

HIGH Court OF CHHATTISGARH, BILASPUR**Judgment reserved on 30.07.2019****Judgment delivered on 24.10.2019****WA No. 810 of 2018***(Arising out of order dated 31/07/2018 passed by learned Single Judge in WP(S) No. 4613 of 2011)*

1. South Eastern Coalfields Limited Through Its Chairman-Cum-Managing Director, Seepat Road Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
2. Chief General Manager Hasdev Area, South Jhagarakhand, District Korea Chhattisgarh
3. Senior Manager (Civil) IWSS, Sub Area Jhagarakhand, District Korea Chhattisgarh
4. General Manager (P&A), SECL, Bilaspur, Chhattisgarh

---- Appellants**Versus**

Ahmand Husain S/o Shri Alauddin Husain Aged About 52 Years R/o A/22,
B. Sim Collery, Post Khongapani, District Korea Chhattisgarh, District :
Koriya (Baikunthpur)

-----Respondent

For Appellants	: Shri Shailendra Shukla, Advocate
For Respondent	: Shri S.P. Kale, Advocate

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

Per Parth Prateem Sahu, J.

1. Appellant-Employer has challenged the order of learned writ Court interfering with the opinion of the Age Determination Committee (for short 'the A.D.C.') dated 26-7-2011, and consequential office order issued by Senior Manager (Civil) dated 27-7-2011, superannuating the respondent-employee from his services with immediate effect.
2. Facts of the case is that respondent/petitioner was employed as T.B.L. on 12-02-1976 and posted at B.Seam Colliery, Koriya. Respondent

moved an application for correction of his date of birth in service record on the ground that his date of birth was wrongly been mentioned in service record as '01-07-1954' instead of '01-06-1958'. Sub-Area manager, after receipt of application wrote a letter to the higher authority for determining the age by A.D.C.. On receipt of letter from Sub-Area Manager, Jhagarakhand, for determining the age of the respondent through the A.D.C., the then Deputy Personnel Manager, Sub-Area, Jhagarakhand, wrote a letter to the Additional Chief Personnel Manager, Hasdev area, for taking necessary action.

3. The Additional Chief Personnel Manager *vide* its letter dated 03-04-1995, advised for necessary correction and its incorporation in CMPF records mentioning therein that as per the service record i.e. 'Form B' register, at page 105, the date of birth is shown as '01-06-1958'. Photocopy of Matriculation Certificate also shows the date of birth as '01-06-1958', but due to clerical mistake only in the CMPF record, the date of birth is shown as 01-07-1954. On the basis of the aforementioned letter dated 03-04-1995, the date of birth of respondent was corrected in service record. As per corrected service record, the date of birth of respondent is shown as '01-06-1958' in the payslip issued by the appellant to respondent-employee.
4. Suddenly, on 19-06-2011, the respondent was served with a notice by the appellant department mentioning therein that the respondent is going to retire on 30-6-2011. The aforementioned letter was challenged by the respondent-employee before High Court in W.P.(S) No. 3301/2011 and learned Single Judge *vide* order dated 27-6-2011, directed the respondent authorities to reconsider the case of the

petitioner-employee by Senior Manager (Civil) on the basis of existing record and to take appropriate decision within a period of one month and till then protection of service was granted to the petitioner.

5. In pursuance of the order passed by the learned writ Court, appellant-employer constituted Age Determination Committee (A.D.C.) for determining age of the respondent. After examination, the A.D.C. gave its report opining date of birth of respondent to be 01-07-1951. This opinion was forwarded to the Chief General Manager by the (P&A).
6. On the basis of the opinion formed by the A.D.C., the respondent was superannuated from his service with immediate effect *vide* its order dated 27-07-2011. The respondent challenged the opinion of the A.D.C. dated 26-07-2011 as well as the office order dated 27-07-2011 before the writ Court by filing writ petition bearing W.P.(S) No. 4613/2011, seeking following reliefs:-

“10.1 Hon'ble Court may kindly be pleased to quash the decision of A.D.C. dt. 26.07.2011 and Hon'ble Court further quash the office order dt. 27.07.2011 and petitioner may be permitted to continue till the age of 60 years correcting to his dt. of birth as 01.06.1958.

