

AFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 23.01.2020****Judgment Delivered on 06.03.2020****Writ Appeal No.6 of 2019***(Arising out of order dated 30.08.2018 passed in Writ Petition (S) No.138 of 2016 by the learned Single Judge)*

1. South Eastern Coalfields Limited through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Head Quarter, Seepat Road, Bilaspur, Chhattisgarh
2. Director (Personnel), South Eastern Coalfields Limited, Head Quarter, Seepat Road, Bilaspur, Chhattisgarh
3. General Manager (P&A), South Eastern Coalfields Limited, Head Quarter, Seepat Road, Bilaspur, Chhattisgarh
4. Chief General Manager, South Eastern Coalfields Limited, Baikunthpur Area, District Korea, Chhattisgarh
5. Area Personnel Manager, Baikunthpur Area, South Eastern Coalfields Limited, Baikunthpur Area, District Korea, Chhattisgarh

---- Appellants**Versus**

Ashok Kumar Thakur, S/o Shri Bhola Thakur, aged about 55 years, R/o Q.No.67, Type B, Charcha Colliery, P.S. Charcha, Civil and Revenue District Korea, Chhattisgarh

---- Respondent

For Appellants	: Shri Vaibhav Shukla, Advocate
For Respondent	: Shri Chandresh Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****Per Parth Prateem Sahu, Judge**

1. Correctness and sustainability of the order dated 30.08.2018 passed in Writ Petition (S) No.138 of 2016 is put to challenge in this appeal wherein the learned Single Judge allowed the writ petition filed by the Respondent-Employee while quashing the orders dated

05.11.2015 (Annexure P/1) and 02.11.2015 (Annexure P/2) respectively, wherein Appellant-Employer has determined the date of birth of the Respondent-Employee as 14.11.1958 by the Age Determination Committee (hereinafter referred to as 'ADC').

2. Facts of the case in nutshell are that, the Respondent-Employee was engaged as General Mazdoor with the Appellant-Employer on 26.11.1976. At the time of appointment on the post of General Mazdoor Category-I, he mentioned his date of birth as 14.11.1960, which was recorded by the Appellant-Employer in Form-B, Form PS-3 and Form PS-4 and other relevant documents maintained by them as per Rules. The Respondent-Employee during the period of his engagement in service, has been promoted on 16.06.1983 as C.D.S. (Trainee) in Clerical Grade-III and thereafter, C.D.S. Grade-II and C.D.S. Grade-I vide orders dated 15.12.1985 and 02.12.1989 respectively. Thereafter, vide order dated 09-17.08.1996, he was promoted and re-designated as Clerk Grade-I and posted at Jhilimili Project. The Respondent-Employee came to know that his date of birth has been corrected without his knowledge in office records from 14.11.1960 (original date of birth), to 14.11.1958.

3. The Respondent-Employee on the basis of information received by him from Section Officer, made an application for grant of relevant documents and thereafter, he has challenged the action of Appellant-Employer by filing Writ Petition (S) No.2312 of 2013 before this Court. The learned Single Judge vide order dated

31.08.2015, disposed off the writ petition directing the Appellant-Employer to pass reasoned and speaking order with respect to determination of age of Respondent-Employee.

4. The Appellant-Employer in pursuance to order dated 31.08.2015 passed in Writ Petition (S) No.2312 of 2013, referred the Respondent-Employee to ADC and the ADC after examining the Respondent-Employee, determined the date of birth/age as 14.11.1958. Based on the determination of age by the ADC, the General Manager (P&A), SECL Bilaspur informed to General Manager, Baikunthpur Area where the Respondent-Employee is in employment on 02.11.2015 (Annexure P/2) and pursuant to which, the Respondent-Employee was intimated that the ADC has determined his date of birth/age as 14.11.1958 vide letter dated 05.11.2015 (Annexure P/1).

5. The Respondent-Employee challenged both the orders i.e. Annexures P/1 and P/2 by filing Writ Petition (S) No.138 of 2016 on several grounds mentioned therein. The Appellant-Employer submitted reply to the writ petition stating therein that Respondent-Employee was employed as General Mazdoor in the year 1976 and at the time of appointment of Respondent-Employee, there is no requirement of production/submission of educational qualification. The Ministry of Coal, Government of India, directed the Coal India Limited and its subsidiaries to verify the documents of workers who are likely to render service of more than 42 years vide letter dated 01.02.1999 and pursuant to this letter of Government of India,

Appellant-Employer has taken initiative for determining the age of the employees working within it likely to render service of more than 42 years. The age of the employees of Baikunthpur Area was verified by ADC as per the letter dated 09.02.2009 issued by the Head Office. Looking to the fact that the Respondent-Employee will render service more than 42 years as per his date of birth recorded in the service records, he was also sent to the ADC for verifying his age. On recommendation of ADC, his date of birth was corrected to 14.11.1958. On account of date of birth originally recorded in the service record of the Respondent-Employee, his age on the date of employment comes to only 16 years and the age of superannuation/retirement is prescribed as 60 years. In view of the aforementioned fact, the Respondent-Employee will have the service period of 44 years, which is more than 42 years as pointed out by the Ministry of Coal, Government of India in its letter dated 01.02.1999. It was also pleaded that the ADC has rightly on the basis of several tests including Radiologist finding, determined the date of birth of the Respondent-Employee as 14.11.1958.

6. The learned Single Judge taking note of the judgment passed in the matter of **Mithilesh Sharma v. SECL** in **Writ Petition No.2157 of 2002** decided on **18.08.2008**, which was affirmed by Division Bench of this Court in **Writ Appeal No.246 of 2008** parties being **SECL v. Mithilesh Sharma** decided on **31.03.2010** and also the fact that the SLP challenging the judgment/order of the Division Bench in Writ Appeal No.246 of 2008 stood dismissed on **20.08.2010**, allowed the writ petition, quashed the impugned orders

Annexures P/1 and P/2 and held that Respondent-Employee would be permitted to continue in service accepting his date of birth to be taken as 14.11.1960.

7. Shri Vaibhav Shukla, learned counsel for the Appellant-Employer submits that the letter dated 01.02.1999 issued by the Ministry of Coal, Government of India is based on the consideration of an employee/Mazdoor to be engaged in employment only after attaining the age of 18 years except he produce required certificate from competent authority and looking to the age of superannuation/retirement of 60 years, the maximum period of service of employee/Mazdoor will not be more than 42 years. It is pointed out that a minor cannot be engaged in employment as Mazdoor. Looking to the date of employment and the period of service as per his date of birth, the Respondent-Employee will work for more than 60 years, which is contrary to the provisions of Certified Standing Orders.

8. The claim of the Respondent-Employee that he entered into service as adolescent is without any basis as he has not produced any document as required for the purpose of such employment i.e. token issued by the prescribed authority allowing him to work as adolescent. The Respondent-Employee has been sent to ADC for determining the age and after following the due procedure prescribed for determination of age as per Implementation Instruction No.76, the ADC has correctly determined the age/date of birth to be 14.11.1958 as his age was found within the maximum

age range of 60 years. It is also pointed out that in no circumstance, any employee engaged by the Appellant-Employer can work for more than 60 years. It is lastly contended that as no document/token has been produced by the Respondent-Employee issued by the prescribed authority at the time of engagement, if employed, as adolescent employee under the Mines Act, 1952, the age determined by the ADC after following due procedure prescribed under Implementation Instruction No.76 determining the date of birth as 14.11.1958 is correct.

9. Per contra, Shri Chandresh Shrivastava, learned counsel for the Respondent-Employee submits that the Respondent-Employee was appointed on the post of General Mazdoor in the year 1976 and at the time of appointment itself, he has mentioned his date of birth as 14.11.1960, which was recorded by the Appellant-Employer in the service record of the Respondent-Employee maintained by them. He further submits that the Respondent-Employee has entered into the service as General Mazdoor, reply submitted by the Appellant-Employer to writ petition, they have admitted that for the appointment of General Mazdoor, there is no requirement of submission of any educational document. It is further contended that as per the Mines Act, 1952, any person of the age of 15 years and above can be employed as Mazdoor in mines, which was the law prevailing at that time with respect to employment of Mazdoor. It is also contended that the Respondent-Employee has passed the Higher Secondary School Certificate Examination in the year 1976 wherein his date of birth is recorded as 14.11.1960. The certificate is

prior to the engagement in employment, which cannot be ignored. In all the service records, date of birth of the Respondent-Employee was recorded as 14.11.1960 from the date of his entering into service, therefore, his date of birth cannot be determined by the ADC only on the basis of Radiological test when the admissible document issued by the Board of Secondary Education, Madhya Pradesh, Bhopal is available. It is also contended that Mines Act, 1952 provides that the persons more than 15 years of age can be engaged in employment and on the date of employment, Respondent-Employee was aged about 16 years. It is lastly contended that the learned Single Judge has rightly allowed the writ petition taking note of the judgment passed by this Court in **Mithilesh Sharma** (supra) and prays for dismissal of the writ appeal.

10. We have heard learned counsel appearing for the respective parties and perused the material placed on record.

11. The Respondent-Employee has placed on record the mark-sheet (Annexure P/4) issued by the Board of Secondary Education, Madhya Pradesh, Bhopal of the year 1976, in which, his date of birth has been mentioned as 14.11.1960. He has also placed on record the copy of Form-B, Form PS-3, Form PS-4 and office order dated 26.08.1996 maintained by the Appellant-Employer and in all those documents, the date of birth of the Respondent-Employee has been mentioned as 14.11.1960. The date of birth recorded in service records of the Respondent-Employee has not been disputed by the

Appellant-Employer, but their case is that, they have considered the case of the Respondent-Employee in pursuance to letter dated 01.02.1999 issued by the Ministry of Coal, Government of India.

12. For better appreciation of the dispute raised by the learned counsel for the Appellant-Employer, it will be relevant to go through the Mines Act, 1952, which governs the service of the Respondent-Employee. Section 2(a) defines the word “adolescent”, which is extracted below for ready reference:

“2(a) “adolescent” means a person who has completed his fifteenth year but has not completed his eighteenth year.”

13. Section 40 provides for employment of adolescents, which is extracted below :

40. Employment of adolescents

“(1) No adolescent shall be allowed to work in any part of a mine which is below ground unless-

(a) a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine.

(b) the adolescent carries, while at work, a token giving a reference to such certificate;

(c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work

on any day.

(2) Notwithstanding anything contained in this Act, no adolescent who has been granted a certificate under sub-section (1) shall be employed in any mine except between the hours of 6 A.M. and 6 P.M.

Provided that the Central Government may, by notification in the Official Gazette, vary the hours of employment of such adolescent in respect of any mine or class of mines so however that no employment of any such adolescent between the hours of 10 P.M. And 5 A.M. is permitted thereby.”

14. Section 45 provides for employment of children, which is extracted below :

“45. Employment of children

(1) No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any open excavation in which any mining operation is being carried on.

(2) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground whereby any operation connected with or incidental to any mining operation is being carried on.”

15. From perusal of aforementioned provisions of the Mines Act, 1952, it is clear that adolescent means a person who completed age of 15 years but less than 18 years. There is no bar for employment

of adolescent in part of mine and for engagement in work in any part of mine, which is below ground. There is a requirement of a medical certificate by a certifying surgeon that he is fit for work as an adult.

16. Undisputedly, the Respondent-Employee has mentioned his date of birth on the date of employment as 14.11.1960 and the Authority appointing him was well aware that the Respondent-Employee is aged about 16 years on the date of his employment, but they did not ask for submission of any certificate to be kept in record nor they referred to the Surgeon for certifying Respondent-Employee is fit for work. It is not a case of the Appellant-Employer that the date of birth of the Respondent-Employee is recorded as 14.11.1958 and he wants to be corrected it as 14.11.1960, but it is other way round that it is the Appellant-Employer only on the basis of letter dated 01.02.1999 issued by Ministry of Coal, Government of India, issued a letter on 09.02.2009 for determining the age of all employees who are likely to work for more than 42 years. This letter has been issued when Respondent-Employee had already completed his service of 33 years. Till then, there is no dispute with regard to date of birth as entered in service record of the Respondent-Employee.

17. Implementation Instruction No.76 provides for method/procedure for determination of the age at the time of appointment under Clause A(i). It provides that the employees who passed matriculates and the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be

altered under any circumstances. Clause A(i) of Implementation Instruction No.76 is extracted below for ready reference :

“(A) Determination of the age at the time of appointment

i) Matriculates.

In the case of appointees who have passed Matriculation or equivalent examinations, in the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.”

18. The Respondent-Employee is a matriculate. His date of birth has been mentioned on the date of initial appointment in service record of Appellant-Employer as 14.11.1960, which is same as recorded in Higher Secondary School Certificate Examination, 1976 issued by the Board of Secondary Education, Madhya Pradesh, Bhopal, therefore, merely on the ground that Respondent-Employee will work for more than 42 years of age, his date of birth cannot be corrected unless and until, some acceptable evidence is brought to the knowledge of Appellant-Employer showing some mischief was committed by Respondent-Employee in recording his date of birth in service record, and the document to be prescribed document in Implementation Instruction No.76 for verification of age of the employees.

19. Even otherwise, the Appellant-Employer is stressing upon the opinion given by ADC based on Radiological test only. The Appellant-Employer instead of asking for the document showing the

date of birth of the Respondent-Employee and finding it to be not in accordance with Implementation Instruction No.76, directly conducted Radiological test and by taking maximum age range of 60 years, corrected the date of birth of Respondent-Employee to 14.11.1958. As per Medical Jurisprudence, the date of birth assessed on the basis of Radiological test will have the variation $\pm$ (plus/minus) of 2 years, it cannot be treated as exact age of a person, whose age is determined on the basis of Radiological test.

20. The maximum age range as arrived in the Radiological test cannot be made applicable in the facts of the present case where the date of birth recorded at the time of entering into service in the year 1976 as 14.11.1960 and the same is also mentioned in the Higher Secondary School Certificate Examination, 1976 issued by the Board of Secondary Education, Madhya Pradesh, Bhopal, which is a document prior to entering into service.

21. Looking to the reason for which, date of birth of the Respondent-Employee has been verified by the Appellant-Employer, the Appellant-Employer ought to have accepted the date of birth recorded in service record of the Respondent-Employee, which is also mentioned in Higher Secondary School Certificate Examination, 1976, when the Radiological test also shows the age of the Respondent-Employee to be maximum of 60 years and not of 60 years.

22. In the case at hand, during the entry of service of Respondent-Employee in the year 1976, date of birth is recorded as 14.11.1960

in all service records till 2009. The reason for starting proceedings of age determination of Respondent-Employee by Appellant-Employer was not on the ground of receiving any impeachable evidence of date of birth of the Respondent-Employee, but only on the ground of the letter issued by the Department to verify the date of birth whose service will be more than 42 years as per service record. In the facts of the case, the Appellant-Employer should have taken into consideration matriculation certificate issued from the Board of Secondary Education, Madhya Pradesh, Bhopal of the year 1976. As per Implementation Instruction No.76, the matriculation certificate is one of the authentic documents for ascertaining the date of birth of an employee. Subsequent presentation of certificate cannot be doubted unless it is proved to be forged when at the time of entry into service as Mazdoor, no document is required to be submitted of an employee including the document of date of birth.

23. When the date of birth mentioned in the office record as of the year 1976 and date of birth in matriculation certificate are same, then reliance placed upon the report of the Radiological test was not proper. As per medical jurisprudence, the determination of age on the basis of Radiological test, there is variation of age of $\pm$ (plus/minus) 2 years, and hence, it cannot be said to be conclusive. The Appellant-Employer has not placed on record any impeachable evidence to show that the date of birth of Respondent-Employee recorded in service record was not correct.

24. Similar issue has already been decided by this Court and the

order passed by the Division Bench of this Court was put to challenge by the Appellant-Employer before the Hon'ble Supreme Court, which came to be dismissed in the matter of **SECL v. Mithilesh Sharma** vide order dated **20.08.2010**. The contents of letter dated 01.02.1999 on the pretext that the age of employee entering into service to be 18 years whereas as per Mines Act, 1952 prevailing at that relevant time, persons with 15 years or more can be appointed to work with mine.

25. The Hon'ble Supreme Court in the matter of **Union of India v. Harnam Singh** reported in **(1993) 2 SCC 162** has held as under :

"7.A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay....."

26. Further, the Hon'ble Supreme Court in the matter of **State of Punjab and Others v. S.C. Chadha** reported in **(2004) 3 SCC 394** had held as under :

"8. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or

retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and it is necessary to maintain the date of birth in the service records.

14. In the instant case the Higher Secondary Examination Certificate was issued on 3.6.1962 which contained information that the date of birth of the respondent was only 19.6.1944. If the said certificate disclosed a wrong date, it is not explained by the respondent as to why he did not make any move to get it corrected at that point or on any one of the occasions when he sought and obtained employment in 7/8 public institutions. Merely because in 1994 an opportunity was granted to the Government employees to get their date of birth corrected, that does not take away the affect of inaction and continued silence for more than three decades, which dehors laches on his part would seriously reflect on the bona fide nature of the claim itself. Even in the application made for employment in the year 1992-93 the date of birth was indicated, as noted above to be 19.6.1944. No contemporaneous document was produced to show that recording of the date of birth to be 19.6.1944 was wrong. Accepting the plea of the respondent would result in two public records, educational on one side and service

on the other reflecting two different and conflicting dates of birth. Such anomalous situations are to be averted and not be countenanced.”

27. The Hon'ble Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Chhota Birs Uranw** reported in **(2014) 12 SCC 570** has held as under :-

“15. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the appellant Company on 6-9-2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction No.76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words ‘were issued’ was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of

safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.”

28. There is no doubt that the Employer can take recourse of correction of date of birth of any of its Employees, but he should be in possession of satisfactorily, admissible and irrefutable piece of evidence with him, particularly, when the Employer wants to correct date of birth recorded by one of its Employees, in service record of any other Employee at the time of entering into the service of that particular Employee.

29. In the instant case, it is the Employer who suspected the date of birth recorded in service record. The Employee is having

matriculation certificate with same date of birth as recorded in service record i.e. 14.11.1960. The certificate is not questioned by the Appellant-Employer, which is one of the documents as mentioned in Implementation Instruction No.76 to be authentic document for ascertaining the age.

30. In view of aforementioned discussions, we do not find any infirmity in the impugned order passed by learned Single Judge. The appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge