

10.01.2022
Item No.12
Crt. No.11.
KB/gsd

**MAT 1321 of 2021
with
IA No. CAN 1 of 2021**

**Director (Personnel) Eastern Coalfield Ltd
-Vs-
Ranjit Ruidas & Ors**

(Via Video Conference)

Mr. Bijoy Kumar
... For the appellant.

Mr. Santanu Chatterjee
... For the respondents.

Mr. Bijoy Kumar, Learned Counsel, appears for the appellant/Director (Personnel) Eastern Coalfield Ltd (ECL) led by Mr. Jayanta Dasgupta, Learned Counsel.

The Sole Respondent/the writ petitioner is represented by Mr. Santanu Chatterjee, Learned Counsel.

The Proforma Respondents are not represented.

However, Mr. Kumar submits that all the Proforma Respondents are the officers /personnel of ECL.

At the heart of the controversy is the exact age of the writ petitioner/the sole respondent.

On the ascertainment of the exact age of the sole respondent/writ petitioner, depends the eligibility of the sole respondent to be considered for employment under the ECL.

The Hon'ble Single Bench by an interim order dated 22nd November, 2021 held as follows:

“As recorded hereinabove, the Birth Certificate and the School Leaving Certificate of the petitioner record the same date. In the instant case, thus, the issue is whether more credence should be given to the declaration in the Service Book by the petitioner's father or the Birth Certificate produced by the petitioner.

A copy of the Birth Certificate produced by the petitioner and appearing at page 32 of the writ petition has been issued under Sections 12 and 17 of the Registration of Births and Deaths Act, 1969. This is a public document under the provisions of Section 74 of the Indian Evidence Act, 1872. The recording in the Service Book is on the basis of the information supplied by the petitioner's father which may be a statement made by a rustic villager as observed by the Division Bench in Panpati Devi Lohar (supra). On the other hand, the Birth Registration is done on production of documents and it should be presumed to be correct unless contrary is proved in view of the provisions of Section 85(c) of the Evidence Act, 1872. Unless a contrary is proved,

the Birth Certificate has to be given more credence than the declaration given by the petitioner's father in the Service Book.

In the instant case, since ECL has doubted the age of the petitioner and has proceeded to have the petitioner medically examined to ascertain his age, I think, without going into the presumption as to correctness of the birth certificate, a further medical examination should be conducted by a government hospital as the result of the Medical Examination already conducted is in doubt as it opines about a specific date of birth in respect of the petitioner.

In such circumstances, the petitioner should present himself to be medically examined by a Board of Doctors of SSKM Hospital, Kolkata as to his tentative age as on the date of examination within a period of three weeks from date. The Medical Super of SSKM Hospital, Kolkata shall constitute the Board, if approached by the petitioner and shall, after examination, forward a report in a sealed envelope to the learned Registrar General of this Court stating the results of the medical examination so that the same may

be placed before this Court on the next date when the matter is taken up.”

Both Mr. Kumar and Mr. Chatterjee strongly argue in support of their respective stand.

As recorded by the Hon’ble Single Bench, while the writ petitioner/sole respondent relied on his Birth Certificate and the School Leaving Certificate declaring him to be born in the year 1986, the appellant/*ECL* points out that the Service Book by which the father of the sole respondent/writ petitioner who was an employee of the *ECL* declared the age of the sole respondent/writ petitioner to be aged 3 years in 1985, runs contrary to claim of the sole respondent/writ petitioner that he was born one year thereafter.

Accordingly, the Hon’ble Single Bench directed an Ossification Test to be conducted of the sole respondent/writ petitioner by a Medical Board of Doctors of S.S.K.M. Hospital, Kolkata.

This Court cannot be unmindful of the fact that considering the overall educational background of the family of the sole respondent/the writ petitioner, which is apparent from the fact that the deceased father of the sole respondent/the writ petitioner put his thumb impression on the Service Record which has been filled up in the English language, this Court is in agreement with the

Hon'ble Single Bench that the issue of contradictory ages claimed by the appearing parties can be best resolved by holding the Ossification Test as directed by the Hon'ble Single Bench.

Accordingly, the appeal is not detained further.

The parties shall act in terms of the direction of the Hon'ble Single Bench dated 22nd November, 2021 within a further period of eight weeks from this date.

The result of the Ossification Test shall be produced before the appropriate Hon'ble Single Bench for further consideration.

Since affidavits are not necessary to this appeal, they are not invited. All other allegations are deemed to be denied and disputed.

Both **MAT 1321 of 2021** and **IA No. CAN 1 of 2021** stand accordingly **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)