

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1135 of 2009**

- Shobit Ram Aged About 53 Years S/o Shri Prem Sai, Occupation Service, presently Posted As Driller, category Grade-C, S.E.C.L., New Kumda Colliery No. 7, 8, Bishrampur Area, R/o Village Ratanpur, Tehsil Surajpur, P.S. Jainagar Post Kandharhai, District Sarguja (Chhattisgarh).

----- Petitioner**Versus**

1. South Eastern Coalfields Ltd. Through the Chairman cum Managing Director, Seepat Road, Bilaspur, C.G.
2. The Personnel Manager (I.R.) SECL, Seepat Road, Bilaspur, C.G.
3. The Sub-Area Managaer, S.E.C.L., New Kumda, Bishrampur Area.

----- Respondents

For Petitioner :- Mr. Kawaljeet Singh Saini, Adv.
For Respondents :- Mr. Atul Kesharwani, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****12/07/2021**

1. Proceedings of this matter have been taken up through video conferencing.
2. The petitioner herein calls in question the notice dated 07.02.2009 (Annexure-P/5) issued by the respondent-authority proposing petitioner's retirement w.e.f. 31.07.2009.
3. Mr. Kawaljeet Singh Saini, learned counsel for the petitioner, would submit that the petitioner's correct date of birth is 31.03.1953 which has been recorded in Annexure P/4 i.e. Class-V certificate issued by the Principal Government Primary School, Ratanpur, Block-Surajpur, Surguja, C.G. which has not been considered by the respondents and he has been proposed to be retired w.e.f. 31.07.2009 taking his date of birth as 30.07.1949 which is unsustainable and bad in law.
4. Mr. Atul Kesharwani, learned counsel for the respondents, would submit that petitioner has raised the dispute about his date of birth after completing 34 years of the service and i.e. fag end of his service and

secondly that Annexure P/4 is not a document earmarked under the Implementation Agreement and also documents filed alongwith Annexure R-1/1 R-1/2 would show that the petitioner's date of birth is 30.07.1949 and, as such, writ petition deserves to be dismissed.

5.I have heard learned counsel for the parties, considered their rival submission made herein-above and went through the records with utmost circumspection.

6.In order to consider the plea raised at the Bar, it would be appropriate to notice the relevant provision contained in Implementation Instruction No.76 which is a part of National Coal Wage Agreement III and which provides procedure for determination/verification of the age of the employees, and for resolution of disputed cases of Service Records, framed by the Joint Bipartite Committee for the Coal Industries of Coal India Limited. In Implementation Instruction No.76, the procedure is divided in two parts, Para (A)

provides for Determination of the age at the time of appointment whereas Para (B) provides for Review/determination of date of birth in respect of existing employees. In order to consider the plea raised at the Bar, it would further be appropriate to reproduce Para (A) (ii) which provides for determination of the age at the time of appointment. It reads as follows: -

"ii) Non-matriculates but educated.

In the case of appointees who have pursued studies in a recognised educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances."

7. Para (B) of Implementation Instruction No.76 provides for Review/determination of date of birth in respect of existing employees which we are concerned here. Para (B) (i) (a) of the said Instruction reads as follows: -

"i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards

issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities / Boards / Institutions prior to the date of employment."

8.A careful and critical reading of Para (B) (i)(a) of Implementation Instruction No.76 would show that in case of existing employees, following documents issued prior to the date of employment shall be treated as correct: -

- 1.Matriculation certificate.
- 2.Higher Secondary Certificate issued by the recognized University or Board.
- 3.Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction.
- 4.Admit cards issued by the aforesaid Bodies.

Thus, four kinds of documents are deemed to be correct if they are available and they must have been issued by the said University, Board or Institution prior to the date of employment.

9.Reverting to the fact of the present case in

light of the aforesaid provisions of the Implementation Instruction it would appear that the document Annexure P/4 i.e. Class-V certificate issued by the Principal Government Primary School, Ratanpur, Block-Surajpur, Surguja, C.G. is not the document within the meaning of Implementation Instruction No.76, therefore, the said document cannot be relied upon to hold the date of birth of the petitioner is 31.03.1953. The petitioner has completed 34 years of his service and due to retirement w.e.f. 31.07.2009, now in 2008 he has raised the dispute belatedly i.e. fag end of his service.

10. The Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Shyam Kishore Singh**¹ placing reliance upon its earlier judgment in the matter of **State of Madhya Pradesh and others v. Premlal Shrivastava**² in which it has been held that even if there is good evidence to establish that the recorded date of birth is clearly erroneous,

1 (2020) 3 SCC 411

2 (2011) 9 SCC 664

correction cannot be claimed as a matter of right, held in paragraph 10 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 Shrivastava*⁴ it is held as hereunder: (SCC pp. 667 & 669, paras 8 & 12)

"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*³).

* * *

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.

³ (1993) 2 SCC 162 : 1993 SCC (L&S) 375

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."

11. Similarly, the Supreme Court in Shyam Kishore Singh's case (supra) as well as in the matter of Eastern Coalfields Limited and others v. Ram Samugh Yadav and others⁴ held that prayer for correction in the date of birth at the fag end of career is totally impermissible.

12. Coming to the facts of the present case the document Annexure P/4 is not a document earmarked under the Implementation Instruction No.76 and on that basis correction in date of birth cannot be directed and further more the petitioner has filed writ petition at the fag end of his service i.e. after completing 34 years of his service. I do not find any good ground to entertain the instant writ petition.

⁴ (2020) 3 SCC 421

13. Accordingly the instant writ petition is
dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit