

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 6488 of 2007

1. Sayyad Yasin S/o S.K. Ibrahim, aged about 54 years, Electrician Grade 'C' Through N.C.P.H. Colliery Chirmiri Region Mines Haldibadi Aamanala Chirmiri District Korea Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coalfields Limited, through Chairman-cum-Managing Director, Seepat Road, Bilaspur, CG.
2. Chief General Manager, Chirmiri Region, N.C.P.H. Colliery Chirmiri District Korea Chhattisgarh
3. The Chief Personnel Manager, N.C.P.H. Colliery Chirmiri Region Post Haldibadi District Korea Chhattisgarh
4. General Manager (IR&L), South Eastern Coalfields Limited, Seepat Road, Bilaspur, CG.

---- Respondent

For Petitioner

Shri Surfraj Khan and Shri Rishi Sahu, Advocate

For Respondent/SECL

Shri Sudhir Bajpai, Advocate

Order On BoardByPrashant Kumar Mishra, J.26/09/2019

1. Petitioner would assail the decision of the respondent - SECL to retire him on attaining the age of superannuation by treating his date of birth as 15-7-1950. Petitioner claims that, in fact, his

date of birth is 19-11-1953 as entered in his Higher Secondary School Certificate Examination as also in the 8th class marksheet and the Transfer Certificate (TC) issued by the school where he studied up to 8th class.

2. The indisputable fact is that the petitioner joined the services with the SECL as General Mazdoor Category IV on 5-3-1972. At the time of entering the service he appended his signature on 'B' Form where his date of birth was entered as 15-7-1950. All throughout the same date of birth continued in his service record. The petitioner submitted representation for correction of his date of birth for the time on 7-10-1987 as referred in Annexure – P/8. By this document (Annexure – P/8) the petitioner was informed to submit necessary documents in support of his claim that his actual date of birth is 19-11-1953. Petitioner submitted his Higher Secondary School Certificate Examination which is apparent from his representation dated 15-6-1988 (Annexure – P/9), but the said representation was dismissed vide Annexure – P/10 dated 4-9-2000 against which the petitioner again submitted representations, which were also rejected and latter he preferred writ petition before this Court bearing WP No.822 of 2003 for correction of date of birth. The said writ petition was disposed of by order dated 23-7-2007 in the following terms :

- 1) Learned counsel appearing for the petitioner, on instructions, submits that at this stage, the petitioner does not want to press other points, except that the respondent-South Eastern Coalfields Limited be directed to refer the matter with regard to date of birth of the petitioner to the Age Determination Committee. Learned counsel appearing for the respondents has no objection to the averment made by learned counsel appearing for the petitioner.
 - 2) In view of the foregoing, the writ petition is disposed of with the direction to the respondent-Souther Eastern Coalfields Limited to refer the dispute with regard to the date of birth of the petitioner to the Age Determination Committee, within a period of three weeks and the Age Determination Committee, in turn, shall consider and decide the same on its own merits, in accordance with law, within a period of six weeks thereafter. No order as to costs.
3. Pursuant to the above order passed in WP No.822 of 2003 the petitioner was sent to the Age Determination Committee (ADC), who examined the petitioner on 20-8-2007 finding his age range between 55-60 years. Since as per the CIL guidelines dated 7-7-1992 the nearest point of the age range as recorded in 'B' Form register will be accepted as the age of the employee concerned, the petitioner's date of birth recorded as 15-7-1950 in the 'B' Form register was taken to be his correct date of birth as it was within the nearest point of age range recorded in the 'B' Form register. Petitioner was informed about the decision of the ADC and thereafter, the present petition came to be filed in the year 2007.

4. Admittedly the petitioner did not submit his 8th class marksheet or Transfer Certificate (Annexures – P/1 & P/2) on which he is now placing reliance, at the time of entry into service. Petitioner raised the issue concerning his date of birth for the first time in the year 1987 i.e. after one and half decade of entry into the service. Likewise, he submitted his matriculation certificate of the year 1985 for the first time before the SECL authorities in the year 1988. Even if the matriculation certificate was not in existence on the date of entry into service, the said entry having been made on the basis of petitioner's own declaration in the examination form, the same is a self serving document being a document coming into existence after his entry into service. Two other certificates of 8th class marksheet and Transfer Certificate were in existence at the time of entry into service, but the same were not produced, therefore, they also lose significance for the purposes of testing the genuineness of petitioner's claim about his date of birth. It is important to bear in mind that the petitioner did not submit his matriculation certificate before the ADC.
5. In a similar matter the Division Bench of this Court in ***South Eastern Coalfields Ltd. & Others v Sampat Kumar Chauhan***¹ was considering the effect of a matriculation certificate obtained subsequent to the date of entry into service. The Division

¹ WA No.399 of 2014 (decided on 27-2-2015)

Bench observed that the date of birth mentioned in the statutory Form 'B' register carries with it statutory force about its correctness, which has taken to be correct. Referring to several decisions of the Supreme Court it was observed thus in paras 12 & 20 :

12. Even if the qualification for regular appointment was I.T.I. training certificate and the Appellants did not ask for his matriculation certificate, the Respondent offers no explanation how his date of birth came to be recorded as 14.12.1952 in the Statutory Form 'B' register on two occasions and signed by him. Surely if he was in possession of a matriculation certificate at the time of his appointment, he would have objected to the recorded date of birth and relied by production of his matriculation certificate. No explanation has been offered by the Respondent. The matriculation certificate therefore may have to be the subject of further enquiry itself. There will have to be sanctity to the date of birth mentioned in the statutory register as compared to any other document. The Respondent is alone answerable for his travails.

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20. In the present case, the first writ petition in the year 2009 itself was filed 34 years after entry into service highly belated in nature seeking to resurrect a cause of action which stood extinguished by passage of time. Realizing the difficulties for himself, the Respondent did not seek adjudication on merits, but prayed for reference to the ADC to lay the foundation for a fresh cause of action on any adverse order that may be passed by the ADC, otherwise not available to him by passage of time. It appropriately compels us to refer (2008) 10 SCC 115 (C. Jacob v. Director of Geology and Mining) observing as follows :-

“ 8....He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made

before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9...If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

11....When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action.”

6. It is pertinent to mention here that that aforesaid decision rendered by the Division Bench of this Court in ***Sampat Kumar Chauhan*** (supra) has been affirmed by the Supreme Court by order dated 20-7-2015 passed in Special Leave to Appeal (C) No(s).19199 of 2015.
7. In the case at hand also, 8th class marksheet and Transfer Certificate (TC) were in petitioner's possession at the time of entry into service recording his date of birth 15-7-1950, in the 'B' Form register, however, the petitioner did not raise any protest and appended his signature without any demur. The matriculation certificate was obtained subsequent to the joining of service, therefore, it cannot be taken to be a document on the basis of which his date of birth recorded in 1972 in 'B' Form can be corrected.
8. As an upshot, the writ petition, being bereft of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri