IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 3945 of 2018

M/s. Steel Authority of India Ltd., a Govt. Company incorporated unde the Indian Companies Act, having one of its Unit at Bokaro, known as Bokaro Steel Plant, P.O. & P.S. – Bokaro Steel City, District – Bokaro through Shri A.k. Upadhyay, aged – 54 years, son of Shri S.N. Upadhyay, presently working as Assistant General Manager (Law), Steel Authority of India Limited, Bokaro Steel Plant, Resident of – Plot No. 242A, Cooperative Colony, P.O. and P.S. – Bokaro Steel City, District – Bokaro.

… … **Petitioner**

V E R S U S

The Workman, namely Ram Prasad Nayak, son of Bhutka Mahto, Resident of – Sector – 12/B, Q. No. 3094, Bokaro Steel City, P.O. and P.S. – Bokaro Steel City, District – Bokaro.

… ... **Respondent**

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

For Petitioner : Mr. Shresth Gautam, Advocate
For the Respondent : Mr. Ashok Kumar Sinha, Advocate,

C.A.V. on 31.08.2020 **Pronounced on 11.11.2020**

Dr. S.N. Pathak, J. In view of outbreak of COVID-19 pandemic, case was taken up through Video Conferencing and heard at length. Concerned lawyers had no objection with regard to the proceeding which was held through Video Conferencing and there was no complaint in respect to audio and video clarity and quality and after hearing at length, the matter was reserved for final disposal.

PRAYER OF THE PETITIONER - MANAGEMENT

2. Petitioner-Management has approached this Court with a prayer for quashing the Award dated 17.01.2018, passed by Central Government Industrial Tribunal No. 1, Dhanbad in Reference Case No. 32/15, whereby and whereunder the dispute so raised by the workman-respondent with regards to claim of his premature retirement has been allowed and he has been allowed to be reinstated with 50% backwages with continuity in service.

CASE OF THE PETITIONER – MANAGEMENT

3. The case of the petitioner–Management is that the respondent – workman was appointed on 15.11.1977 to the post of Khalasi and a Personal Data Form (PD Form) was opened wherein date of birth, which

was mentioned earlier to be 18 years as on the date of joining, was deleted and it was mentioned that on the said date of joining i.e. 15.11.1977, his date of birth is 24 years. The new entry which was made, was duly approved by the concerned respondent-workman by putting his signature at the place where it was mentioned that his age was 24 years as on the said date of joining and as such, his date of birth was recorded as 15.11.1953 for all purposes. During the time of applying for re-validation of medical books in the years 2004 and further in the year 2009, the concerned respondent-workman had mentioned that his date of birth was 15.11.1953. However, in the year 2010, after continuous service for a period of three decades, for the first time the concerned respondent-workman raised objection with regards to his date of birth mentioned in the PD Form and requested for correction of the same. However, the application of petitioner was rejected by the petitioner-management vide order dated 18.10.2010 on the ground that the date of birth cannot be changed at the fag end of service. Again vide letter dated 23.03.2013, the respondent-workman filed a representation for change of his date of birth, which was also negated vide letter dated 06.05.2013. After attaining age of superannuation as per PD Form, the respondent-workman superannuated from the service on 30.11.2013. However, even after his superannuation, the respondent-workman again filed a representation for recall of order of superannuation, which was also rejected vide order dated 06.06.2014. Thereafter, a request was made for raising an Industrial Dispute in regard to premature retirement of the respondent-workman vide letter dated 09.02.2015 and pursuant thereto, vide order no. L-26012/20/ 2015/IR(M), Dated 15.07.2015, an Industrial Dispute was raised, which is as under:

> *"Whether the action of the management of Bokaro Steel Plant, SAIL in retiring Sri Ram Prasad Nayak prematurely w.e.f. 30.11.2014 instead of 30.11.2019 is fair and justified? If not, to what relief the concerned workman is entitled?"*

Upon notices, the petitioner-management filed a detailed written statement putting forward case of the Management that change of date of birth is impermissible at the fag end of service and cannot be allowed after superannuation. The workman had himself admitted his date of birth

mentioned in the service record with the management and as such there was no error in superannuating him on 30.11.2013. However, the same was disputed by the respondent-workman in his written statement filed before the Tribunal, which was denied by the petitioner-management in its rejoinder. The medical re-attestation form was also exhibited before the Tribunal to prove that the respondent-workman was well aware regarding the fact that his date of birth was recorded as 15.11.1953 and as such the industrial dispute raised by him was not sustainable in the eyes of law. However, the Labour Court, without considering facts of the case, vide its Award dated 17.01.2018, allowed the dispute in favour of the respondent-workman and he has been allowed to be reinstated with 50% backwages with continuity in service. Being aggrieved by the impugned Award, the petitioner-management has knocked door of this Court.

