

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Justice I. P. Mukerji
Hon'ble Justice Subhasis Dasgupta

FMA No. 4415 of 2016

Pranab Kumar Layek
Vs.
Eastern Coalfields Limited & Ors.

For the Appellants : Mr. Partha Ghosh,
Mr. Amal Kumar Datta, Adv.

For the Respondents : Mr. Bijoy Kumar, Adv.

Judgment on : 12.02.2021

I. P. MUKERJI, J.-

The appellant joined the service of the first respondent, Eastern Coalfields Ltd. (the respondent) on 14th October, 1977 as a trainee. On 21st November, 1979 he was appointed in the post on probation for six months.

He had secondary level school qualification having obtained it in 1978.

Almost 10 years after his appointment in service the respondent raised a dispute regarding the appellant's age. They did not accept the age as shown in the admit card of the West Bengal Secondary Board. By its letter dated 19th June, 1989 they communicated this to the appellant.

By a letter dated 25th August, 1992 they directed the appellant to appear before the Apex Medical Board at the Regional Hospital Pantanagar, Pandaveswar area on 27th August, 1992 at 9.00 A.M with his identity card, a photocopy of the service excerpt along with a duly attested

passport size photograph for the purpose of determination of his date of birth.

The Medical Board opined that the appellant would be between the age 40 to 45 as on 27th August, 1992 and determined his date of birth as 27th February, 1950.

Against its decision, the appellant filed a writ application in this court [WP 15396(W) of 2005] (Pranab Kumar Layek Vs. Eastern Coalfields Ltd. & Ors.). It was disposed of on 16th September, 2015 by directing the General Manager (Personnel) of the respondent to consider the representation to be made by him for age correction, within six weeks of such representation.

In pursuance of the said order of this court, the General Manager (P&IR) made his decision on 13th November, 2015 which is the impugned decision in the instant writ [WP 5572(W) of 2016].

On 11th April, 2016 this writ was dismissed at the motion stage by a learned single judge of this court.

The reasons advanced by the learned judge for dismissing the writ application were that in the identity card issued to the appellant in 1999, after assessment of his age by the Medical Board, his date of birth was shown as 27th February, 1950. The appellant did not take any steps against this insertion. He obtained a certificate dated 25th March, 2003 from Raniganj High School, also much later, recording his date of birth as 25th October, 1959. The court did not believe this certificate. The court proceeded on the basis that the appellant had accepted the declaration of his age in the identity card.

The writ application was dismissed at the motion stage.

Hence, this appeal.

Mr. Kumar, appearing for the respondents at the outset submitted that an opportunity should be given to him to file an affidavit-in-opposition to

the stay petition. He said that an affidavit-in-opposition is necessary because such an affidavit was not filed before the court below. We did not allow him to do so for two reasons. We noticed from the records that on 20th September, 2016 a division bench of this court had directed hearing of the appeal after the puja vacation. On 25th January, 2021 another division bench of this court directed that the appeal and the said application would be heard on 1st February, 2021. No prayer had been made by Mr. Kumar on either of the two days for filing an affidavit-in-opposition to the said petition.

Mr. Ghosh, learned Advocate for the appellant was right when he submitted that in the earlier writ of 2005 the respondent had filed a detailed affidavit-in-opposition which is annexed to the stay petition. That writ had been disposed of as stated earlier by directing the respondent to consider the age correction matter by a reasoned decision. No new facts have occurred.

Mr. Ghosh also submitted that the said affidavit-in-opposition was a complete reflection of the defence of the respondents and the prayer for filing a fresh affidavit-in-opposition was a mere formality and should not be accepted by the court as it would delay hearing of the appeal.

We are in full agreement with such submission.

The said affidavit has been placed before us in detail and we have considered it.

The appellant has relied on an admit card of the West Bengal Board of Secondary Education where his date of birth is recorded as 25th October, 1959. We have also been shown a document described as excerpts from the service record card of the said respondent where the educational qualification of the appellant is described as Madhyamik.

Mr. Ghosh, appearing for the appellant submits that the above admit card for the Madhyamik examination was furnished to the respondent, for recording the appellant's date of birth at the time of his said

appointment. He also says that in the service book under the remarks column the appellant had entered the said date of birth which was never disputed by the appellant.

We have also been taken through the document relating to Coal Mines Provident Fund where under Sl. No. 138 the name of the appellant was entered and his date of birth shown as 25th October, 1959.

Let us examine what the respondent said in their affidavit-in-opposition to the earlier writ. They said that in the 'B' Form Register of the respondent where the details of the employees were recorded, the age of the appellant was stated to be 27th February, 1950. This was on the basis of a "service excerpt" which was prepared in 1987. The unions raised objections to such entry. Thereupon it was referred to the "apex medical board" at Regional Hospital, Panthnagar, Pandeveshwar. This Board assessed the appellant's age as between 40 to 45 years on 27th August, 1992. Calculating his age to be the mean between 40 and 45 years the date of birth of the appellant was recorded as 27th February, 1950. The affidavit referred to the procedure for determination/verification of the age of the employees contained in Implementation Instruction No. 76.

DISCUSSION

The Implementation Instruction No. 76 are rules which govern the determination or verification of age of the employees of the said respondent.

Paragraph No. A(i) is relevant and most instructive. It is set out below:-

"A) Determination of the age at the time of appointment.

i) Matriculates.

In the case of appointees who have passed Matriculation or equivalent examinations, 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.”

Therefore, at the time of appointment of employees with the respondent, with matriculate qualifications, the date of birth recorded there was treated as sacrosanct and entered in the records. This clause makes it absolutely plain that if so entered, it is not to be altered “under any circumstances.” In the excerpt from the service record furnished by the respondent to the appellant, although the date of birth column was blank, against the writing educational qualification, ‘Madhyamik’ was entered. Again in the remarks column at Page 2 filled up by the appellant, he stated that his date of birth was 25th October, 1959. He wrote against it: “as per Madhyamik admit card 1978”.

Mr. Ghosh submitted that the admit card of the West Bengal Board of Secondary Education for the appellant for the Madhyamik Examination, 1978, recording his date of birth as 25th October, 1959 was submitted with that document. There is nothing on record to suggest that there was any contemporaneous objection to it, he argued.

The question involved in the instant writ and before us is whether the decision made by the respondent on 13th November, 2015 in obedience to the order dated 16th September, 2015 in the earlier writ was correct or not. The learned single judge in the impugned judgment and order dated 11th April, 2016 upheld this decision and dismissed the writ.

When Implementation Instruction No.76 specifically stated that the date of birth in the school leaving certificate would be deemed to be correct by the respondent employer and would “not to be altered under any circumstances”, there was no occasion to subject the appellant to a

Medical Board examination for assessment of his age. A full bench of the Jharkhand High Court in **Kamta Pandey Vs. M/s. B.C.C.L. & Ors.** reported in **2008 LAB I. C. 2677** has opined in a similar voice:

“Paragraph – 16:- The above instruction, which is, admittedly, binding upon the respondent company, would clearly indicate that in the case of the existing employees, date of birth mentioned in the Matriculation Certificate alone shall be treated as authentic and correct date of birth. If it is found that the said certificate, which is genuine, containing the date of birth, has been issued by the recognized University or recognized Board of Education, it cannot be altered under any circumstances. When the instruction found in the agreement reflecting the scheme provided for implementation envisaging the specific procedure for determination of date of birth conclusively, it cannot be said that entries made in the service register alleged to have been acknowledged by the employee would nullify the effect or the object with which the Instruction No. 76 has been introduced.”

A division bench of this court has gone further in **Gadadhar Konar Vs. Union of India & Ors.** reported in **2011 (3) CLJ (Cal) 157** and said that even if the assessment by the Medical Board was otherwise, the date of birth recorded in the school leaving certificate should be considered as “conclusive proof of age of the appellant/petitioner”

“Considering the report of the Medical Board, we find that the said Medical Board was of the opinion that the age of the appellant/petitioner was between 40 to 45 years on 12th October, 1993. Therefore, the age Determination Committee was not definite in respondent of the actual age of the appellant/petitioner. In any event, in the present case, the school leaving certificate issued by the Headmaster of the school concerned on the basis of the

admission register cannot be ignored under any circumstances. The school leaving certificate issued by the Headmaster of the school on the basis of the admission register should have been considered as conclusive proof of age of the appellant/petitioner apart from the other valid documents viz., the last pay certificate issued by the competent authority of the respondent Coal Company.”

A single bench of this court in **Sukumar Dawn vs. Coal India Limited** reported in **2013 (4) CHN (CAL) 112** followed the full bench judgment of the Jharkhand High Court and directed Coal India Ltd. to record the correct date of birth of its employee according to the admit card issued in the school final examination.

Great importance is attached to the date of birth as recorded in the school leaving certificate as would be evident from the judgment of the Supreme Court in **Ms. Bharat Coking Coal Ltd. and Ors. Vs. Chhota Birsa Uranw** reported in **AIR 2014 SC 1975**, where the Supreme Court remarked:-

“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..... 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”

The appellant was appointed in the post on 21st November, 1979. The admit card related to the school leaving matriculate examination of 1978. Hence, his date of birth had been recorded by the school prior to his appointment in the post on 21st November, 1979 and the admit card issued by it.

The respondent is bound by its own rules. As long as it follows Implementation Instruction No. 76, it cannot travel outside it. It appears from the evidence on record, including the said service excerpt that the admit card issued by the West Bengal Board of Secondary Education recording the date of birth of the appellant as 25th October, 1959 was furnished by him and taken on record by the respondent at the time of commencement of his employment on confirmation. Furthermore, there is no contemporaneous correspondence by the respondent denying the existence of this admit card in their records.

The Supreme Court in **M/s. Bharat Coking Coal Ltd. and Ors. Vs. Chhota Birsa Uranw** reported in **AIR 2014 SC 1975** has said that the date of birth, to be valid and admissible should be recorded by the school prior to an employee's joining the employment. Whether the certificate is issued at a later point of time is immaterial.

In those circumstances, the admit card tendered by the appellant while joining the service of the respondent was a valid document. Since the respondent was following Implementation Instruction No. 76, it had no option but to accept the date of birth mentioned in the admit card as correct. The opinion of the Medical Board or a determination made by the respondent on the basis of the opinion of this Board should have no impact. The date of birth as disclosed with the admit card issued by the Board has overriding effect. The respondent is clearly wrong in not acting on the date of birth recorded in this document.

In those circumstances, we set aside the impugned decision of the respondent dated 13th November, 2015. We also set aside the impugned judgment and order dated 11th April, 2016. We direct the respondent to record the date of birth of the appellant as 25th October, 1959. On this basis, his date of superannuation is to be notionally computed. He will be deemed to have been in service up to the notional date of retirement. The decision of the respondent superannuating the appellant stands annulled. The appellant shall be entitled to salary from the date of his actual retirement till the date of his notional retirement less any retirement benefit received. The appellant will also be entitled to retiral benefits, both arrear and current, less any benefit already received. The appeal is allowed to the above extent, compliance by the respondent within 3 months from date.

No order as to costs.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(SUBHASIS DASGUPTA, J.)

(I. P. MUKERJI, J.)