

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1972 of 2008**

- Sidheshwar Upadhaya S/o. Late Shri Shyama Upadhaya, aged about 52 years, Senior Mining Sardar, Mahamaya Colliery, Bhatgaon Area, SECL, District. Surguja C.G

---- Petitioner**Versus**

1. The Chief Managing Director, SECL Seepat Road, Bilaspur, District Bilaspur (CG)
2. The Chief General Manager, SECL Bhatgaon Area, District Surguja (CG)
3. Senior Personnel Officer, Mahamaya Project, SECL, PO Bhatgaon Colliery, District Surguja (CG)
4. Deputy Chief Personnel Manager, SECL, Bhatgaon Area, PO Bhatgaon, District Surguja (CG)

---- Respondent

For Petitioner	Mr. Amit Soni, Advocate
For Respondents	Mr. Vinod Deshmukh, Advocate

Hon'ble Mr. Justice Prashant Kumar Mishra**Order On Board****2/1/2020**

1. Heard.
2. In this petition under Article 226 of the Constitution of India, the petitioner would pray for quashment of the orders Annexure P/1 dated 28.2.2008 and Annexure P/2 dated 1.3.2008, by which, he has been informed that he is attaining

the age of superannuation and his pension papers are to be processed and that his application for correction of the date of birth, has been rejected.

3. The petitioner joined services as General Mazdoor on 18.12.1974. He passed the Mining Sirdar Certificate Examination in the year 1978. He thereafter passed the Gas Testing Certificate Examination in the year 1979. In Form 'B' prepared at the time of entry into service, his date of birth was recorded as 6.4.1948, which the petitioner claimed that the same is wrongly recorded as his correct date of birth is 8.6.1956. On 22.11.1995, the SECL issued a letter informing the employees that the age recorded in Form 'B' Register and Mining Sirdar Certificate differs from each other in respect of many employees, therefore, as per the Implementation Instruction No.76, the employees are requested to take necessary action for correction of their date of birth. The petitioner applied for correction but no orders were passed on his application, even though in respect of many other employees, correction order was issued on 5.10.1996 vide Annexure P/10. The petitioner kept representing at regular intervals but his prayer was not heeded, therefore, he preferred WP No.1424 of 2006 for redressal of his grievance. The said writ petition was disposed of vide order dated 10.12.2007 filed as Annexure P/14. At the time of disposal, this Court mentioned thus in the last paragraphs of the order:

“Admittedly, there is a dispute regarding date of birth of the existing employee (petitioner) and the provisions of Implementation Instruction No.76, contained in internal page 2 of the same, shall be applicable in this case and the matter can be referred to the age determination committee.

In view of the above, this petition is disposed of with a direction that the respondents shall refer the case of the petitioner to the age determination committee as per Implementation Instruction No.76 (Annexure P-4) and shall get his age determined according to the said Implementation Instructions and shall communicate the same to the petitioner after its determination.

This Court hopes and observes that the entire exercise shall be completed within a period of 2 months from today and the matter shall be finalized prior to the date of retirement of the petitioner.

The petition stands finally disposed of.”

4. In view of the above order passed by this Court, the petitioner was referred to the ADC for assessment of his age. After examination, the ADC found that his age ranges 55-60 years, which is nearest to his date of birth i.e. 6.4.1948 mentioned in Form 'B'. Therefore, the date of birth in Form 'B' is confirmed.
5. On the basis of Implementation Instruction No.76 and the judgment rendered by the Supreme Court in the matter of **Bharat Coking Coal Limited and others Vs. Chhota Birs Uranw, 2014 12 SCC 570**, learned counsel for the petitioner

would argue that when the Mining Sirdar Certificate carries his correct date of birth, the same should have been accepted by the Management.

6. Per contra, learned counsel for the respondent- SECL would refer to the order passed by the Division Bench of this Court in the matter of **South Eastern Coalfields Ltd. and others Vs. Sampat Kumar Chauhan** (WA No. 399 of 2014 decided on 27.2.2015), to argue that the prayer for correction of date of birth in the service record at the fag end of service cannot be accepted.
7. Whether or not Implementation Instruction No.76 was properly interpreted and applied in the case of the petitioner viz-a-viz his Mining Sirdar Certificate cannot be considered again when in his earlier writ petition, no such arguments were advanced. In the earlier writ petition, this Court referred the matter to the ADC for determination of the petitioner's age. Thus, once the ADC has examined the petitioner and submitted finding pursuant to the orders of this Court, it is not open for this Court to consider any other plea. Even otherwise, the petitioner kept quiet from 1995 to the year 2006, when he preferred his first writ petition.
8. When the date of birth of some other employees were corrected vide the order dated 5.10.1996- Annexure P/10, the petitioner could have approached the Court soon thereafter but he waited for 10 long years and moved the writ petition when he was nearing to his date of superannuation.

9. In **Sampat Kumar Chauhan (supra)**, the Division Bench of this Court has held that belated claim for correction of date of birth should not be entertained. This Court has referred to the various judgments rendered by the Supreme Court in the matters of **Union of India Vs. Ram Suia Sharma, (1996) 7 SCC 421, State of Madhya Pradesh and others Vs. Premlal Shrivastava, (2011) 9 SCC 664** and **C. Jacob Vs. Director of Geology and Mining, (2008) 10 SCC 115**, to hold that belated plea for correction of date of birth at the fag end of service should not be entertained by the writ Court.

10. In view of the above and the finding that the petitioner has preferred a writ petition earlier also prior to his age of superannuation, his claim is not only belated but is otherwise not worth consideration on merits as the ADC has found his range of age nearer to his date of birth in Form 'B' Register.

11. The writ petition is dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge