

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7602/2019

Moinuddin s/o Mehmud Hasan

...Versus...

Western Coalfields Limited (A Government of India Enterprise) (A Subsidiary of Coal India Limited), Nagpur through its Chairman-cum-Managing Director and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri D.S. Thakur, Advocate for petitioner

**CORAM : DIPANKAR DATTA, C.J. &
VM. DESHPANDE, J.**

DATE : JULY 22, 2021

1. The petitioner was an employee of the Western Coalfields Limited on the date of presentation of this writ petition, i.e., 11/6/2019. In his service records, the petitioner's date of birth was recorded as 1/7/1959. In terms of such recording, the petitioner was due to and accordingly, retired on 30/6/2019 on attaining the age of 60 years. It appears that on or about 22/8/2002, the petitioner had raised an objection to the recording of his date of birth as 1/7/1959 before the employer. Such objection was raised

based on a certificate issued by the Madhyamik Shiksha Parishad, Uttar Pradesh, wherein it was certified that Muin Uddin Siddiqi, whose date of birth is 3/5/1963, succeeded in the High School examination with the subjects mentioned therein. Such certificate bears the date 8/7/1978. The petitioner claimed that his date of birth which was erroneously recorded should be corrected so that he could serve another four years, i.e., till May 2023.

2. The objection of the petitioner came to be dealt with by the employer by an order dated 27-28/7/2017. The objection was overruled on the ground that although the petitioner's name is Moinuddin s/o Mehmud Hasan, the names of the examinee/certificate holder and his father, as appearing from the certificate dated 8/7/1978, were Muin Uddin Siddiqi and Mehmood. The employer doubted that the certificate issued in favour of Muin Uddin Siddiqi could be regarded as a certificate that was issued in favour of the petitioner. The difference in the name of the petitioner and the examinee/certificate holder in whose favour the certificate was issued together with the difference in spelling of the first name of the father created a doubt in the mind of the employer leading to rejection of the petitioner's objection.

3. The order dated 27-28/7/2017 is the subject matter of challenge in this writ petition.

4. It is clear as crystal that despite the impugned order having been issued almost two years prior to presentation of the writ petition, the petitioner did not approach the Court and invoke its writ jurisdiction with expedition.

5. Be that as it may, Shri Thakur, learned advocate appearing for the petitioner refers to Implementation Instruction No.76, at page no.41 of the writ petition, to contend that the petitioner is entitled to have his date of birth, erroneously recorded in the records of the employer, corrected in terms of the certificate dated 8/7/1978. He further contends that since the petitioner had approached the employer as far back as in 2002, delay in disposal of the objection by the employer ought not to operate to his disadvantage. In this regard, Shri Thakur places reliance on the decision of the Supreme Court in ***Bharat Coking Coal Limited and others Vs. Chhota Birsa Uranw***, reported in ***(2014) 12 SCC 570***. Based on such instruction and the law laid down in ***Chhota Birsa Uranw*** (supra), Shri Thakur has prayed for relief claimed in the writ petition, i.e., direction to the respondents to act in accordance with Implementation Instruction No.76 and to correct the date of birth of the

petitioner from 1/7/1959 to 3/5/1963.

6. We do not find that the petitioner, after presenting the writ petition, showed any inclination to have it heard anytime soon. No notice has yet been served on the respondents. However, nothing substantial turns on non-service of notice since we find no reason to interfere with the impugned order.

7. Whether or not the certificate dated 8/7/1978 was issued in favour of the petitioner, having regard to the features noted above, assumes the character of a disputed question of fact which cannot be conclusively decided on the basis of affidavit evidence adduced in course of writ proceedings. The point is well-taken by the employer in the impugned order dated 27-28/7/2017 that there is room for doubt in view of the apparent differences. The view expressed is not an absurd view in the given set of facts and circumstances; on the contrary, it is a plausible view. There is no cogent and pressing reason as to why the certificate issued in favour of Muin Uddin Siddiqi s/o Mehmood Hasan should be treated to be a certificate issued in favour of the petitioner, particularly when his name is not Muin Uddin Siddiqi and also that his father's first name has been spelt differently, as set out in the cause title of the writ petition.

8. That apart, there is also no reasonable explanation as to why the petitioner waited till the last month before his retirement from service to invoke the writ jurisdiction of this Court. Notwithstanding the decision in ***Chhota Birsa Uranw*** (supra), there are innumerable decisions of the Supreme Court that an approach made to the writ court for having the date of birth corrected at the fag end of the service career should not be entertained.

9. Not that we do not propose to deal with the decision in ***Chhota Birsa Uranw*** (supra). We have read the said decision and are of the considered view that the ratio thereof does not apply on facts and in the circumstances and cannot be of any assistance to the petitioner. Paragraph 10 of the decision, to which our attention has been invited by Shri Thakur, would show that the petitioner had approached the Court at the age of 40 years (if the recording of date of birth by his employer is correct) and, therefore, more than a decade's time was left for his retirement. Also, having regard to the pleaded cases, the Supreme Court was of the view that the petitioner had approached the Court at the earliest possible opportunity. These are distinguishing features which do not persuade us to apply the law laid down in ***Chhota Birsa Uranw*** (supra) for the purpose of entertaining this writ petition.

10. Also, it cannot be lost sight of that a few days after presentation of this writ petition the petitioner retired from service and no step was taken for two years to have a decision on it.

11. Thus, no case has been set up by the petitioner of infringement of his legal right and for interference by the writ court. However, if the petitioner is so advised, he may pursue legal proceedings elsewhere for enforcement of his right, if any, including appropriate declaration.

12. With the aforesaid observations, this writ petition stands dismissed. There shall be no order as to costs.

13. Needless to observe, the observations made hereinabove are only for the purpose of a decision on this writ petition and if proceedings elsewhere are initiated by the petitioner, such proceedings shall be taken to its logical conclusion without being influenced by any observations as above.

(V.M. DESHPANDE, J.)

(CHIEF JUSTICE)