

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 26.07.2019****Judgment pronounced on 01.08.2019****WA No. 388 of 2017**

(Arising out of order dated 10.04.2017 in WPS- 6829 of 2009)

- Tulsi Yadav S/o Late Raghunath Yadav Aged About 49 Years Working As Mechanical Fitter, Kusmunda Colliery, Under Kusumunda Area SECL, R/o M D - 1, Vikas Nagar, P. O. Kusumunda District Korba Chhattisgarh

---Appellant**Versus**

1. SECL Through Chairman Cum Managing Director, Seepat Road Bilaspur Chhattisgarh.
2. General Manager, SECL, Kusumunda Area, P.O. Kusumunda, District Korba, Chhattisgarh.

-----Respondents

For Appellant	: Shri Govind Ram Miri and Shri Basant Kaiwartya, Advocates
For Respondents	: Shri Sudhir Kumar Bajpai, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Challenge in this appeal is to the order dated 10.04.2017 passed in Writ Petition (S)- 6829 of 2009 passed by the Writ Court wherein the Writ Petition filed by the appellant/petitioner claiming for correction of date of birth in the service record was dismissed.
2. Brief facts relevant for disposal of this appeal are that the appellant was initially appointed on 23.11.1980 on the post of 'General Majdoor' at Banki Colliery, Korba. Appellant filed an application before the Deputy

General Manager (DGM), South Eastern Coal Fields Limited, Kusumunda Project (for short, 'SECL') on 27.12.2004 for correction of his date of birth and, thereafter, second application was filed on 14.06.2006 for correcting his date of birth in service record from 23.11.1950 to 04.06.1960.

3. When the respondents have not considered these applications filed by the appellant, he again moved an application on 10.02.2009 and, thereafter, filed a Writ Petition before this Court with following reliefs:

“(i) That, this Hon'ble Court may kindly be pleased to call records relating to this case for kind perusal of Hon'ble High Court.

(ii) That, the Hon'ble Court may kindly be pleased to direct the respondents to refer the petitioner to age determination committee for correction of date of birth of petitioner's service record.

(iii) That, the Hon'ble High Court be pleased to quash the date of birth mentioned in service record of petitioner ie 23.11.1950, which is wrongly recorded. And issue direction to the respondents to mention, date of birth 4.6.60.

(iv) Any other appropriate relief/order directions be passed in favour of the petitioner, which this Hon'ble Court may deem fit.

(v) Award cost of this petition to the petitioner.”

4. Respondents after receipt of notice of the Writ Petition, gave their appearance and also submitted reply to Writ Petition and denied the claim of the appellant. They specifically pleaded that the Writ Petition was hopelessly barred by time as even if considering his first application for correction of date of birth, he has moved the said application only after 24 years of service, which is not permissible. Respondents have also filed copies of relevant official records along with copy of Form-B.

5. Learned Writ Court after considering the pleadings, documents and arguments of respective parties, dismissed the Writ Petition taking into consideration of Order passed by Division Bench of this Court on 27.02.2015 in the matter of **SECL and others Vs Sampat Kumar Chauhan** in Writ Appeal- 399 of 2014 and held that the Writ Petition filed by the appellant for correction of date of birth in service record was with inordinate delay.

6. Learned counsel for the appellant submits that the appellant was appointed as General Mazdoor and he is not highly literate person and therefore, he could not read the contents of Form- B which has been filled up by other Officer of SECL in English and he put his thumb impression on it. He also submits that date of birth of appellant is correctly mentioned in Annexure P/5 of Writ Petition, which is the School Transfer Certificate where date of birth is recorded as 04.06.1960.

7. By referring the Implementation Instruction No.76 of National Coal Wage Agreement III, which is the procedure for determination/verification of age of employees framed by SECL, learned counsel for the appellant submits that in case where an employee is a non-matriculate, but educated, then, date of birth recorded in the School Leaving Certificate should be treated to be correct date of birth. He also argued that in some of the documents which were issued by the SECL like Medical service card, Pay slip of October 2004, date of birth of appellant is recorded as 04.06.1960. Therefore, in view of contents of Implementation Instruction No.76, appellant ought to have been referred to the Age Determination Committee/Medical Board which SECL has not done and got the appellant

superannuated from his service on the basis of wrong date of birth recorded in Form- B ie Service record, thereby appellant lost 10 years' of service and also suffered monetary loss for the same.

8. Per contra, learned counsel appearing for the SECL submitted that Form- B is the basic official document which is filled-up by the employee at the time of joining and when the employees are not much literate, this Form-B is filled up by other employees of SECL and signature of concerned employee is obtained on the said form for verification of information recorded in the Form-B. He also placed reliance on the same instruction ie Implementation Instruction No.76 Clause B and argued that in case of existing employees, certificate issued by the Board should be treated as correct provided it was issued prior to the date of employment. But the School Leaving Certificate placed on record by the appellant appears to have been issued much after the date of his employment in SECL. He further argued that Annexure P/7 of the Writ Petition in which details of family members were supplied by the employee to the SECL for taking benefits for himself and family members, date of birth of elder son of appellant is mentioned as 30.11.1977. Therefore, appellant's date of birth as claimed by him is 04.06.1960 is not acceptable.

9. We have heard learned counsel for the parties and perused the records minutely. Though there is an application filed by the appellant requesting the SECL for correction of his date of birth from 23.11.1950 to 04.06.1960, but said application has been filed after 24 years of service. In the first application he has not filed any supporting document ie any document with respect to his school like Mark-sheet, Admission Register

or School Leaving Certificate, but School Transfer Certificate was enclosed with the subsequent application filed on 14.06.2006. School Transfer Certificate Annexure P/5 is issued in April 2006 ie when the second application for correction was made. This document cannot be said to be acceptable document for the purpose of correction of date of birth in view of Clause-'B' of Implementation Instruction No.76. Clause-'B' (i) (a) reproduced herein below :-

“Review/Determination of date of birth in respect of existing employees :

(i) (a). In the case of existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate 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.”

10. Undisputedly, appellant has taken steps for correction of his date of birth in service record only after lapse of 24 years of his service. This Court while considering the similar issue and law applicable to it after referring to several decisions of Hon'ble Supreme Court and dismissed the claim of employee therein in the matter of **Sampat Kumar Chauhan** (supra).

11. Further, looking to document Annexure P/7 of the Writ Petition in which details of Family members mentioned for availing benefits of the SECL like Home Town Allowance, LTC etc., date of birth of elder son of appellant shown as 30.11.1977. Looking to the date of birth of his elder son, marriage of appellant ought to have been held at the age of 16 years or prior. On pointing out this fact to learned counsel for the appellant, he

submits that in earlier days, marriages used to take place at much earlier age and therefore, date of birth of his elder son shown in the record cannot be doubted. We are not inclined to accept the submission made by learned counsel for the appellant.

12. The fact that benefit of Clause-B of the Implementation Instruction of SECL can be availed by any employee for correction of the date of birth mentioned in service record on the basis of school documents or certificate subject to the Said document was issued prior to the date of appointment. In the case at hand, the document Annexure P/5 relied upon by the appellant was issued after 25 years of his appointment ie just before making an application and therefore, the document Annexure P/5 cannot be taken into consideration for correction of date of birth recorded in the Office recorded at the time of appointment. No other document/certificate issued prior to date of appointment was brought on record.

13. Annexures R/1 & R/2 submitted along with the reply, one of which, is filled up in Hindi also mentions the date of birth as 23.11.1950. Both were signed by him. He signed his *vakalatnama* in english and, therefore, the arguments of the learned counsel that he was not aware as what date of birth was recorded is not acceptable.

14. In view of afore said discussions and considering the earlier verdict of this Court in dealing with identical question with respect to correction of date of birth at the fag end of service, we do not find any illegality or infirmity in the order passed by learned Single Judge.

15. We find no tenable ground to call for interference. The appeal fails, and it is dismissed accordingly.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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