ARGUMENTS ON BEHALF OF THE PETITIONER-MANAGEMENT

4. Mr. Shresth Gautam, learned counsel appearing on behalf of the petitioner-management argues that an employee cannot be allowed to raise the issue of date of birth mentioned in the PD Form. The concerned respondent-workman has himself accepted the date of birth recorded in the PD Form which is evident from his signature at the place where it was mentioned that his age was 24 years as on the said date of joining. Even at the time of applying for re-validation of medical books in the years 2004 and further in the year 2009, the concerned respondent-workman had mentioned that his date of birth was 15.11.1953, which cannot be questioned by him at the fag end of his service or even after his retirement. The workman has raised the dispute after three decades of his joining, which cannot be permitted at any stretch of imagination. The Tribunal has erred in not considering the fact that at the time of joining and even at many occasions, the workman himself had accepted his date of birth as recorded in the PD Form then how can he be allowed to challenge the same at the fag end of his service. Learned counsel further submits that the medical re-attestation form, which was also exhibited before the Tribunal, is the proof of the fact that the respondent-workman was well aware regarding the fact that his date of birth was recorded as 15.11.1953 and as such the industrial

dispute raised by him is not sustainable in any stretch of imagination and as such, the impugned Award is fit to be interfered by this Court. Learned counsel further argues that the Labour Court did not deal with any of the documents so filed by the Management and merely relied on the PD Form and the interpolation made thereto while answering reference in favour of the respondent-workman without considering the fact that the same was duly attested by the workman by putting his signature at the place where correction was carried out. The delay in raising dispute by the respondent-workman has also not been answered and as such the impugned Award is fit to be interfered. Learned counsel further argues that the impugned Award is cryptic and has been passed in teeth of several Judgments which clearly speaks that the dispute in regards to date of birth cannot be raised at the fag end of service of an employee and as such the same is fit to be quashed. Learned counsel further submits that everything has already been paid to the respondent-workman after his retirement as per records in the PD Form and in view of provisions of Section 17-B of the Industrial Dispute Act, 1947, payments have already been made to the workman.

Learned counsel has placed heavy reliance on the Judgment passed in the case of ***Bharat Coking coal Ltd. & Ors. Vs. Shyam Kishore Singh*** reported in ***(2020) SCC online SC 126*** and submits that various Judgments has already been dealt therein.

ARGUMENTS ON BEHALF OF THE RESPONDENT – WORKMAN

5. Mr. Ashok Kumar Sinha, learned Counsel appearing on behalf of the respondent-workman argues that the Award dated 17.01.2018, passed by Central Government Industrial Tribunal No. 1, Dhanbad in Reference Case No. 32/15, is legal, proper, valid and is based on evidences on record and no interference is warranted by this Court. The writ petition is not maintainable and is fit to be dismissed. There is no illegality or infirmity in the impugned Award wherein claim of premature retirement of the respondent-workman has been allowed and the respondent-workman has been allowed to be reinstated with 50% backwages with continuity in service. Learned counsel further submits that the concerned respondent-employee was illiterate and as such he could not understand the contents

and consequences thereof mentioned in the PD Form, which resulted in present dispute. Learned Counsel further submits that there was interpolation in the PD Form which would be evident from Exhibits-M1 and M1/1 produced before the Tribunal and also brought on record vide Annexure-A and B to the counter affidavit. Further, by drawing attention towards Annexure-C to the counter affidavit, learned counsel submits that the Medical Board duly constituted by the petitioner-management has also assessed age of the respondent-employee to be 18 years at the time of his joining. It is only in the year 2008 when Notice was served by the Management to the respondent-employee, he came to know that he has to retire on 30.11.2013. The Tribunal, after considering facts and circumstances of the case, has passed the Award, which is fully justified and needs no interference.

Learned counsel further submits that the matrix of dispute as was described, raised and sponsored by the Union, before the Conciliation Officer – cum – Assistant Labour Commissioner (Central) at Dhanbad is that the concerned workman was a displaced person and he fully remembers that in his Personal Data Form and Attestation Form, his age was mentioned as 18 years with date of birth as 19.09.1959. The person who had filled in the forms for the workman, had written the age as 18 years in word in his hand writing and, therefore, the workman was firm that he shall be retiring on 19.09.2019 on attaining the age of 60 years. It was only in the year 2008 when he was noticed by the management, he could come to know that he would be retiring on 30.11.2013 since his date of birth was changed and written as 15.11.1953 in the Personal Data Form, which led to filing of W.P.(S) No. 6117 of 2010 before this Court. However, on the advice of his legal adviser, petitioner withdrew the said writ petition on 16.04.2014 to move before the appropriate forum and present dispute has been raised by the Union. The manipulation done by the officials in the Personal Data Form cannot be a reason for premature retirement of the workman. Learned counsel submits that Tribunal has rightly considered case of the workman and as such, instant writ petition has no merits and is fit to be dismissed.

CONCLUSION

6. The Courts have consistently deprecated the request for change of date of birth in the service records at the fag end of service. The policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time. Similar is the view taken by the Hon'ble Supreme Court in the Judgment passed in the case of ***Bharat Coking Coal Ltd. v. Shyam Kishore Singh*, (2020) 3 SCC 411 : (2020) 1 SCC (L&S) 535 : 2020 SCC OnLine SC 126 wherein, at paragraph-9 to 11, it has been held as under:**

> **9.** This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in *State of Maharashtra* v. *Gorakhnath Sitaram Kamble* [*State of Maharashtra* v. *Gorakhnath Sitaram Kamble*, (2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:
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> > "*16*. The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha Parishad* v. *Raj Kumar Agnihotri* [*U.P. Madhyamik Shiksha Parishad* v. *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 grievance 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* v. *Pitamber Dutt Semwal* [*State of Uttaranchal* v. *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 [*Pitamber Dutt Semwal* v. *State of U.P.*, 1999 SCC OnLine All 1610 : 2000 All LJ 2341] of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.
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> > *19*. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant

portion of the judgment in *Home Deptt.* v. *R. Kirubakaran* [*Home Deptt.* v. *R. Kirubakaran*, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] reads as under: (SCC pp. 158-59, para 7)

> '*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 promotions 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.'

Further, in paragraph-10 of the said judgment, it has been held as under:

> **10.** This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P.* v. *Premlal Shrivas* [*State of M.P.* v. *Premlal Shrivas*, (2011) 9 SCC 664 : (2011) 2 SCC (L&S) 574] it is held as hereunder:
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> > "*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 (see *Union of India* v. *Harnam Singh* [*Union of India* v. *Harnam Singh*, (1993) 2 SCC 162 : 1993 SCC (L&S) 375]).
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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."

Further, in paragraph-11 of the Judgment, the Hon'ble Supreme Court has held as under:

> **11.** The learned Additional Solicitor General has also relied upon the decision of this Court in *Kirloskar Bros. Ltd.* v. *Laxman* [*Kirloskar Bros. Ltd.* v. *Laxman*, (2020) 3 SCC 419] dated 25-4-2019 wherein the belated claim was not entertained. Further reliance is also placed on the decision of this Court in *Eastern Coalfields Ltd.* v. *Ram Samugh Yadav* [*Eastern Coalfields Ltd.* v. *Ram Samugh Yadav*, (2020) 3 SCC 421] dated 27-5-2019 wherein this Court has held as hereunder: (SCC p. 422, paras 6-7)
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> > "*6*. Nothing is on record that in the year 1987 when the opportunity was given to Respondent 1, to raise any

> issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent 1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge [*Ram Samujh Jadav* v. *Coal India Ltd.*, WP No. 215 of 2006, order dated 28-8-2007 (Cal)] as well as the employer was justified in refusing to accept such an issue.
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> *7*. The Division Bench of the High Court [*Ram Samujh Yadav* v. *Coal India Ltd.* APO No. 334 of 2009, order dated 6-10-2010 (Cal)] has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent 1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier."

7. Powers to make reference cannot be exercised to revive settled matters or to refer stale disputes in spite of absence of statutory limitation period. The question of interference in date of birth does not arise. Law is well settled. The same is not resintegra. As discussed above, High Courts as well as the Hon'ble Apex Court in a catena of decisions, have held that neither of the parties are permitted for correction of date of birth at the fag end of service.

8. In view of facts and circumstances, judicial pronouncements and settled principles, this Court is of the considered opinion that in this case, the impugned Award dated 17.01.2018, passed by Central Government Industrial Tribunal No. 1, Dhanbad in Reference Case No. 32/15, is devoid of any merits and as such the same is hereby quashed and set aside. As a consequence of the aforesaid observations, this writ petition stands allowed. The workman has already been paid benefits of retiral dues as well as benefits under Section 17-B and as such no further order need to be passed.

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