

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.2866 of 2016

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the action of respondents in not correcting the petitioner's date of birth as 04.07.1962 as per the Certificate of Birth issued by the Registrar of Births and Deaths under Sections 12 and 17 of the Registration of Births and Deaths Act of 1969, and incorporating the age of petitioner on 22.07.1981 by wrongly assessing his date of birth as 06.06.1956, acting contrary to Instruction No.76 of NCWA III Age Assessment Rules, basing on the erroneous procedure pressing into service the impugned letter Ref.No.R.G-3/OC-2/W.O./P014/1542, dated 08.06.2015 issued by the respondents, as illegal, arbitrary and violative of Articles 16, 19 (1)(g) and settlements and circulars and provisions of Industrial Disputes Act of 1947 and 1988 JBCCI Rules and sought a consequential direction to permit the petitioner to continue in service upto 30.07.2022 with all service benefits under the peculiar facts and circumstances of the case.

2. Heard Ms.Sudha Ghatrazu, counsel for petitioner and Sri J.Srinivas Rao, Standing Counsel for respondents.

3. It has been contended by the petitioner that he was initially appointed as a Badli Filler on 09.07.1981 and later on he was promoted as Timberman, Category-IV on 01.07.1982, to Category-V on 01.01.1992 and further promoted in C-Grade on 01.01.2007. The

petitioner further submitted that during June, 2009, he was declared as medically unfit to work underground and during November 2009, the petitioner was given posting on surface. The petitioner further submitted that his actual date of birth is 04.07.1962 and as per his correct date of birth, he is entitled to be continued in service upto 30.07.2022, but the respondents are treating the date of birth of the petitioner as 06.06.1956 and based upon such incorrect date of birth, they are taking steps to retire the petitioner with effect from 30.06.2016. Challenging the same, the present writ petition is filed.

4. The petitioner submits that he has produced the school record and also the birth extract from the Registrar of Births and Deaths to strengthen his case that his actual date of birth is 04.07.1962, but the respondents have not taken any steps to correct his date of birth based upon the certificates produced by him. The petitioner further contend that at the time of his initial appointment, a medical examination was conducted and as per the opinion of the then Medical Officer, the petitioner was aged 25 years as on 09.07.1981 and based upon the medical examination report, the respondents are treating the date of birth of the petitioner as 06.06.1956. The petitioner further contends that at the time of his initial appointment, the respondents have not taken any steps to determine his actual date of birth and based upon the medical officer's assessment, his date of birth was recorded as 06.06.1956. While recording the date of birth of the petitioner, no opportunity was given to the petitioner to prove his correct date of

birth. The petitioner has submitted an application seeking correction of date of birth through Employees Union on 03.09.2012 along with a copy of School Leaving Certificate, but the said application was rejected vide proceedings dated 19.05.2013, informing the petitioner that pursuant to Circular dated 16.08.2012, the case of the petitioner was examined and there was no proof in terms of JBCCI Rules for correction of date of birth. Later on, the petitioner has submitted an application with necessary information seeking correction of his date of birth. When no response was forth-coming from the respondents, the petitioner has submitted an application under Right to Information Act on 23.02.2015, and only then, the respondents have furnished a copy of Circular dated 16.08.2012 to the petitioner on 28.02.2015. Later on, the petitioner has approached the Revenue authorities and Mandal Revenue Officer, who, after conducting inquiry, has sent his report stating that the date of birth of the petitioner is 04.07.1962, but the respondents have not acted upon the report of the Revenue officials and retired the petitioner on 30.06.2016. Therefore, the petitioner contends that appropriate orders be passed in the writ petition directing the respondents to extend the service benefits to the petitioner by duly treating the date of birth of the petitioner as 04.07.1962 and based upon such correction, reinstate the petitioner into service and continue the petitioner in service till the petitioner attains the age of superannuation i.e. 30.07.2022. Counsel for petitioner contended that the impugned orders dated 08.06.2015 are issued retiring the petitioner with effect from 30.06.2016, which is

arbitrary, illegal and the same is liable to be set aside and the petitioner be re-inducted into service and be continued in service till he attains the age of superannuation as per his correct date of birth i.e. 30.07.2022 and further direct that the petitioner is entitled for all consequential benefits.

5. The learned Standing Counsel appearing for respondents had contended that at the time of appointment of the petitioner, he had not produced any documents with regard to his date of birth, therefore, the petitioner was subjected to medical examination and the Medical Officer, who had examined the petitioner, had assessed the age of the petitioner as 25 years as on 09.07.1981 and all through, the date of birth of the petitioner in the Service Records was entered as 06.06.1956 and the petitioner, for the first time in 2012, has produced the School Leaving Certificate and based upon the school record, requested the respondents to correct the date of birth, that too, at the fag-end of his career and later on approached the Revenue authorities and the Revenue authorities have issued a certificate under Registration of Births and Deaths Act, 1969. As the petitioner has approached the authorities at the fag-end of his career seeking correction of his date of birth, it is not permissible. The learned Standing Counsel has relied upon a judgment rendered by this Court in **Ram Brich Yadav (Died) as per LR. V. Singareni Collieries Company Ltd., Khammam District & others¹**, wherein, this Court

¹ 2018 (2) ALD 249

held that any attempt to correct date of birth in the fag-end of service is not permissible and contends that for three Decades, the petitioner has not raised any dispute with regard to his date of birth and only when he was about to retire in 2 or 3 years, the petitioner has sought correction of date of birth. The case of the petitioner was examined in terms of the Circular dated 16.08.2012 and it was rightly rejected vide orders dated 19.05.2013. The petitioner was fully aware that his request for correction of date of birth was rejected by the respondents, and he ought to have challenged the said rejection orders in 2013 itself if at all he had a genuine claim, but the petitioner has approached this Court during January 2016, knowing fully well that he would be retiring from service on 30.06.2016.

6. The counsel appearing for petitioner has relied upon the judgment reported in **Bharat Coking Coal Limited & others v. Chhota Birsa Uranw**², wherein, two dates of birth were recorded and in those set of circumstances, the Hon'ble Supreme Court held that it is not a belated claim and declined to interfere with the orders passed by the High Court and dismissed the case preferred by Bharat Coking Coal Limited.

7. In the instant case, this Court, having considered the rival submissions of the parties, is of the considered view that the date of birth of the petitioner was recorded by the respondents at the time of initial appointment of the petitioner as 06.06.1956 and the petitioner

² (2014) 12 SCC 570

has submitted application seeking correction of date of birth only during September, 2012, which was rejected by the respondents on 19.05.2013 and later on, the petitioner has not chosen to challenge the said rejection orders. The petitioner has filed the present writ petition in January 2016 knowing fully well that the respondents are taking steps to retire him with effect from 30.06.2016. Admittedly, in the instant case, the petitioner has approached this Court in the last minute seeking correction of his date of birth, though the respondents have considered the case of the petitioner and rejected the same way-back on 19.05.2013 and the said proceedings are not challenged by the petitioner. Therefore, this Court is not inclined to interfere in the matter.

8. The writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th June, 2019

ajr