IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 1541 of 2002

M/s. Bharat Coking Coal Ltd. being represented by the Employers in relation to the management of Block-II Area, through its Chief General Manager, Block-II Area, P.O. Nawagarh, district-Dhanbad.

…. … **Petitioner**

V E R S U S

1. Their workmen being represented by Regional Secretary, Coalfields Labour Union, Block-II, O.C.P., P.O. Nadkhuri, district-Dhanbad.
2. The Presiding Officer, Central Government Industrial Tribunal No. 2, at Dhanbad.

… ... **Respondents**

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK

For Petitioner : Mr. Anoop Kumar Mehta, Advocate.
For Resp. No.1 : Mr. M.K. Laik, Sr. Advocate
For Resp. No. 2 : Mrs. Mahua Palit, Advocate

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C.A.V. on 02.12.2020 ***Pronounced on 18.12.2020***

J U D G M E N T :

Dr. S.N. Pathak, J. Heard counsel for the parties.

2. Petitioner-Management has approached this Court with prayer for quashing the Award dated 27.07.2001, passed by learned Presiding Officer, Central Govt. Industrial Tribunal No. 2, at Dhanbad, in Ref. Case No. 22 of 1996, whereby the learned Tribunal has answered the reference in favour of the respondent No. 1 holding therein that the demand of the Union for correction of date of birth of the concerned-workman is justified and the management was directed to reinstate the workman in service immediately treating his date of birth as 06.12.1947 and further directed the management to pay all the dues to the workman from 02.02.1993 till the date of his reinstatement.

3. As per factual matrix, the workman-Abhi Mahanti was appointed on 28.01.1973 at Benidih Colliery of petitioner-management and at the time of appointment, the concerned-workman had mentioned his age to be 40 years and accordingly, his date of birth was entered as 31.01.1933. Thereafter, statutory Form ‘B’ register was prepared according to the provision of Mines Act, in which his date of birth was recorded as 31.01.1933. The petitioner was transferred from Benidih Colliery to Nadkhurki Colliery, where also in Form-B register his date of

birth was recorded as 31.01.1933. However, in the said service particulars, the date of birth mentioned as 31.01.1933 was penned through and by manipulation, an imaginary date of birth i.e. 06.12.1947 was recorded. Based on the said imaginary date of birth, the concerned workman demanded for correction of his age. Accordingly, a dispute relating to correction in the date of birth was raised at the fag end of service career i.e. in the year 1993, when the workman received the notice regarding superannuation from service w.e.f. 31.01.1993. Thereafter, an industrial dispute was raised and conciliation process was taken-up. During the conciliation, the petitioner-management was able to demonstrate the correctness in the date of birth recorded in Form-B register. However, due to adamant attitude of the respondent-Union, conciliation failed and a failure report was submitted to the appropriate Government. Thereafter, the concerned Department of Central Government by reasons of its order dated 27.02.1996 referred the dispute for adjudication to the learned Central Govt. Industrial Tribunal No. 2, Dhanbad, by framing the following issue for adjudication:

> "Whether the demand of the Union for revision of the date of birth of Sri Abhi Mahanti, Querry/ Miner Loader by the management of Block-II Area of M/s. B.C.C.L. is justified? If so, to what relief is the concerned workman entitled?"

On the receipt of the order of reference, the Tribunal registered the same as Ref. Case No. 22 of 1996 and issued notices to the respective parties to submit their written statements, rejoinder, etc. Upon receipt of notices, both parties appeared and submitted their respective written statements. Thereafter, learned Tribunal after hearing the parties and perusing the evidences and documents brought on record by its Award dated 27.07.2001, answered the reference in favour of the workman and against the management, holding therein that:

> *"The demand of the Union for revision of the date of birth of Sri Abhi Mahanti, Querry/ Miner Loader by the management of Block-II Area of M/s. B.C.C.L. is justified. Consequently, the management is directed to reinstate the concerned-workman in service immediately considering his date of birth as 06.12.1947. The management is also directed to pay all his dues (wages, etc.) from 02.02.1993 till the date of his reinstatement."*

Aggrieved by the same, petitioner-management has knocked the door of this Court.

4. Mr. Anoop Kumar Mehta, learned counsel appearing for the petitioner-management vociferously argued that the learned Tribunal has committed an error of law by not accepting the statutory Form-B register maintained by the petitioner-management in accordance with Section 48 of the Mines Act, 1952 and Rule 77 of the Mines Rules, 1955. Learned counsel submits that Form-B register of a workman is the Service Book and accordingly any entry made in the said Service Book has to be accepted as final and conclusive. Learned counsel further argued that in the statutory Form 'B' register, the date of birth of the concerned workman was recorded as 40 years on the date of his appointment i.e. on 28.01.1973, the same was duly acknowledged and accepted by the concerned workman by affixing his L.T.I. in the relevant column of Form-B register but the Tribunal has completely overlooked the said fact. Learned counsel further submitted that in view of judgment passed by the Hon'ble Supreme Court in case of **General Manager, M/s. BCCL Vs. Shib Kumar Dusadh & Ors.,** reported in **AIR 2001 SC 72,** the date of birth recorded in statutory Form-B is to be accepted as final and conclusive. Learned counsel has further submitted that the Tribunal has committed an error of law in accepting the date of birth recorded in Ext. W-1, i.e. the service excerpts which does not even contain the signature of any officer and also Ext. W-1/1 which is the salary and service particular which is not a statutory record relating to date of birth. Learned counsel further argued that the workman has accepted his date of birth as recorded in statutory Form-B all along his service career and when the management issued notice in the year 1993 intimating the workman that he is going to superannuation on 31.01.1993, the workman through his sponsoring Union has raised an industrial dispute regarding correction in the date of birth. Learned counsel further argued that the Hon'ble Apex Court as well as this Court in catena of its judgments have held that no correction in the date of birth can be made at the fag end of service career.

To buttress his arguments, learned counsel for the petitioner placed heavy reliance on the following judgments:

I) Atlas Cycle (Haryana) Ltd. Vs. Kitab Singh [(2013) 12 SCC 573];

II) Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh [(2020) 2 Supreme Today 189];

III) Ajit Singh Vs. M/s. Tata Iron & Steel Ltd. [W.P.(L). No. 1251 of 2010,

dated 05.10.2020, passed by this Court].

5. On the other hand, Mr. M.K. Laik, learned senior counsel appearing for the respondent-workman argued that at the time of appointment, the workman has recorded his age as 27 years as on 06.12.1974 in the statutory Form-B and as such, his date of birth would be 06.12.1947. Thereafter, the concerned workman was transferred to Nudhurkee Colliery in the year 1975, where also his date of birth was recorded as 06.12.1947. Learned senior counsel further argued that in the ID Card and in the CMPF record his date of birth was mentioned as 06.12.1947 and further in the school leaving certificate also the said date of birth was mentioned. Learned counsel further argued that the ID Card is the only document issued to a workman stating therein his age and other particulars, as recorded in the Form 'B' register but inspite of the aforesaid fact, the management issued an illegal and arbitrary superannuation notice, whereby it was informed to the workman that he is going to superannuate w.e.f. 31.01.1993. Hence, the management has arbitrarily superannuated the workman prior to his actual date of superannuation and as such, rightly the learned Tribunal has answered the Award in favour of the workman. Learned senior counsel further argued that this Court sitting under Article 226 of the Constitution cannot enter into the findings of fact recorded by learned Tribunal.

6. Be that as it may, having heard the rival submissions of the parties and upon perusal of the documents brought on record, this Court is of the considered view that the Award dated 27.07.2001, passed by learned Tribunal is fit to be quashed and set aside for the following facts and reasons:

I) The workman remained in services till 1993 and when notice of superannuation was issued to him then, for the 1st time demand for correction in the date of birth was made in the year 1993. Learned Tribunal has failed to consider the fact that as per the settled law, no correction can be made at the fag end of service career.

II) Form-B register of a workman is the Service Book and accordingly any entry made in the said Service Book has to be accepted as final and conclusive. In the statutory Form 'B' register, the date of birth of the concerned workman was recorded as 40 years on the date of his appointment i.e. on 28.01.1973 and the same was duly acknowledged and

accepted by the concerned workman by affixing his L.T.I. in the relevant column of Form-B register.

However, the Tribunal has completely overlooked the said fact and relying on Ext. W-1 and W-1/1, has accepted the date of birth 06.12.1947 as the correct date of birth of the workman though in Ext. W-1, there was no signature of the Office Bearers of petitioner-management and further Ext. W-1/1 which is the salary and service particular is not a statutory record relating to date of birth.

III) The onus lies on the workman to prove his age. Further, petitioner was fully aware of the date of birth entered in the service record and he accepted the said date of birth all along his service career and it was only in the year 1993 i.e. after 20 years from the date of his appointment, he made an application for correction in the date of birth.

The Hon'ble Apex Court as well as this Court in catena of decisions has held that request for change of date of birth in service records at the fag end of service career is not sustainable.

7. In case of ***State of Tamil Nandu Vs. T.V.Venugopalan***, reported ***(1994) 6 SCC 302***, the Hon'ble Apex Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under:-

> *".....The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register.*

The Hon'ble Apex Court in case of **Secretary and Commissioner, Home Department & Ors. Vs. R. Kirubakaran**, reported in **1994 Suppl. (1) SCC 155**, has held as under:

> *"**7.** An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 their promotion forever. ...According to us, this is an important 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 materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."*

8. This Hon'ble Court dealing with the similar issue in case of **Manik Chand Ghosh Vs. Bharat Coking Coal Ltd. & Ors.**, reported in **2004 (1) JCR 51 (Jhr.)**, has held that, *date of birth once recorded and entered in the service record, counter-signed by the government servant, he should not be permitted to challenge at the fag end of his servic*e.

The Hon'ble Apex Court in the case of ***State of Maharashtra & Anr. v. Gorakhnath Sitaram Kamble & Ors.,*** reported in ***(2010) 14 SCC 423*** has held that:

> *"16. The learned counsel for the appellant has placed reliance on the judgment of this Court in **U.P. Madhyamik Shiksha Parishad Vs. Raj Kumar Agnihotri [(2005) 11 SCC 465 : 2006 SCC (L&S) 96].** In this case, this Court has considered a number of judgments of this Court and observed that the grievances as to the date of birth in the service record should not be permitted at the fag end of the service career.*
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> *17. In another judgment in **State of Uttaranchal Vs. Pitamber Dutt Semwal [(2005) 11 SCC 477 : 2006 SCC (L&S) 106]** relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades."*

Further, the Hon'ble Apex Court reiterating the same view, in case of **State of M.P. v. Premlal Shrivas,** reported in **(2011) 9 SCC 664** has held as under:-

> *"**8.** It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book.* ***Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous.*** *No court or the tribunal can come to the aid of those who sleep over their rights.*
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> ***12.** Be that as it may, in our opinion**, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed.*** *It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."*

Similar view has been expressed by the Hon'ble Apex Court in case of **Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh**, reported in **(2020) 3 SCC 411**, wherein the Hon'ble Apex Court has held that, *"request for change of the date of birth in the service records at the fag end of service is not*

sustainable."

The Hon'ble Apex Court in case of **Nedungadi Bank Ltd. Vs. K.P. Madhavankutty & Ors.,** reported in **(2000) 2 SCC 455,** dealing with the issue relating to stale claim, has held that, reference of the said dispute at a belated stage is bad in eyes of law both on the grounds of delay as well as on non-existence of an industrial dispute.

Time and again it has been held that if government servants sleep over their right and are not vigilant, the Court cannot come to their rescue/ aid and grant relief only because they were ignorant of the Rules.

These decisions lead to a different dimension of the case that correction of date of birth at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court.

9. Contention of learned senior counsel for the respondent-workman that this Court sitting under Article 226 of the Constitution cannot enter into the findings of fact recorded by learned Tribunal, is also not acceptable in view of the observation made by Hon'ble Supreme Court in case of **Atlas Cycle (Haryana) Ltd. Vs. Kitab Singh**, reported in **(20`13) 12 SCC 573**, wherein the Hon'ble Court has observed as under:

> *"In the present case the Single Judge of the High Court has thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. Although the High Court exercising writ of certiorari would not permit to assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/ Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. Hence, the Single Judge was fully justified in interfering with the conclusion arrived at by the Labour Court which has been rightly affirmed by the Division Bench. ……"*

10. In the present case the learned Tribunal has overlooked the Statutory Form-B (Ext. M-1) and relying on Ext. W-1 and W-1/1, has accepted 06.12.1947 as the correct date of birth of the workman though in Ext. W-1, there was no signature of the Office Bearers of petitioner-management and further Ext. W-1/1 which is the salary and service particular is not a statutory record relating to date of birth. Hence, in view of ratio laid down by the Hon'ble Apex Court in **Kitab Singh's case**, this Court has jurisdiction to interfere in the findings of facts recorded by the learned Tribunal, as the Tribunal had erroneously refused to admit the admissible and material evidence and had erroneously admitted the inadmissible evidence which has influenced the impugned finding.

11. As a sequitur to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, the Award dated 27.07.2001 passed in Ref. Case No. 22 of 1996 is hereby quashed and set aside. However, the petitioner-management is directed to pay retiral dues of the workman, in accordance with law, if not paid till date, within a period of four weeks from the date of receipt/ production of a copy of this order

12. Resultantly, the writ petition stands allowed.

(**Dr. S.N. Pathak, J.**)

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