

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.5014 of 2009

Abdul Nawab, S/o Shri Abdul Sattar, Aged about 48 years, Working as Electrician in North Chirimiri Colliery (Gelhapani), Chirimiri, Distt. Korea (C.G.)

---- Petitioner

Versus

1. South Eastern Coalfields Ltd., Through the Chairman cum Managing Director, Seepat Road, Bilaspur (C.G.)
2. The Chief General Manager, Chirimiri Area, Chirimiri, Distt. Korea (C.G.)
3. The Mines Manager, North Chirimiri Colliery (Gelhapani), Chirimiri, Distt. Korea (C.G.)
4. The Deputy Chief Mining Engineer, North Chirimiri Colliery (Gelhapani), Chirimiri, Distt. Korea (C.G.)

---- Respondents

For Petitioner: Mr. Azad Siddiqui, Advocate.

For Respondents/SECL: Mr. Abhishek Sinha, Senior Advocate with Mr. D.L. Dewangan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/08/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner has called in question the order dated 27-9-1988 passed by the Age Determination Committee of the respondent South Eastern Coalfields Limited (SECL) holding the date of birth of the petitioner as 8-9-1952 seeking declaration that his date of birth is 15-4-1961.
3. The petitioner entered in the service of SECL on 15-12-1977 as General Mazdoor, thereafter, he was promoted as Electrical Helper

and thereafter as Electrician. At the time of appointment in SECL, the petitioner submitted form Annexure P-1 in which his date of birth is recorded as 8-9-1952. On 3-6-1988, the petitioner submitted an application that his date of birth has been wrongly recorded as 8-9-1952 and his correct date of birth is 15-4-1961, that application was rejected by the Age Determination Committee on 27-9-1988 holding that the date of birth recorded in the service record Form B CMPF record, dated 8-9-1952 is final. Thereafter, the petitioner filed this writ petition claiming that his matter be referred to the Age Determination Committee as his date of birth is 15-4-1961 in which the respondents filed return stating that his application for correcting the date of birth has already been rejected on 27-9-1988 vide Annexure P-5 and that has not been challenged, then the petitioner amended the writ petition and called in question the order dated 27-9-1988 claiming that his date of birth be corrected as 15-4-1961.

4. Rejoinder has also been filed.
5. Mr. Azad Siddiqui, learned counsel appearing for the petitioner, would submit that the petitioner's date of birth was wrongly recorded in the service record as 8-9-1952, he made application for correction of his date of birth on 3-6-1988 that has wrongly been rejected by Annexure P-5 dated 27-9-1988 which is absolutely illegal and bad in law as by certificate dated 2-10-1999 (part of Annexure P-6), the Head Master of Govt. Primary School, Gelhapani, Distt. Surguja has certified that the petitioner's date of birth entered in the school register is 15-4-1961. The petitioner has also filed affidavit that has not been considered and he has been made to retire on 30-9-2012 on his attaining the age of superannuation on 7-9-2012 holding that his date of birth is 8-9-1952. Therefore, the impugned order is liable to be set aside and the

petitioner's date of birth be corrected as 15-4-1961 and he be granted all consequential benefits. Mr. Azad Siddiqui, learned counsel, relied upon the decisions of the Supreme Court in the matters of Brij Mohan Singh v. Priya Brat Narain Sinha and others¹ and Mohd. Yunus Khan v. U.P. Power Corporation Limited and others² and also the decision of this Court in the matter of Sayyad Yasin v. South Eastern Coalfields Limited and others³ to buttress his submission.

6. Mr. Abhishek Sinha, learned Senior Counsel appearing for the respondents / SECL, would submit that the petitioner's date of birth recorded in the service record and Form B entered in the service record, is 8-9-1952 which is evident from Annexure P-1. He would further submit that the petitioner made representation/application for correction of his date of birth during the course of employment on 3-6-1988, his representation was referred to the Age Determination Committee and the said Committee has rejected the representation on 27-9-1988 vide Annexure P-5 which he did not call in question while initially filing this writ petition, but later-on, the petitioner amended the writ petition questioning the order dated 27-9-1988. He would also submit that the petition suffers from delay and laches and correctness of that certificate cannot be examined being the writ petition suffers from delay and laches so far as the order Annexure P-5 is concerned. He would contend that the petitioner has relied upon the certificate issued by the Head Master of Govt. Primary School, Gelhapani on 2-10-1999 stating the petitioner's date of birth as 15-4-1961 which is not the document under Implementation Instruction No.76 which gives the procedure for determination / verification of age of employees and in

1 AIR 1965 SC 282

2 (2009) 1 SCC 80

3 W.A.No.564/2019, decided on 18-5-2020

the case of the petitioner, sub-clause (i)(a) of Clause (B) of the said Implementation Instruction which deals with Review determination of date of birth in respect of existing employees, would be applicable. None of the documents earmarked in sub-clause (i)(a) of Clause (B) of Implementation Instruction No.76 has been filed by the petitioner to prove his case, therefore, it cannot be held that his date of birth is 15-4-1961 and as such, his date of birth has rightly been determined by the Age Determination Committee under Clauses (B), (C) & (D) of Implementation Instruction No.76. Mr. Sinha, learned Senior Counsel, would rely upon the decision of this Court in the matter of South Eastern Coalfields Ltd., Bilaspur and others v. Adya Singh⁴ to buttress his submission.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. The petitioner entered into the service of SECL as General Mazdoor on 15-12-1977 and later-on, he was promoted on the post of Electrical Helper, thereafter, as Electrician. After 11 years of his service, on 3-6-1988, he made a representation / application that his date of birth is not correctly recorded in the service record and his correct date of birth is 15-4-1961, which was ultimately referred to the Age Determination Committee and the said Committee vide Annexure P-5 on 27-9-1988 has held that the date of birth recorded in the company register (8-9-1952) is final. Thereafter, the petitioner made representation for correcting the date of birth, but somehow that was not corrected. The basis of correction claimed is the certificate dated 2-10-1999 (part of Annexure P-6) in which the petitioner's date of birth

has been recorded as 15-4-1961. The petitioner again made application on 25-10-1999 for correction of his date of birth on the basis of certificate issued by the Head Master, Govt. Primary School, Gelhapani, Distt. Surguja, on 2-10-1999 which is part of Annexure P-6 at page 22 of the writ petition. The petitioner was existing employee of SECL, therefore, Clause (B) of Implementation Instruction No.76 which prescribes Procedure for Determination / Verification of Age of Employees, would apply. Sub-clause (i)(a) of Clause (B) of Implementation Instruction No.76 which deals with Review determination of date of birth in respect of existing employees, states as under: -

“(B) Review determination of date of birth in respect of existing employees.

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.”

9. A careful perusal of the aforesaid clause would show that in case of 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 and it should also be issued prior to the date of employment.
10. Reverting to the facts of the present case, the certificate dated 2-10-1999 issued by the Head Master, Govt. Primary School, Gelhapani, Distt. Surguja, is not the document earmarked under Clause (B)(i)(a)

of Implementation Instruction No.76 and apart from that, it has also not been issued prior to the date of employment, as the petitioner entered in the service of SECL on 15-12-1977 and this document has been issued on 2-10-1999. As such, this document which is part of Annexure P-6 i.e. the certificate dated 2-10-1999 is not the document falling within the terms of Clause (B)(i)(a) of Implementation Instruction No.76 and therefore the petitioner's date of birth cannot be held as 15-4-1961.

11. Apart from this, Clause (C) of Implementation Instruction No.76 provides for constitution of Age Determination Committee and it clearly provides that in the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b), the date of birth recorded in the records of the company, namely, Form B register, CMPF Records and Identity Cards (untampered) will be treated as final. The petitioner himself has filed document in his service record while entering into service in which his date of birth is recorded as 8-9-1952 and the Age Determination Committee while determining his age has accepted his date of birth to be 8-9-1952 which he did not challenge even in the instant writ petition initially. Moreover, when the respondents have raised preliminary objection that the petitioner has not questioned the order dated 27-9-1988, then it has been said to be questioned by way of amendment in the writ petition.

12. In the considered opinion of this Court, the petitioner has failed to make out a case for interference in his date of birth for the reasons that,

1. the petitioner did not produce any document within the meaning of Clause (B)(i)(a) of Implementation Instruction No.76;

2. in his service record, his date of birth has been mentioned as 8-9-1952; and

3. the Age Determination Committee had already decided his date of birth to be 8-9-1952 which he has failed to assail by filing documents to hold otherwise.

13. As such, the decisions cited by learned counsel for the petitioner are clearly distinguishable to the facts of the present case.

14. As a fallout and consequence of the aforesaid discussion, I do not find any merit in the writ petition. The writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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