Industrial Relations Act, 1960 (hereinafter referred as 'CGIR Act'). The petitioners also entered appearance before the Labour Court and filed a detail reply denying all the submissions and contentions made by the employee. It was emphatically stated by the petitioners that the date of birth of the employee as per the documents that he had produced at the time of appointment was 30.03.1956 which also stands proved from the school record submitted by him at the time of appointment.

4. After the parties led evidence in support of their respective stands, the Labour Court vide order dated 10.12.2007 Annexure P-7 rejected the claim application holding the same to be barred by limitation in view of Section 62 of the CGIR Act. The said order dated 10.12.2007 passed by the Labour Court was subjected to challenge before the Industrial Court. The Industrial Court, after hearing the parties, reached to the conclusion that the matter cannot be said to be hit by delay and laches. According to the Industrial Court, it is a case where the initial date of birth entered in the service book was 30.03.1956 which subsequently got corrected as 30.06.1958 by the officers of the Department themselves. Later on, it was found that the Authority who had ordered for correction of the date of birth was not competent and therefore, the same stood further rectified and the original date of birth i.e. 30.03.1956 was restored back in the service book of the respondent employee. This subsequent correction was made by the Department on 10.12.1992 though according to the employee,

he was intimated about this correction only in the year 2003 i.e. when he raised the dispute.

5. In the instant case, the employee has got himself examined and has led the evidence of the principal of Govt. Boys Higher Secondary School, Katghora, District Korba namely Shri R. A. Bhardwaj and Incharge headmaster of Janpad Primary School Sarkhon namely Shri Datatreya Saraf. So far as the petitioners are concerned, though they had initiated steps for issuance of summons to the witnesses on their behalf, none could appear before the Court below. Therefore, the right of the petitioners' establishment to lead evidence had been closed. Though the Labour Court initially rejected the claim holding it barred by limitation, but on an appeal, vide the impugned order, the Industrial Court held that the correction of the date of birth from 30.06.1958 to 30.03.1956 by the Department was without any notice and knowledge of the employee, therefore, the same was not sustainable. Accordingly, the Industrial Court vide the impugned order allowed the appeal of the employee and ordered that his date of birth be treated as 30.06.1958 instead of 30.03.1956.

6. Contention of Shri Vyas, counsel appearing for the petitioners is that the petitioners have not been granted sufficient opportunity to prove their case so far as the actual date of birth of the employee is concerned. He submits that the employee in the instant case i.e. respondent no.1 himself has not been cross examined completely and therefore it is a case where the order of the Court below was without sufficient materials on record. Counsel for the petitioners referred to the order sheets of the Labour Court to establish the fact that the cross examination of the employee could not be completed and that the employer also has not led any evidence though they were granted some time to lead evidence. Counsel for the petitioners also alternatively prayed that ends of justice would meet if the matter is remitted back to the Labour Court permitting the petitioners to adduce their evidence if any and also permitting the

petitioners to cross-examine the employee in the instant case and the Labour Court may pass a fresh order in accordance with its merit.

7. Shri Deshmukh, counsel appearing for respondent no.1 employee opposing the petition submits that the finding of the Industrial Court is proper, legal and justified and is based on the evidence which has been brought on record. He submits that it is not a case where the employer was not granted any opportunity of hearing. Rather the employer was granted ample opportunities yet they did not choose to lead evidence and therefore the finding of the Industrial Court was perfectly justified. He further submits that the Court cannot wait for eternity for closing a matter in spite of sufficient opportunities being granted to the petitioner employer. Thus, prayed for rejection of the petition.

8. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects from the order sheets of the Labour Court is that while the employee was examined, due to paucity of time, the cross examination could not be completed. The matter then went on being adjourned for that for a considerable period of time for some reason or the other and abruptly the matter was fixed for evidence of the Management. The Management also did not lead any evidence in spite of ample opportunities being provided to them. From the aforesaid factual matrix of the case, it is evident that the entire case before the Labour Court is half baked to the extent that the worker's evidence is not complete and the Management has not led any evidence. Under the given facts and circumstances, this Court is of the opinion that ends of justice would meet if the two orders i.e. order dated 10.12.2007 passed by the Labour Court in Case No. 6/CGIR Act/07 and the order dated 07.11.2008 passed by the Industrial Court in Civil Appeal No. 01/CGIR ACT/A/11/2008 are set aside and the matter is remitted back to the Labour Court for a fresh adjudication. It is ordered accordingly.

9. It is made clear that the fresh adjudication will start from the stage of the cross-examination of the employee i.e. respondent no.1 herein and the witnesses who have already been examined on behalf of the employee, need not be called again and their evidence would have to be considered by the Court below while considering the case on merits. In addition, the petitioners Management would also be granted three dates at an interval of 15 days by the Labour Court for leading their evidence whatsoever in their possession. Thereafter, the Labour Court shall decide the matter afresh taking into consideration the evidences which would be brought on record.

10. It is made clear that the Labour Court shall not be influenced in any manner from any of the findings earlier recorded or any observation made by this Court while disposing of this writ petition. Since the parties are present before this Court, let them appear before the Labour Court on 21.02.2018. Since the matter is old, it is expected that the Labour Court shall decide the matter positively within a maximum period of three months from the next date of hearing i.e. 21.02.2018.

11. At this juncture, it is also necessary to direct that since there was already an order in favour of the employee by the Industrial Court vide its order dated 07.11.2008 in Civil Appeal No. 01/CGIR Act/A/II/2008, the services of respondent no.1 employee shall not be discontinued by the petitioners till the Labour Court passes a fresh order on merits, irrespective of the fact that under the old date of birth reflected in the service book, respondent no.1 employee will be superannuated w.e.f. 31.03.2008. The employee will be permitted to continue in service till the Labour Court decides the matter.

12. With the aforesaid observations and directions given by this Court, the present writ petition stands allowed in part.

Sd/-
(P. Sam Koshy)
JUDGE