10.2 Any other relief, which Hon'ble Court deems fit and proper may also kindly be granted to the petitioner in the interest of justice.

10.3 Cost of the petition be also awarded.”

7. The learned writ Court after considering the facts and circumstances of the case as well records of the A.D.C., allowed the writ petition, set aside the report of A.D.C. determining date of birth of respondent as 01-07-1951 and the order dated 27-07-2011, superannuating the respondent/petitioner from service and held that the

respondent/petitioner is entitled for all consequential benefits treating his date of birth as 01-06-1958. It is the aforementioned order passed by the learned writ Court was challenged by the appellant-employer.

8. The learned counsel for the appellant submits that the perusal of the order dated 27-6-2011 passed by the learned writ Court in earlier round of litigation records that appellant-company could not be able to file its reply and the relevant documents on record and the order has been passed for reconsideration of date of birth of respondent/petitioner at the first date of hearing considering the pleadings made by the respondent/petitioner that the service record shows the date of birth of the respondent/petitioner as 01-06-1958 on the basis of the correction incorporated in the year 1995. He submits that in pursuance of the aforementioned order passed by the learned writ Court, looking to the disputed date of birth of the respondent/petitioner, as per the norms of the company i.e. Implementation Instruction No. 76 (in short 'I.I. No.76'), it was decided to refer the case of respondent to the A.D.C.. The Committee was constituted and a letter was issued by the Committee to the respondent to produce all the relevant documentary evidence as required and mentioned in the I.I. No.76. The respondent, except the 'School Leaving Certificate', has not produced any other document/certificate issued by the competent Board or Institution meeting the requirements of Clause B of the I.I. No.76. He also submits that the respondent presented himself before the A.D.C. and stated that in the year 1995 also he only submitted his School Leaving Certificate before the authority and on that basis his service record was corrected. Though

he is a matriculate and at present working in the clerical grade of service but has not produced the certificate issued by the competent Board or Institution in support of his claim of date of birth and therefore on the basis of his medical examination by the A.D.C., his age has rightly been determined by the A.D.C. on the basis of the records available before it. Other contentions of learned counsel for the appellant is that in the earlier round of litigation, looking to the date of his superannuation i.e.30-06-2011, on the basis of the date of birth of the respondent/petitioner as mentioned in the service record as 01-07-1951, the company decided to refer the case of respondent to A.D.C.. He further submits that the letter of Additional Chief Personnel Manager, Hasdev area, dated 03-04-1995, was an erroneous procedure adopted by the Additional Chief Personnel Manager because once there is age dispute raised by party and recommendation of case of the respondent before A.D.C., then without opinion of the A.D.C., date of birth of any employee could not have been corrected in service record and the writ Court considering one of the factors with respect to the correction of the date of birth in the service record in the year 1995 itself has passed the impugned order which is not sustainable.

9. Per contra, the learned counsel for the respondent-employee submits that respondent filed an application for correction of his date of birth in service record immediately after coming to his knowledge wrong entry of date of birth in the year 1995 itself and the competent authority directed for correction of the records. Subsequently the record was also corrected and correct date of birth was incorporated in service record of the appellant-company and therefore it could not be said that

