

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 89 of 2014**

Ramji Yadav S/o Shri Marachhu Yadav Aged About 49 Years Working As Mechanical Fitter Category-6, South Eastern Coal Fields Ltd, Chirmiri Colliery U/G NEIS No. 92289727 R/o Chhotibazar, Chirmiri Police Station Chirmiri, Civil and Revenue District Korla, Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coalfields Limited And Ors. S/o SECL Bhawan, Seepat Road, Bilaspur, Civil and Revenue Distt Bilaspur, Through Managing Director, Pin 495006, Chhattisgarh
2. General Manager (Mining) South Eastern Coal Fields Ltd., Chirmiri U/G Sub Area, Gm Complex, West Chirmiri, Post Podi, PS Podi, Civil and Revenue District Korla, Chhattisgarh
3. Senior Manager Mining Bartungahil, Chirmiri Underground Sub Area, South Eastern Coal Fields Ltd. Office Of The Sub Area Manager Under Ground Chirmiri Sub Area Chirmiri Police Station Podi, Civil and Revenue District : Korla (Baikunthpur), Chhattisgarh
4. Sub Area Manager Chirmiri Colliery U/G, South Eastern Coal Fields Ltd. Chirmiri Area, Gm Complex, West Chirmiri Post Podi, PS Podi, Civil and Revenue District Korla, District : Korla (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Mohit Kumar, on behalf of Mr. Sanjay Agrawal, Advocates
For SECL	:	Mr. Sudeep Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/12/2020**

1. The issue involved in the present writ petition is the date of birth of the petitioner. According to the petitioner the actual date of birth of the

petitioner is 04.01.1965 whereas the respondent employer has treated his date of birth to be 26.07.1954 and have superannuated the petitioner about 9 year before schedule.

2. Facts of the case is that the petitioner was initially appointed in the year 1984 as General Majdoor Loader. At the time of appointment the petitioner was appointed against the illiterate category. The petitioner at the time of his appointment was subjected to age determination and where his date of birth in the records was recorded as 26.07.1954 in the year 1984. Based upon that the date of birth in the entire service records of the petitioner and other statutory registers maintained by the respondents the date of birth was entered and maintained as 26.07.1954. The said date of birth was also reflected in the provident fund record as also in the Form-B Register which is the statutory register required to be maintained under the provision of Mines Act. Right from 1984 till the notice of retirement which was issued on 09.10.2013 there has never been any representation whereas the objection raised by the petitioner so far as his date of birth in the service records are concerned.
3. Contention of the petitioner is that at the time of appointment he had submitted his Class-8th Marksheet where his date of birth was 04.01.1965 and he was under the presumption and his date of retirement would be based upon his date of birth as 04.01.1965. This has not happened rather erroneously a different date of birth has been accepted by the respondents in the service record. Further contention of the petitioner is that in the light of the Implementation Instruction No.76 the matter needs to be referred to the Age Determination Committee.
4. The contention of the petitioner and objection has been strictly opposed by the learned counsel for the respondent and he submits that petition is totally devoid of merits. According to the respondent right from the time of appointment in the year 1984 the petitioner was well aware of the fact that

in the service records his date of birth has been mentioned as 26.07.1954. It was further contention of the respondent that petitioner had various occasions periodically of witnessing the date of birth 26.07.1954 and he has never objected to same at the appropriate stage. It was further the contention of the respondent that appointment of the petitioner itself was on the post of his being illiterate and under the said category his date of birth as per the procedure then was recorded as 26.07.1954 which was accepted by him as would be reflected from his signatures that he has put in the entire service register, service record and other statutory registers and documents maintained by the respondents including that of the provident fund, LPCs, LTC etc and other documents/registers/records where the date of birth of the petitioner is recorded. Learned counsel for the respondent further submits that even the contention of the petitioner of submission of 8th Class Marksheet is not acceptable for the reason that the said marksheet enclosed by the petitioner also is document which has been obtained only on 19.11.2013 i.e. after notice of retirement was issued to the petitioner.

5. Moreover, the first representation for correction of date of birth in the records is reflected to be 15.10.2012 and that there was no any representation for the previous years of around 30 years during which the petitioner had discharged his duties. Thus for all these reasons counsel for the respondent prays for rejection of the writ petition.
6. The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Premlal Shrivastava, (2011) 9 SCC 664, in paragraphs – 7 & 8 held as under:

“7. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

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 Vs. Harnam Singh)".

7. The Supreme Court in case of Govt. of Andhra Pradesh Vs. M.Hayagreev Sarma, 1990 (2) SCC 682, in a dispute pertaining to correction of date of birth has held as under:

"A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 was under consideration in this case by this Court. The date of birth of the employee was recorded in the service book on the basis of school certificate at the time of entry into service. The employee's application for alteration in the date of birth so recorded was finally rejected prior to coming into force of the rules. A subsequent claim was made by the employee for alteration after commencement of the rules. This Court held that the subsequent claim for alteration after the commencement of the rules even on the basis of the extracts of entry contained in births and deaths register maintained under Births, Deaths and Marriages Registration Act, 1886 was not open."

8. It would be relevant at this juncture also to refer the judgment of Supreme Court in case of Union of India Vs. Harnam Singh, 1993 (2) SCC 162 wherein in similar sort of case, it has been held as under:

".... It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age....."

9. In case of Secretary & Commissioner, Home Department Vs. R. Kirubakaran, 1994 Supp.(1) SCC 155, in paragraphs 7 & 9 dealing with the

issue of correction of date of birth after a considerable period of entering into service, the Supreme Court has held as under :

“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 the 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 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 and before any such direction is issued, the Court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service book.

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.. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier.”

10. In the case of State of UP and Another Vs. Shiv Narain Upadhyaya, 2005

(6) SCC 49 in paragraphs 6 and 9 the Supreme Court has held as under:

“....But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or not.”

11. The Supreme Court again in case of Registrar General, High Court of Madras Vs. M. Manickam and Others, 2011(9) SCC 255, dealing with the same issue has held as under:

“30. There must be strong, cogent and reliable evidence in support of the contention that the date of birth entered in the service records or in the S.S.L.C. certificate was wrongly entered by a mistake.”

12. In the case of State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others, (2010) 14 SCC 423, in paragraph-12 it has been held as under:

“12. Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years.”

13. In the light of the aforesaid legal position as it stands and also taking into consideration the factual matrix as has been reflected from the pleadings which are available with the writ petition this Court is of the opinion that no strong case is made out for notice of retirement issued by the respondent, particularly when the Hon'ble Supreme Court also time and again have reiterated the proposition that disputes pertaining to the correction of date of birth at the fag end of the service career should not be entertained and present writ petition also being one where the dispute has been raised at the fag end of his service career, that to after the notice of retirement was issued. The writ petition therefore fails and being devoid of merits stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit