

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 6659 OF 2011**

Dharam Say, S/o Shri Amir Say, age about 49 years, C.M.P.F. No. A/4/144/863, R/o Bhatgaon, Tahsil Bhaiyathan, District Surguja (CG)

... Petitioner**versus**

1. South Eastern Coal Fields Limited, though Regional Manager, Bhatgaon Area, Post- Bhatgaon Colliery, District Surguja (CG)
2. Personnel Manager, Bhatgaon Colliery, District Surguja (CG)

... Respondents

For Petitioner	:	Mr. M.K. Sinha, Advocate.
For Respondents	:	Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/09/2018**

1. Claim of the petitioner in the present writ petition is for a direction to the respondents to refer the case of the petitioner to the Age Determination Committee to consider the factual scenario of the petitioner and to determine the age of the petitioner for deciding his date of superannuation.
2. Contention of the petitioner is that the petitioner, vide Annexure P-1, has got a school certificate issued on 27.7.1983 whereby the petitioner has been declared 8th pass and the petitioner has also obtained a transfer certificate dated 11.8.1983, and in both these documents the date of birth of the petitioner has been reflected 23.3.1962. Further contention of the petitioner is that the petitioner while being granted appointment by the respondents at initial stage on 29.7.1981, his date of birth was entered as 9.12.1951. This was an erroneous entry made without there being any basis whatsoever. According to the petitioner, his date of birth is 23.3.1962 and for which the petitioner has made repeated representations to the authorities on 18.3.1995, 24.4.1998, 21.2.2003, 26.8.2011 but none of these have been duly considered by the respondents and therefore he has preferred the present writ petition seeking for a direction to the respondents to consider the case of the petitioner by the Age Determination Committee.

3. Learned counsel for the respondents however opposing the petition submits that it is a case where all along the petitioner has accepted his date of birth in the office record to be 9.12.1951. He submits that even in the statutory record under the Mines Act, i.e., Form B, which is maintained for all the mine workers, the date of birth so far as the petitioner is concerned is 9.12.1951. He next submits that the petitioner on many occasions had the occasion knowing his date of birth as per the office record, but he has never objected to. It was further contended that so far as the representations which the petitioner is alleged to have made time and again are all doubtful documents to have been made to the respondents on that point of time and that it is only at the fag-end of his career that the petitioner has challenged the date of birth seeking correction. It was also contended by the counsel for the respondents that the document, Annexure P-1, i.e. the mark-sheet as well as the transfer certificate of the school, on the basis of which the petitioner relies for change of date of birth, are the documents which have been obtained much after the petitioner came in employment. Those documents of the school education department also are of a period subsequent to his coming into employment. Therefore, the petitioner's case would not fall in any of the conditions stipulated under the Implementation Instructions No.76 which is a document which lays down the guidelines for determining the date of birth of a person at the time of appointment as also for determining the dispute pertaining to the date of birth of an existing employee. Thus, for the aforesaid reasons, he prayed for the dismissal of the writ petition.

4. On due consideration of the contentions made on behalf of either side and on perusal of record, admittedly the petitioner was given appointment by the respondents in 1981. At the time of his appointment, in the service register as well as in the statutory registers, the date of birth was mentioned

as 9.12.1951. These records bear the signatures/thumb impression of the petitioner. At that point of time, the petitioner had not objection to the date of birth reflected in the service records. The petitioner has placed strong reliance on Annexure P-1 for correction of his date of birth. Annexure P-1 is the document obtained by the petitioner much after his joining the employment with the respondents. The petitioner has not been able to produce any document of a period prior to 1983, i.e., the period when Annexure P-1 was issued, to co-relate his date of birth as 23.3.1962. Likewise, apart from the 8th standard mark sheet, Annexure P-1, there does not appear to be any other document produced by the petitioner to substantiate his date of birth as 23.3.1962.

5. Given the said facts and circumstances, it would be relevant at this juncture to take note of the conditions stipulated in the Implementation Instruction No.76 which deal with the review determination of the date of birth in respect of existing employees. The first condition is that, in case of any certificate issued from the University or Board, the same should be treated as correct provided they are issued by the same University/Board/Institution prior to the date of appointment. In the instant case, the sole document i.e. Annexure P-1 which the petitioner relies upon is the document which was not issued prior to the appointment but one which was obtained subsequently and therefore the petitioner would not fall within the conditions stipulated in the Implementation Instruction No.76.

6. So far as the date of birth is concerned, it is by now well settled proposition of law that the same can only be altered in case there is substantive, justified and cogent document to establish the actual date of birth. In the instant case, the petitioner has not been able to produce any cogent document which could be considered as authentic and genuine to think of going in for correction of his date of birth.

7. Thus, for the foregoing reasons and discussions in the preceding paragraphs, this Court does not find any strong case made out by the petitioner calling for an interference in his date of birth.

8. The writ petition thus deserves to be and is accordingly dismissed.

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

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