the respondent has raised the claim of date of birth at the fag end of service. In fact, much prior to his date of retirement i.e. about more than 16 years prior (as per service record), his date of birth got corrected in service record. He further submits that the appellant-employer contrary to the date of birth recorded in service record of the employee has issued a letter of intimation dated 19-06-2011 mentioning therein that the respondent was going to retire on 30-06-2011, treating the date of birth of respondent as 01-07-1951 whereas the service record shows the date of birth as 01-06-1958. He submits that in earlier round of litigation, the learned writ Court set aside the letter of intimation issued by the appellant-company and specifically directed to consider the available service record and to take appropriate decision. He also submitted that without there being any direction of the writ Court in order dated 27-06-2011 for constitution of the A.D.C. to determine the date of birth of the respondent, the appellant has erroneously constituted A.D.C. which is contrary to the order passed by the learned writ Court and therefore the opinion of the A.D.C. could not be considered for determining the date of birth of the respondent-employee. He also submitted that the appellant along with his writ petition has filed School Leaving Certificate wherein it has been categorically mentioned that date of birth of the respondent-employee as 01-06-1958. The said document was of the year 1973 i.e. prior to coming into employment of the respondent, which is as per the requirements of the I.I. No.76.

10. He also submitted that the learned writ Court in categorical terms recorded a finding that the A.D.C. has not assessed the age of the respondent in accordance with law. On the basis of the aforementioned

submission, he submitted that the impugned order passed by learned writ Court allowing the writ petition does not call for any interference.

11. We have heard learned counsel for the parties and perused the records of writ petition as well as writ appeal.

12. The correction of date of birth in the year 1995 is not under challenge.

13. So far as the argument raised by the learned counsel for the appellant-employer that the appellant has acted strictly in accordance with the observation made by the High Court in its order dated 27-06-2011, passed in W.P.(S) No. 3301/2011, we have perused the order dated 27-6-2011, Annexure A-2 filed along with the writ appeal and Annexure P/8 to writ petition which reads as under--

“... All the documents, which have been placed on record by the petitioner show that the respondents have taken a decision to accept his correct date of birth as 1.6.1958. Therefore, the notice of retirement, which has been issued, requires consideration by the respondent- Senior Manager (Civil), who has issued the notice. Accordingly, the case of the petitioner with regard to his date of birth shall be considered on the basis of existing record and appropriate decision shall be taken. This exercise may be completed within a period of one month from the date of receipt of copy of this order.”

14. It appears that the writ Court, looking to the documents enclosed with writ petition as well as date of superannuation i.e. 30-6-2011 mentioned in letter of intimation, has directed the Senior Manager (Civil) to consider the case of respondent on the basis of existing record and to take appropriate decision. From perusal of the order dated 26-7-2011, it appears that appellant-employer has not submitted

its affidavit/reply to the writ petition. In compliance of the order, the Senior Manager (Civil) took a decision to refer the case of the respondent to A.D.C. on the basis of existing service record where different date of birth has been mentioned and subsequently in the year 1995, the date of birth in service record of the respondent was corrected. The order of learned writ Court only directs that the Senior Manager (Civil) to take appropriate decision only.

15. The learned writ Court in first round of litigation correctly directed for taking a decision on the basis of the existing records because till the service records bears the corrected date of birth as 01.06.1958, the appellant could not have issued the letter of intimation of superannuation because the decision to retire the respondent will be contrary to service record and will be illegal.
16. The appellant-employer, in pursuance of the order passed by the learned writ Court, by its order dated 27-06-2011 has correctly took a decision for referring the case of the respondent to the A.D.C. as prescribed under I.I. No.76 on the basis of the existing records wherein different date of birth has been mentioned in service record. Once, the dispute arose with regard to the date of birth of an employee recorded in service record, then the best way is to refer the dispute to Age Determination Committee. Decision and steps taken by the appellant-company for referring the case of the respondent to A.D.C., cannot be said to be in violation of the order passed by the learned writ Court. The A.D.C. issued notice to the respondent-employee for placing all the testimonial certificates available with him as per the requirements of I.I. No.76 for determining the age of existing employees. The

respondent-employee in the year 1995 was working as clerk Grade-I and except the School Leaving Certificate he has not produced any document like Matriculation certificate, though it forms part of Annexure-P/4 i.e. letter dated 03-04-1995 in which it is mentioned that the photocopy of the Matriculation certificate was produced before Additional Chief Personnel Manager. The respondent-employee appeared before the A.D.C. and submitted the letter dated 03-04-1995 issued by the Additional Chief Personnel Manager, Payslips for the month of December, 2003 & December, 2004, School Leaving Certificate, showing his date of birth. The documents which are required to be placed before the A.D.C. has been provided in Clause B of I.I. No.76. Clause (A)(i) & Clause B of the I.I. No.76 is reproduced herein below:-

“Implementation Instruction No. 76
Procedure of determination/
verification of age of employees

(A) Determination of age at the time of appointment.

i) Matriculates.

In the case of appointees who have passed Matriculation or equivalent examination, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

(B) Review/ determination of date of birth in respect of existing employees.

- i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards 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.

(b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (1)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) will be treated as authentic.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of the case will taken appropriate action for correction through Age Determination Committee/Medical Board.”

17. Sub-clause (i)(a) of Clause B of I.I. No.76 specifically provides that the existing employees' Matriculation certificate or Higher Secondary certificate issued by recognised University or Board, admit card issued by aforesaid Bodies should be treated as correct, **provided** they were issued by the said Universities/Boards/Institutions prior to the date of employment.

18. In the case at hand, respondent employee only produced School Leaving Certificate which does not form part of the documents mentioned in Clause B of I.I. No.76 which are to be considered by the A.D.C. as mentioned in sub-clause (i)(a) of Clause B of I.I. No.76.

19. The Certificate issued by the Bihar School Examination Board has been enclosed along with the writ petition only and was not placed before the A.D.C.. The Certificate said to be issued by Bihar School Examination Board only mentions the date as 25-07-2011, whereas the date of examination shows as 1972. In view of the specific Clause mentioned in I.I. No.76 with respect to the documents to be considered

and that to the date of issuance of the documents should be prior to the date of employment, these documents placed along with the writ petition also cannot be taken into consideration for looking into the date of birth of the respondent-employee.

20. Annexure P-1 filed along with the writ petition refers that the statement of the respondent-employee was taken, he deposed that the letter dated 03-04-1995 was issued on the basis of School Leaving Certificate dated 26-12-1973 and that was the document submitted by him before the Area Chief Personnel Manager, it is also recorded that the respondent-employee also stated that he do not have any other document to support his date of birth claimed by him to be 01-06-1958. The aforementioned facts recorded in the Annexure-P/1 was not controverted by the petitioner in the pleadings of the writ petition, as no document, required as per Clause of I.I. No.76, was submitted, the respondent was examined by the medical officer and he opined the date of birth to be 01-07-1951.

21. The learned writ Court while allowing the writ petition of the respondent-employee took into consideration that the correction of date of birth in service record *vide* its letter dated 03-04-1995, not granting of opportunity before issuing letter of intimation of superannuation mentioned the date as 30.06.2011 on the basis of the pre-corrected date of birth at the time of service that is 01-07-1954. Further, that the A.D.C. has not been acted fairly. The learned writ Court after examining the record of A.D.C. has considered in detail the materials available therein and has categorically recorded that there was no description of examination of respondent by the Radiologist and further no details of test has been mentioned in 'Form O' but it has

found to be a blank 'Form O' except a remark in the assessment column that "*Radiological age range between 55-60 years*". The medical test is not only the test to be taken into consideration but it requires several tests of different parts of body for determining the age of any person undergoing the Radiological test and to be mentioned in the report prepared by the Radiologist team very specifically. When there appears some dispute with respect to the date of birth in service record of the employer then to ascertain the correct date of birth, the only measure provided is in I.I. No.76. In the above instructions No. 76, it is provided if the specified document is not available or produced then the age is to be determine by the A.D.C. A.D.C. alongwith the records and documents placed before them and also require to perform medical test for determining the age of a person which is one of the medico-logical ways to ascertain the age. The appellant has not raised any argument challenging the finding recorded by learned writ Court for not accepting the opinion of A.D.C. for the reason that there is no details regarding medical test and only age range is mentioned.

22. In the case at hand as discussed above, the appellant had not mentioned the details of the medical examination of the respondent. In absence of the description and details of results of medical examination of respondent shown in the report of A.D.C., the only inference can be drawn that the respondent has not determined the age of respondent in specific prescribed manner.

23. Looking to the facts and circumstances of the case and the date of birth of the respondent as per existing service record and the 'Form O' which only records age range, it cannot be concluded that the date of birth of respondent is 01-07-1951. In view of the above discussion, we

do not find any infirmity in the order passed by learned writ Court that the opinion of A.D.C. and also the order of retiring the respondent/petitioner by accepting his date of birth as 01-07-1951 to be not sustainable and setting aside the order of retiring the petitioner w.e.f. 30-6-2011.

24. The Hon'ble Supreme Court considered the issue of grant of back wages in the matter of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidhyalaya (D.ed.) and others** reported in (2013) 10 SCC 324 and held thus.

“33. In *Novartis India Limited v. State of West Bengal*¹⁵, the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed: (SCC pp. 132-33, paras 21-22)

“21. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefore

¹⁵ (2009) 3 SCC 124

several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.

22. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.”

25. Recently, the Hon'ble Supreme Court again dealt with the issue of award of back wages in the case of **Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed and others** passed in **Civil Appeal No. 6188/2019** dated 21/08/2019 and held as under:

“13. Having due regard to the principles which have been enunciated in **Deepali Surwase** by this Court, the High Court was not, in our view, justified in denying the back-wages to the appellant altogether. Bearing in mind the circumstances which have been noted above, a lumpsum compensation should be directed to be paid.”

26. Learned counsel for the appellants placed his reliance on the decision of this Court in the matter of **South Eastern Coal Fields Ltd and others v. Adya Singh** passed in **W.A. No. 113/2014** and **Eastern Coalfields Ltd.& Ors v. Bajrangji Rabidas** reported in **2014 SC 919**. In the case of **South Eastern Coal Fields Ltd.** (supra), this Court has held as under:

“We do not find any infirmity in the decision-making process undertaken by the age determination committee with the order dated 17-3-2008 (Annexure P-1 with the writ petition), as the age determination committee has taken into consideration the relevant documents while reaching to such conclusion and as such, we are unable to persuade

ourselves to accept the conclusion recorded by the learned writ court and we hereby set aside the order passed by the learned writ court. Resultantly, the writ petition would stand dismissed leaving the parties to bear their own costs.”

In the above judgment, this Court has held that the decision of Age Determination Committee is to be accepted in absence of any infirmity in the decision making process.

27. In the instant case, though there is report of A.D.C. which is based on medical examination of the respondent but in record of A.D.C. perused by learned Single Judge, there were no documents on record with regard to medical examination and no data to arrive at a conclusion and determining the age. The records of A.D.C. do not contain any material to decide or conclude the age of respondent except their opinion. There should be material available showing the procedure of examination and data considered for arriving at final conclusion which was not there, therefore, the decision making process of A.D.C. itself is erroneous and could not be relied upon.

28. The case of **Bajrangi Rabidas** (supra) is at different facts and cannot be applicable in the facts of the case as well as the grounds raised by learned counsel for the appellants.

29. In the case at hand, the only question for consideration is whether the A.D.C. report is reliable or not and there was proper material available on record of A.D.C. to determine the age of respondent, but the learned counsel for the appellants failed to point out any error in the finding recorded by learned Single Judge with regard to the material not found in record of A.D.C. for determining the age of the respondent medically.

30. In view of above discussion, we affirm the order passed in writ petition setting aside the order retiring the petitioner w.e.f. 30-06-2011. However, in the facts and circumstances of the case, we are of the opinion that the respondent/petitioner is entitled for 50% back wages for the period he was not allowed to work and all consequential retiral benefits treating date of birth as '01/06/1958'.

31. Consequently, the writ appeal is allowed in part.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge