

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPL No. 4133 of 2007**

Mehattar Sahu Son Of Shri Rajpal Sahu, Resident Of Village Prakashpur,  
Post Chichola, Tahsil. Khairagarh, District. Rajnandgaon C.G

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh And Another Public Works Department Bandr  
Khairagarh, District. Rajnandgaon C.G
2. The Executive Engineer Public Works Department Bandr Khairagarh,  
District. Rajnandgaon C.G

**---- Respondents**

|                |   |                                                                         |
|----------------|---|-------------------------------------------------------------------------|
| For Petitioner | : | Mr. P.K.C. Tiwari, Sr. Advocate with Mr.<br>Ashutosh Trivedi, Advocate. |
| For State      | : | Mr. Jitendra Pali, Dy. AG                                               |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**11/01/2019**

1. The present writ petition has been filed being aggrieved by the award of the labour Court, Rajnandgaon in case No. 32/I.D. Act/2000(Reference). Vide impugned award labour Court has answered a reference to the State Government in negative holding that the petitioner is not entitled for any relief.
2. The relevant facts for the adjudication of the present dispute is that the petitioner was initially appointed as a permanent Gangman with the respondents in the Public Works Department, Khairagarh, District Rajnandgaon. While service book of the petitioner was being prepared the date of birth of the petitioner according to him was entered as 08/10/1946 and as per this date of birth the petitioner should have retired from service on 31/10/2008 on attaining the age of 62 years. According to the petitioner because of the date of birth in the service book being tampered/interpolated he

has been retired from service about 5 years earlier. According to the petitioner the date of birth in the service book maintained with the respondents have been tampered to the extent that his date of birth is reflected as 08/10/1940 instead of 08/10/1946. Based on which the petitioner was ordered to be retired from service on 31/10/2000 onwards. The petitioner immediately raised an industrial dispute before the appropriate authority who initially granted interim protection from being retired and the interim protection continues uptill 24/02/2003 whereby the interim protection stood vacated, thereafter the petitioner was retired vide Annexure (P-3) dated 12/03/2003. Meanwhile the dispute that the petitioner had raised was referred to the State labour Court at Rajnandgaon with the following terms on records :-

“Whether the action on the part of the respondents in retiring the petitioner w.e.f. 31/10/2000 was justified or not? If not what relief the petitioner is entitled for, and in this regard what directions can be given to the respondents?”

3. The said reference was registered as case No. 32/I.D. Act/2000(Reference) before the labour Court, Rajnandgaon. The matter was put to trial and the petitioner as a workman got himself examined before the labour Court. In course of the adducing evidence, the petitioner provided before the labour Court, copy of the original service book that he had with him with original entries of his date of birth reflected as 08/10/1946. In addition the petitioner had also made a categoric averment before the labour Court that the Date of birth reflected in his service book maintained by the

department has been tampered by somebody to the extent of his date of birth being interpolated from 08/10/1946 to 08/10/1940. He further submits that correction has been made without any knowledge and intimation to the petitioner and thus the same is bad in law. Subsequently the department was directed to lead evidence. The department that is respondents herein was granted ample opportunity of time to lead evidence in rebuttal to the evidence put forth by the petitioner workman. The management in spite of sufficient opportunity being granted, failed to adduce any evidence and finally the respondent management stood closed so far as leading evidence is concerned and the matter was heard and decided finally vide impugned award. In spite of the fact that the management has not led any evidence yet the labour Court rejected the reference case against the petitioner holding that the petitioner lacked evidence to substantiate his contention both in respect of tampering of the records maintained by the respondents and also in respect of the fact that the date of birth maintained by the department was in fact 08/10/1946 and not 08/10/1940. It is this award which is under challenge in the present writ petition.

4. The contention of the petitioner is that the finding of the labour Court is total perverse and contrary to the evidence which has come on record. According to the petitioner he had entered appearance before the labour Court and specifically stated that the service book which was maintained by the respondent employer a copy was given to him and where the date of birth is reflected as 08/10/1946. It was also the contention of the learned senior counsel that the finding is also perverse as according to the labour Court it was the

petitioner to adduce evidence in respect of tampering of the date of birth in the records maintained by the respondents, however it was the burden of the management respondent State. It was also the contention that so far as the petitioner is concerned he has led evidence and also produced materials that were available with him as far as establishing his date of birth is concerned. Learned senior counsel also pointed out that the fact in the service book that was maintained by the respondent management tampering has been done was clear because the date of birth mentioned was by a separate ink and the entry made so far as the tampered areas are concerned was in English whereas the figures were written in Hindi which clearly establishes that the said entries were made subsequently by some unknown person without taking the petitioner in confidence and without there being any material regarding his date of birth in fact being 08/10/1940. For all these reasons the petitioner sought for the quashment of the impugned order.

5. Opposing the petition, learned State counsel submits that from perusal of the official service book available with the respondent employer, it does not seem to have been tampered or interpolated. To avoid tempering or interpolation they have fixed a tape over the date and therefore the contention of the petitioner can not be accepted. State counsel further submits that in the absence of any substantive material produced by the worker to establish that is actual date of birth is 08/10/1946, the finding of the labour Court cannot be said to be either bad or perverse. The State counsel also submits that this Court in exercise of its power under Article 226

would not sit as appellate authority over the , findings of the labour Court. The writ petition should therefore be rejected.

6. Having heard the contention put forth on either side and perusal of the record so far as interference by this Court is concerned, this Court definitely is of the firm view that High Court while hearing the petition wherein the order of labour Court is under challenge would not be sitting as First Appellate Court. It is settled position of law that under the scope of judicial review under Article 226 this Court has power to scrutinize the evidence and reach also to the conclusion whether the finding is perverse and contrary to the evidence on record.
7. So far as the merits of the case is concerned records would show that the workman in the instant case has promptly objected before the authorities concerned regarding his premature retirement. The petitioner also had interim protection in his favour by the Court below, which later on was vacated. What is also reflected is that the petitioner has led evidence before the Court both oral and documentary. Whereas on the contrary there is no evidence on the part of the employer respondent either oral or documentary. In the absence of any material in rebuttal by the employer this Court does not find any material available for the labour Court to reach to the conclusion that the workman has not adduced any evidence. The proceedings which show that the Exhibit P-1c is the copy of original service book which was reproduced by the worker before the labour Court whereas to rebutt the same, there is no evidence which has been adduced by the respondent employer. The respondent

employer also has not been able to adduce evidence to show that the date of birth 08/10/1940 was based on some materials available in the department.

8. Given the said facts this Court has no hesitation in reaching to the conclusion that the finding of the labour Court to be perverse finding and is also contrary to the evidence on record. Whereas the worker infact has led evidence and supported his statement with documentary proof. The burden of proof thereafter automatically shifts upon the respondent employer to rebut the evidence led by the worker. In the absence of which the evidence led by the worker has to be given due weightage.
9. For the aforesaid reasons the impugned award is not sustainable and same deserves and is accordingly set aside. The dispute raised by the petitioner is answered in his favour and as a consequence this Court holds that the retiring of the petitioner w.e.f. 31/10/2000 at the first instance and later on w.e.f. 12/03/2003 are both bad in law and the petitioner's date of birth has to be accepted to be that of 08/10/1946 and accordingly he should have retired only in the year 2008 on attaining the age of 62 years which was age of superannuation for the Gangman. So far as the age of retirement for the Gangman being 62 years is concerned the same stands fortified from the bunch of writ petition decided by this Court which is reported in 2007(2) CGLJ, 29 where in referring to the Chhattisgarh Public Works Department work charge Contingency paid Employees (recruitment and conditions of service) Rules, 1976), this High Court upheld the age of retirement to be 62.

10. As a consequence the petitioner would be entitled for all consequential relief and other benefits that he is entitled for between 12/03/2003 to 31/10/2008 and any further consequential benefits on his retirement.

11. Accordingly, the writ petition stands allowed and disposed off.

Sd/-

**(P. Sam Koshy)**  
**Judge**

Rohit