

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Writ Petition (S) No. 1573 of 2012**

Baratu Ram, Aged about 54 years, S/o Late Jharhi Ram, R/o B-373 NCH Colony Urja Nagar, Post Gevra Project, Distt. Korba, Chhattisgarh.

**---Petitioner**

**Versus**

1. South Eastern Coalfields Limited through its Chairman-cum-Managing Director, Seepat Road, Bilaspur Chhattisgarh – 495006.
2. Chief General Manager, SECL, Gevra Area, P.O. Gevra Project, Distt. Korba, Chhattisgarh.

**---Respondents**

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For Petitioner       :- Mr. Gary Mukopadhyay, Advocate  
For Respondents    :- Mr. Pankaj Agrawal, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board (Th. Video Conferencing)**

**02/09/2021**

1. Petitioner's date of birth was not correctly adjudicated by the respondents herein which led to the filing of WPS No. 3086/2011 in which by order dated 20/06/2011 (Annexure P/16) this Court directed the respondents to determine the

correct date of birth of the petitioner by referring the matter to the Age Determination Committee in accordance with Implementation Instruction No. 76 after giving the petitioner proper opportunity of hearing. Thereafter, the Age Determination Committee vide report dated 30/09/2011 made the recommendation to the respondents that petitioner's date of birth is 01/12/1954, which was communicated by the respondents/SECL vide impugned order dated 13/15.10.2011 (Annexure P/2) and eventually vide order dated 29/10/2011 (Annexure P/1) it was communicated to the petitioner that as per the recommendation of the Age Determination Committee, his date of birth shall not be corrected to 27/02/1958, as such, both Annexures P/1 and P/2 have been called in questioned by the petitioner in the instant writ petition.

2. It is the case of the petitioner that the document (Annexure P/5) which is the copy of his Matriculation Examination Marksheet clearly shows that he has passed matriculation examination from the Board of Secondary Education, Madhya Pradesh in the year 1977 and his date of birth has been recorded as

27/02/1958. The said document was sent for verification by the respondents/SECL by memo dated 05/10/2005 (Annexure P/11) and it has been verified by Chhattisgarh Board of Secondary Education, Raipur by letter dated 20/01/2006 (Annexure P/12) stating that petitioner has passed his matriculation examination in the year 1977 and his date of birth is 27/02/1958. Thereafter, again vide letter dated 03/09/2009, the respondents requested the Regional Commissioner, CMPF, Bilaspur to send a copy of Form - A in order to verify petitioner's date of birth. In reply to the said letter, the Regional Commissioner, CMPF, Bilaspur vide his letter dated 08/09/2009 (Annexure P/15) sent a copy of Form-A wherein petitioner's date of birth has clearly been recorded as 27/02/1958. Therefore, the finding of the Age Determination Committee holding petitioner's date of birth to be 01/12/1954 merely on the basis that the date of issuance has not been mentioned in petitioner's matriculation examination marksheet (Annexure P/5) is absolutely arbitrary and is liable to be set aside.

3. Return has been filed by the respondents opposing the stand taken by the petitioner stating that the Age Determination Committee has rightly held petitioner's date of birth to be 01/12/1954 as petitioner did not produce his matriculation examination marksheet right in time while entering into service on 23/02/1979, therefore, the writ petition deserves to be dismissed.

4. Mr. Gary Mukopadhyay, learned counsel for the petitioner, would submit that the document (Annexure P/5), which is the copy of petitioner's matriculation examination marksheet clearly shows that he passed the said examination in the year 1977 and his date of birth therein has already been recorded as 27/02/1958, has been duly verified by the respondents, firstly from the Chhattisgarh Board of Secondary Education, Raipur (Annexure P/12) and then from the Regional Commissioner, CMPF, Bilaspur (Annexure P/15) and moreover, since the said document (Annexure P/5) is an ear-marked document in terms of Implementation Instruction No. 76, it is binding on the respondents, but vide order dated 13/15.10.2011 (Annexure P/2),

the respondent authorities have declined to accept petitioner's date of birth as 27/02/1958 only on the ground that date of issuance has not been mentioned in the said document (Annexure P/5). He would rely upon the decision rendered by this Court in the matter of Amar Singh v. Sub Area Manager Dipka Ex. Project and Others<sup>1</sup> which has been affirmed in Sub Area Manager and Others v. Amar Singh<sup>2</sup> to further submit that the impugned orders Annexures P/1 and P/2 deserve to be quashed and since the petitioner has retired from service on 28/02/2014 by treating his date of birth to be 01/12/1954, therefore, he is entitled for all the consequential benefits from his actual date of retirement after correcting his date of birth as 27/02/1958.

5. Mr. Pankaj Agrawal, learned counsel for the respondents, would support the impugned orders and submit that petitioner has failed to produce his matriculation examination marksheet (Annexure P/5) at the time of entering into service on 23/02/1979 and even otherwise, in the said document (Annexure P/5), the date of issuance has not been recorded and it is not a

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1 WP No. 258/2004 decided on 14/09/2011

2 WA No. 559/2011 decided on 28/09/2012

document covered under Clause B(i)(a) of the Implementation Instructions No. 76, therefore, the said document i.e. petitioner's matriculation examination marksheet has rightly not been considered while determining the date of birth of the petitioner particularly when the date of issuance itself has not been recorded in Annexure P/5. He would rely upon the decision rendered by this Court in South Eastern Coalfields Ltd. v. Amarnath Kurrey<sup>3</sup>, South Eastern Coalfields Ltd. v. Kulwant Ram<sup>4</sup> and Amarjeet Singh v. S.E.C.L. through its C.M.D.<sup>5</sup> and submit that the instant writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7. Clause B(i)(a) of the Implementation Instruction No. 76 would be applicable in petitioner's case in which procedure for determination /verification of date of birth in respect of existing employees has been given. It states as under :-

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3 WA No. 533/2013 decided on 20/11/2014

4 WA No. 336/2014 decided on 04/12/2014

5 WA No. 84/2014 decided on 20/11/2014

"Implementation Instruction No. 76

PROCEDURE FOR DETERMINATION  
/VERIFICATION OF AGE OF EMPLOYEES

A)       XXX                               XXX                               XXX

**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 recognized Universities or Board 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 perusal of the aforesaid clause of Implementation Instruction No. 76 would show that in the case of existing employee, matriculation certificate or higher secondary certificate issued by the recognized Universities or Board, 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.In order to support his plea, petitioner submitted his matriculation examination marksheet issued in the year 1977 (Annexure P/5)

before the Age Determination Committee in which his date of birth has been recorded as 27/02/1958. The said document (Annexure P/5) was verified by the respondents by sending memo dated 05/10/2005 (Annexure P/11) to which reply was received from Chhattisgarh Board of Secondary Education, Raipur by letter dated 20/01/2006 (Annexure P/12) stating that petitioner has passed his matriculation examination in the year 1977 and his date of birth is 27/02/1958. It was again verified by the respondents from the Regional Commissioner, CMPF, Bilaspur by sending letter dated 03/09/2009 and in reply, the Regional Commissioner, CMPF, Bilaspur vide his letter dated 08/09/2009 (Annexure P/15) verified through Form - A that petitioner's date of birth is recorded as 27/02/1958.

10. As per Clause B(i)(a) of Implementation Instruction No. 76, petitioner's matriculation examination marksheet (Annexure P/5) is an earmarked document and it has been duly verified and reverified by the respondents, but still it has been rejected by the Age Determination Committee only on the ground that date of

issuance has not been mentioned in the said document (Annexure P/5). True it is that the date of issuance has not been mentioned in Annexure P/5, but it has been verified by the respondents and the Chhattisgarh Board of Secondary Education, Raipur has verified vide letter dated 20/01/2006 (Annexure P/12) that petitioner has passed his matriculation examination in the year 1977 and his date of birth is 27/02/1958. As such, merely because the date of issuance has not been mentioned in the document (Annexure P/5) the respondents/SECL cannot take the ground that the said document was issued after the date of petitioner's entering into service. It is common knowledge and experience that the marksheet of any examination is issued immediately after declaration of result and thereafter it is supplied to the students. Even otherwise, if the respondents/SECL was of the opinion that petitioner's matriculation examination certificate (Annexure P/5) has been issued after the date of petitioner entering into service, then it was open for the respondents/SECL to get it verified before issuing the impugned orders (Annexure P/1 and P/2). Moreover, the

respondents/SECL had got the document (Annexure P/5) verified before passing the impugned orders wherein it has been clarified that petitioner has passed his matriculation examination in the year 1977 and his date of birth is 27/02/1958 and it is not the case of the respondents/SECL that petitioner has passed his matriculation examination after entering into service. As such, the argument raised by learned counsel for the respondents that the finding recorded by the Age Determination Committee is correct as the date of issuance has not been mentioned in petitioner's matriculation examination marksheet (Annexure P/5), therefore, it is not an ear-marked document as per clause B(i)(a) of the Implementation Instruction No. 76 deserves to be rejected.

11. In the matter of Amar Singh (supra), a similar issue was raised wherein this Court, while holding that since the marksheet has been verified, proceeded to accept the certificate without even referring the matter to the Age Determination Committee. Paragraphs 10, 11 and 12 of the judgment state as under :-

"10. It is not disputed by the respondents that the petitioner had passed his

matriculation in the year 1965 vide Annexure P-1 i.e. prior to his entry in service. Moreover, the fact that the petitioner had passed his matriculation prior to his entry in service was also verified by the respondents from the Board vide Annexure P-9 dated 16.12.2003 and it has been confirmed by the Board that the petitioner has passed his matriculation in the year 1965 and his date of birth has been shown in the certificate as 12.09.1945.

11. Clause – B(i)(a) of the Instruction No. 76 reads as follows:-

“In the case of existing employees Matriculation Certificate or Higher Secondary Certificate issued by the Universities or Board 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.

12. Once the petitioner has passed his matriculation prior to his employment, in all fairness, the respondents should have treated his date of birth as 12.09.1945 as per Clause – B(i)(a) of Instructions No. 76.”

12. The decision rendered by this Court in Amar Singh (supra) was questioned before the Division Bench in Writ Appeal No. 559/2011 filed by SECL which was dismissed on 28/09/2012. However, the judgments relied upon by learned counsel for the respondents are clearly distinguishable and are not applicable to the facts of the present case.

13. As such, I am of the considered view that petitioner's date of birth ought to have been accepted as 27/02/1958 on the basis of his matriculation examination marksheet (Annexure P/5) duly verified by Chhattisgarh Board of Secondary Education, Raipur vide letter dated 20/01/2006 (Annexure P/12). The Age Determination Committee has acted arbitrarily in not accepting the age of the petitioner as 27/02/1958 on the ground that date of issuance has not been mentioned in the marksheet (Annexure P/5).

14. As a fallout and consequence of the aforesaid discussion, impugned orders dated 29.10.2011 (Annexure P/1) and 13/15.10.2011 (Annexure P/2) are hereby quashed and petitioner's date of birth is held to be 27/02/1958. Since, he has retired from service on 28/02/2014 treating his date of birth to be 01/12/1954, he will be entitled to get all the consequential benefits from the respondents from 01/03/2015 to 28/02/2018 within four weeks from the date of receipt of a copy of this order.

15. Accordingly, the instant writ petition is allowed to the extent indicated herein-above. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet