

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.606 of 2019

Date: 25.09.2019

Between:

Boddula Sadanandam

...Appellant

And

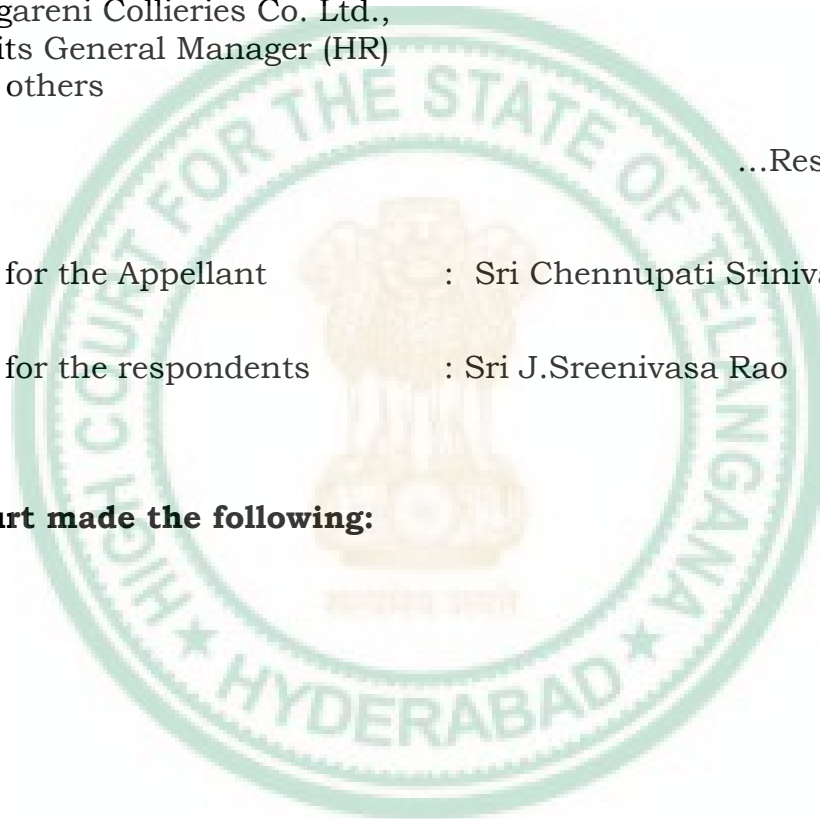
M/s.Singareni Collieries Co. Ltd.,
Rep. by its General Manager (HR)
And two others

...Respondents

Counsel for the Appellant : Sri Chennupati Srinivas

Counsel for the respondents : Sri J.Sreenivasa Rao

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the Order of the learned Single Judge passed in W.P.No.36544 of 2018, dated 11.06.2019, the Writ Appeal is filed by an employee of M/s.Singareni Collieries Co. Ltd.,

2. The brief facts of the case are that on 21.05.1983 the appellant herein was appointed as 'Badili Filler' in the respondent-Company. In the Service Register, his age was recorded as 24 years as on 27.03.1983; his date of birth was recorded as 27.03.1959. Subsequently, after joining in the respondent-company, the appellant has written S.S.C. examination and in the same, his date of birth was recorded as 10.05.1964. It is the case of the appellant that the respondent-company has corrected his date of birth in the Service Register based on the basis of the SSC certificate. But subsequently, vide proceedings, dated 03.05.2018, they have retired him on 31.03.2019 taking his date of birth as 27.03.1959, which is incorrect.

3. The learned Single Judge, after going through the record, has dismissed the writ petition mainly on two grounds *viz.*, firstly, the petitioner had appeared for SSC examination after his appointment as Badili Filler in October, 1987. Thus, the date of birth recorded in SSC certificate cannot be taken into consideration. Secondly, on the ground that he has approached this Court at the fag end of his career seeking correction of the same and also the fact that his earlier representations were rejected by the respondent-company, which cannot be countenanced in view of the law laid down by the Supreme Court that the Courts should be circumspect of giving any relief to an employee, who approached the Court at the fag end of his career, for correction of date of birth.

4. Heard Sri Chennupati Srinivas, the learned Counsel for the appellant, and Sri J.Sreenivasa Rao, the learned Standing Counsel for the respondents.

5. Learned Counsel appearing for the appellant has strenuously argued that there are no laches on the part of the appellant-employee. For, he was corresponding with the authorities prior to 2012 itself, and following up the issue with them by giving due representations on various occasions. Secondly, the authorities had accepted the date of birth reflected in the SSC certificate as correct, but changed the same in his Service Register. As such, any subsequent change is not only illegal, but also against the principles of natural justice, as he was not put on any notice by the authorities. Learned Counsel has relied on **BHARAT COKING COAL LIMITED AND OTHERS v. CHHOTA BIRSA URANW**¹ to buttress his contention that when an employee has been corresponding with the authorities, it cannot be said that he has approached the Court at “the fag end of his career”.

6. After going through the order passed by the learned Single Judge and the record, we do not find any infirmity or illegality in the order passed by the learned Single Judge for the following reasons:

- 1) Even though, the petitioner had joined the service in the year 1983, initially his date of birth was recorded as 27.03.1959 and his age, as on the date of joining, was shown as 24 years. Subsequently in October, 1987, the appellant appeared for SSC examination, in private, mentioning his date of birth as 10.05.1964 in the application form. As the employee has appeared for the SSC examination in private, while filling up the application form,

¹ (2014) 12 SCC 570)

he can show any date, as he pleases, as his date of birth, as at the time of writing the examination or filling up the form, no proof of date of birth is required. As such, the date of birth in the SSC certificate cannot be taken into consideration more particularly when the same is written after joining the job.

- 2) Even if it is the case of the appellant that the date of birth in SSC certificate was accepted by the authorities, the regulations of the Singareni Collieries Company Limited in Ref.No.P.34/4184/IR/2679 dated 23.11.2001, clearly indicates that the date of birth shown in the SSC certificate after joining in the company will not be taken into consideration. Moreover, the employee was communicated with an intimation on 06.10.2003 vide proceedings No.SRP/RK5/WO/33/P001/5730 indicating that his date of birth was confirmed as 27.03.1959, and his date of retirement as 22.03.2019, but the last working day will be 31.03.2019. The petitioner has not disputed the same. And it is seen that as early as in 2003 itself, the respondent-company had intimated the appellant his correct date of birth shown in the records. Subsequently, the representations made by the appellant herein for change of date of birth were rejected vide letters dated 12.07.2012, 28.11.2017 and 09.02.2018. But, for the reasons best known to the appellant, he has not challenged the same; the said orders have attained finality.
- 3) We have gone through the Judgment of **Bharat Coking Coal Limited (supra)**. It is seen that in that particular case, two dates of birth of the employee were recorded in the Service

Register, and another in the Certificate issued on passing Mining Sardarship, which corresponded to the date recorded in the School Leaving Certificate. On coming to know about the different dates recorded in the Service Register, the employee made representations for rectification of the said error right from 1987 i.e., at the earliest possible opportunity, and as per the Implementation Instructions 76 Cl.(i)(a) of the National Coal Wage Agreement, the same was permissible. Therefore, the High Court directed for correction of the date of Birth. In view of the above stated facts, the decision relied by the Counsel for the appellant is of no help to him.

- 3 (i) The Hon'ble Supreme Court in the very same decision reported in **Bharat Coking Coal Limited Case (supra)**, in paragraph No.9, held as under:-

Another practice followed by the Courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organisation. Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is question of fact fit to be determined by the appropriate forum.

- 3 (ii) In **BURN STANDARD CO.LTD. AND OTHERS v. DINABANDHU MAJUMDAR AND ANOTHER**², the Hon'ble Supreme Court at para 10 held as under:-

Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and

² (1995) 4 SCC 172

when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material.

3 (iii) In **HOME DEPTT., v. R.KIRUBAKARAN**³, the Hon'ble Supreme Court in paragraph No.7 held as under:-

An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly

³ 1994 Supp (1) SCC 155

an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always

be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

7. In the case on hand, the petitioner has approached the Court in the year 2018 even though he had ample opportunity to get his date of birth corrected in the year 2003 itself, when the authorities of the respondent-Company informed the employee about his correct date of birth.

8. In view of the above mentioned reasons, the Writ Appeal is devoid of merit. The order of the learned Single Judge does not suffer from any illegality or infirmity. The appeal is accordingly dismissed.

The miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

25th September, 2019
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