

A.F.R.

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.7252 of 2014

In the matter of an application under Articles 226 and 227 of the Constitution of India.

The Management of M/s. Tata Refractories Ltd Petitioner

-Versus-

State of Odisha & others Opp.parties

For Petitioner : Mr. B.P. Tripathy

For Opp.parties : Mr. P.K.Muduli, AGA for O.P.Nos.1 & 2

Mr. P.K.Dash, Advocate for O.P.No.3

P R E S E N T:

THE HONOURABLE SHRI JUSTICE S. TALAPATRA

A N D

THE HONOURABLE SHRI JUSTICE M.S. SAHOO

Date of hearing: 23.09.2022 Date of judgment: 14.12.2022

M.S.SAHOO, J The petitioner-company registered under the Companies Act, employer of opposite party no.3, by filing the writ petition has challenged the award dated 31.12.2013 (Annexure-1) of the learned Labour Court, Sambalpur passed in I.D. Case No. 31 of 2013.

2. The operative portion of the award made by the learned Labour Court is quoted herein:-

“The reference is answered on contest without any cost. The termination of services of Sri Haribola Dash, workman by way of retirement with effect from 01.08.2012 by the management of M/s. TRL Krosaki Refractories Limited, Belpahar, Dist-Jharsuguda is held to be illegal and unjustified. The second-party is entitled to reinstatement in service with full back wages and other service benefits. The management is directed to reinstate the second-party in service immediately and refix his date of retirement as 28.02.2014. The first-party management is further directed to pay full back wages to the second party with effect from 01.08.2012 including his regular increment and all other service benefits within a period of two months hence.”

3. The I.D. Case No.31 of 2013 was pursuant to reference made by the Govt. of Odisha in the Labour and ESI Department under the power conferred by sub-section (5) of Section 12 read with Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the “Act 1947”) vide Order under Memo No. 4447(4) dated 7.5.2013. The schedule of reference is quoted herein:-

“Whether the termination of services of Sri Haribola Dash, workman by way of retirement with effect from 01.08.2012 by the management of M/s. TRL Krosaki Refractories Limited, Belpahar, Dist-Jharsuguda is legal and/or justified? If not, what relief the workman is entitled to ?”

4. The opposite party no.3 (second party workman before the labour court) in his statement of claim submitted as follows:-

“(i) that the workman Shri Haribola Dash joined the first party erstwhile Tata Refractories Ltd (Previous name of the 1st party) on 06.07.1978 and continuously worked sincerely and faithfully till he was retired w.e.f. 01.08.2012 at the age of 58 years 5 months 24 days even though as per the standing order Clause No.48, he was to retire at the age of 60 years i.e., on 07.02.2014 (end of month 28.2.2014)

(ii) That at the time of his joining his school leaving certificate was not available with him for which Medical

report was called for an the company Doctor Certified his age was 24 years on 03.07.1978 and later on he submitted his school leaving certificate to the management, which reflects his date of birth 07.02.1954. So his 60 years complete on 07.02.2014.

(iii) That the workman is a permanent/regular workman having P.F.A/c. No.OR/257/3664 and Pension Fund A/c. No.OR257/1791 at the time of retirement he was in the post of Master Technician in Basic Department bearing P.No.2240 and there was no adverse remark against him at any point of time.

(iv) That on 17.2.2012, the workman was informed by a letter no.HRM/P/489 dated 17.2.2012 by the General Manager (HRM & Admn.) that his retirement will take effect from 01.08.2012 and his last working day will be on 31.07.2012.

(v) That the workman replied to the said letter by his application dated 25.02.2012 stating his date of birth being 07.02.1954 he will retire on 28.2.2014 not on 01.08.2012 but the same was not considered by the 1st party and the workman's service was terminated w.e.f. 01.08.2012 by retirement without affording any natural justice to him. He was issued a service certificate on 06.08.2012, which also reflects his date of birth on 07.02.1954.

5. On being noticed by the learned Labour Court, the first party management filed their written statement. In the written statement, the petitioner herein (first party management) presented the facts as follows :-

"The first party-management is a limited company having its Registered Office at Belpahar and Head Office at Jamshedpur. Prior to the formation of the TRL Krosaki Refractories Ltd., the management-Company was known as Tata Refractories Ltd., and there existed a Works Standing Order which is the certified standing order of the company and the same certified Standing Order of the Company and the same certified Standing order continues to be in force after formation of TRL Krosaki Refractories Ltd.

5.1 The workman was appointed as an unskilled labourer on temporary basis vide Order No.PH/1984, dated 06.07.1978. As per the requirement of the 1st party/management, the workman did not produce any proof regarding birth and accordingly had to obtain a medical report from the company doctor. In that medical report it has been mentioned that the 2nd party-workman was of 26 years as on the date, i.e., 03.07.1978. The employee was given employment with Employment sl.no.903, Personal No.2240 having recorded date of birth as 03.07.1952. In the period intervening he was promoted to the Grade of Master Technician and was posted in the Basic Department.

5.2 As the superannuation of the 2nd party-workman was approaching and due on 31.07.2012, the 1st party-Management on 17.02.2012 issued a letter to the 2nd party-workman that he was due to retire on 31.07.2012 after completion of around 34 years of services. 2nd party-workman had filed in the Declaration Nomination Form of Provident Fund in Form-2 mentioning his date of birth as 03.07.1952 which was counter-signed by the Manager (Personnel) of the 1st party-Management on 30.11.1988. After attaining the superannuation he applied for monthly pension under the Employees' Pension Scheme, 1995, on 24.07.2012 mentioning his date of birth as 03.07.1952 under his signature.

5.3 During the period of employment of the 2nd party-workman, the name of the company was changed from Belpahar Refractories Ltd., to Tata Refractories Ltd. to Tata Refractories Ltd. and he was issued with an identity-cum-punching card by the company wherein his date of birth was mentioned as 03.07.1952. All the records of the Company including the records available with the

Government Authorities relating to his employment contain his date of birth as 03.07.1952. As per the requirement of the Regional Provident Fund Commissioner, Rourkela, the 2nd party-workman had submitted a clarification to the Regional Provident Fund Commissioner, Rourkela that his date of birth is 03.07.1952 according to the medical report available in the service record. On his application for Provident Fund dated 07.08.2012 he was paid Rs.2,21,101.49 on 23.08.2012 and it was received by the 2nd party-workman. The 2nd party-workman was also paid Rs.2,47,811.90 as full and final settlement which included his leave salary and gratuity and the same amount was transferred to the Bank Account No.10707928170 maintained the State Bank of India, Samda Branch on 24.08.2012. The Management acted as per the records that the date of birth of the workman is 03.07.1952 which was prepared as early as on 03.07.1978 as per the medical report submitted by the Doctor and accordingly the 2nd party-workman was allowed to retire on superannuation on 31.07.2012. There was never any illegal termination of the services of the 2nd party-workman, rather the superannuation of the 2nd party-workman was legal, justified and as per the provisions of the works Standing Order.

5.4 The 2nd party-workman was rightly superannuated on his completion of 60 years and the 2nd party-workman has come up with a false story at a much belated stage only to get the pecuniary advantage. 2nd party-workman was well aware on the date of his entry in service, i.e., on 06.07.1978, that his date of birth was 03.07.1952, but he did not make any protest by then or soon thereafter on the point of birth. It is submitted that in the medical report the Company Doctor certified the age of the 2nd party-workman

as 26 years on 03.07.1978 and accordingly all his service records were prepared but on a later date the workman in association with some unscrupulous persons could manage to tamper the official record and he put his date of birth as 07.02.1954 and again it was duly corrected by the 1st party-management. As per the earliest recorded date of birth, the 2nd party-workman was allowed to superannuate on 31.07.2012 on his completion of 60 years during that month. The service certificate dated 06.08.2012 which was obtained by the 2nd party-workman was not based on official record and it was not procured from the competent authority by the 2nd party-workman and the person who has issued that certificate has not been authorized by the 1st party-management to issue such certificate.”

6. The learned Labour Court, Sambalpur on the basis of the pleadings culled out the issues for determination as recorded in para-5 of the award. The issues as framed by the learned Labour Court are quoted herein:-

“(i) Whether the termination of services of Sri Haribola Dash, Workman by way of retirement with effect from 01.08.2012 by the management of M/s. TRL Krosaki Refractories Limited, Belpahar, Dist-Jharsuguda is legal and/or justified?

(ii) If not, what relief the workman is entitled to ?

7. The respective parties before the learned Labour Court filed their affidavits in evidence, i.e., deposition of workman himself as the witness. The workman has also examined as workman witness No.2 and workman witness No.3. The management examined witness nos. 1 and 2 on its behalf. The workman exhibited documents marked as Ext.1 to 18. The Management marked

documents in evidence as *Exts.A to AA/1*. The service records introduced by the workman as well as documents on behalf of the workman are marked without objection. In fact, *Ext.1* as well as *Ext.A* is the self-same document i.e. the copy of the 1st page of the service record. On perusal of the said exhibit, it is indicated that the Date of Birth: as indicated in the heading “Date of Birth” contains 3 entries;

(i) 3.7.1952 (scored through)

(ii) 7-2-1954 (scored through)

(iii) 03.07.1952

(scored through noted and indicated by this Court)

7.1 The medical examination report dated 03.07.1978 (*Ext.B*) shows that the opposite party no.3-workman Shri Haribola Dash was examined by the Doctor and the Entry No.2 shows at Sl.No.2. Age as assessed by the Doctor: About 26 Yrs (Twenty Six).

The horizontal line (3) indicates “3. Date of Birth (as per Certificate) : 24 Years as per his statement.”

It can be seen that the workman/opposite party as early as on 03.07.1978 in his statement recorded by the doctor of the company had stated his age to be 24 years thereby indicating his year of birth to be 1954.

7.2 The workman has put his signature at the relevant horizontal line i.e. entry no.21. The signature of the Doctor is also present, the date being 3.7.78. The photocopy of the EPF Nomination Form is marked as *Ext.E* indicating the date of birth as “3-7-52”. It contains the signature of the workman with date i.e. 30-11-88. The

application for “Retirement gift” is marked as *Ext.F* dated 06/08/2012. The application for settlement of provident fund w.e.f. 01.08.2012 made by the workman has been marked as *Ext.K*. The employee list dated 25.02.87 is marked as *Ext.Q*, in which the name of the opposite party no.3, workman contains at Sl. No.903 indicating his birth date 3rd July, 1952. The application made by the opposite party no.3-workman forwarded on 24.07.2012 written by the workman himself indicates his date of birth 03.07.1952. The petitioner’s application for pension has been marked as *Ext.S*.

8. In the writ petition, notices were issued to the opposite party no.3-workman, who has appeared through the learned counsel. The records of the Labour Court, Sambalpur pertaining to I.D. Case No. 31 of 2013 which was called for is placed before this Court for reference.

Mr. B.P. Tripathy, learned counsel for the petitioner and Mr. P.K. Dash, learned counsel for the opposite party no.3-workman have been heard at length.

Chronological date charts as well as summary of citations relied upon by both the parties have been filed and have been considered by this Court.

9. The brief factual background of the case, those are necessary for adjudication are reiterated herein :

After the issuance of superannuation letter dated 17.02.2012 intimating the workman that his retirement on 31.07.2012. The workman by representation dated

25.02.2012 (Ext.6) has stated that his date of birth as mentioned in documents like Driving License, School records is noted as 07.02.1954, therefore his retirement date should be 28.02.2014. The transfer certificate issued by the Headmaster where the workman prosecuted his studies i.e. Dalgaon M.E. School dated 25.07.1978 was admitted without objection from the Management. The said transfer certificate has been marked as Ext.3.

10. Learned counsel for the petitioner has taken us through the various exhibits marked by the employer to support their contention to treat the date of birth to be 03.07.1952 and submitted that as per the law laid down by the Hon'ble Supreme Court, date of birth as recorded in the service records at the earliest would not be subject to change at the instance of the employee. Learned counsel for the petitioner to buttress the submissions relies on the decision of the Hon'ble Supreme Court in the cases of ***State of U.P. and another v. Shiv Narain Upadhyaya : (2005) 6 SCC 49; Karnataka Rural Infrastructure Development Limited and others v. T.P. Nataraja and others; Civil Appeal Nos.5720 and 5721 of 2021 decided on 21.09.2021.*** Learned counsel for the petitioner also relies on the decision rendered by the High Court of Delhi in the case of ***Span India Pvt. Ltd. v. Ram Sunder and others in Writ Petition (Civil) No.20769 of 2005 decided on 05.10.2006.***

11. On the other hand the learned counsel for the workman-opposite party no.3 relies on the decision of this Court reported in the cases of ***State of Orissa and two others v. Sarada***

Prasanna Das: 2004 (Supp.) OLR 838 and the decision of the Division Bench of this Court in the case of **the General Secretary (JRD), Bolanni Shramik, Barbil v. Presiding Officer, Industrial Tribunal, Rourkela: 2016 (II) OLR 925** and in the case of **Smt. Gelli Dei v. Orissa Lift Irrigation Corporation Ltd. and others : 2007 (II) OLR 320.**

12. A coordinate Bench of this Court while hearing the matter, by order dated 09.01.2017 had directed as follows:-

“A photocopy of the transfer certificate purported to have been issued in favour of the petitioner by the Headmaster of Dalgaon M.E. School, Sambalpur (now in Jharsuguda) is handed over to the learned counsel for the State, who is directed to take instruction with regard to genuineness of the same.”

On such direction of this Court, the Block Education Officer, Lakhanpur, At/PO-Lakhanpur, Dist-Jharsuguda has provided instructions by letter No.2235 dated 5.9.2022 addressed to the Sr. Standing Counsel, School and Mass Education Cell, O/o of the Advocate General, Odisha stating the following:-

“... .. In this regard it is submitted that on verification of the admission register of Dalagaon M.E. School, it is found that Sri Haribola Dash, Son of Baladeb Dash, VIII-Bageinala had taken admission on 22.07.1965 in Class-VI on the basis of the T.C. No.29 dated 07.07.1965 issued from Gudiali Upper Primary School wherein the date of birth of Haribola Dash has entered as 07.02.1954 in the admission register of the Dalagaon M.E. School.

Further as per the admission register and 1st copy of the original Transfer Certificate Book of Dalagaon M.E. School, it is revealed that while he was reading in Class-VI and being not passed the Middle School Certificate Examination, he was issued with T.C. No.2 on 09.08.1967 by the Headmaster of Dalagaon M.E. School, wherein the purpose of leaving school

has been marked as to read elsewhere. Furthermore as per the school records, Sri Haribola Dash has been issued with a duplicate T.C. on 25.07.1978 by the Headmaster, Dalagaon M.E. School with the same information as has been mentioned in the Original T.C. issued on 09.08.1954, as recorded in the admission register. The extract of the relevant page of the admission register of Dalagaon M.E. School and copy of the T.C. issued on 09.08.1967 and 25.07.1978 are enclosed herewith for favour of kind reference of the Hon'ble High Court of Orissa."

(underlined to supply emphasis)

13. The said letter dated 05.09.2022 issued by the Block Education Officer, Lakhanpur has been taken on record by order dated 12.09.2022 passed by this Court without any objection from the petitioner management, who have taken a very fair stand considering the letter dated 05.09.2022 having been issued by responsible Govt. authority who does not *per se* has any interest in the litigation. Accordingly, it has to be concluded that the School Transfer Certificate/*Ext.3* as produced before the learned Labour Court is correct and authenticated and also is a primary evidence/document that is to be accepted as evidence for the date of birth having been issued by the Headmaster of the concerned school originally on 09.08.1967 and also a copy on 25.07.1978 indicating the date of birth as recorded in the admission Register to be 07.02.1954.

14. In considered opinion of this Court the entries made in the 1st page of the service book/record of the opposite party no.3-workman has to be treated in its perspective. The said record was admittedly in the custody of the employer, the three entries

regarding date of birth, out of which two have been scored out, have to be considered to be entered/subsequently written by someone, the person scoring through the entry, has not put his signature.

Since the entries in the first page of the service book indicating the date of birth and the subsequent corrections have resulted in three entries, out of which two have been scored through neither the learned Labour Court could have gone nor this Court can go into the question, who had made the entries and who had made the corrections in absence of any signature/initial either certifying the entry or certifying the correction.

15. The case at hand, is somewhat unique in its facts as presented before the learned Labour Court to the extent that an evidence which can be treated to be the proof of the date of birth was initially not with the employer/management at the time, when the workman got employment and employment was given to workman after he being examined by the doctor and the date of birth being noted as per the doctor's report without any other primary evidence and the said "date of birth" has been entered in various documents during service of the employee. But existence of the document, i.e., the school leaving certificate and the entries made therein have not been disputed. Rather the contents of the School Leaving Certificate have been proved to be true as indicated above, by the officer under whom the headmaster of the concerned school is working.

16. Considering the rival submissions on the question of law, there cannot be two opinions that date of birth as recorded in the service record at the earliest could not be subject to change at the instance of the employee later, particularly close to the date of superannuation.

However in considered opinion of this Court, the said sound proposition of law would be of no avail to the management petitioner in the facts and circumstances of the present case where the question is whether a primary evidence, that is laid to make a claim of the date of birth to be 09.08.1954 instead of 03.07.1952 as recorded in the service book when the workman entered into service, has to be accepted or not. On acceptance of primary evidence indicating the date of birth to be 07.02.1954 (Ext.3), the entry made in the Service Book has to be treated as not indicating the correct date of birth.

In fact it would be evident from the evidence laid before the learned Labour Court and the written statement of the management that they did not challenge Ext.3 straight away, apart from taking a plea that the school leaving certificate was not available with the workman when he joined his service and that the workman has come up with a false story.

17. In ***Bharat Coking Coal Ltd. v. Chhota Birsa Uranw*** : **(2014) 12 SCC 570** the Hon'ble Supreme Court dealing with a matter where two dates of birth of the respondent employee was recorded in service record, i.e., date of birth recorded as

15.02.1947 in Form-B, a statutory form stipulated under the Rules which was signed twice by the respondent employee whereas certificate issued on passing “Mining Sardarship”, the date of birth was recorded as 06.02.1950 corresponding to date recorded in School Leaving Certificate, have held the following (at paragraphs- 8, 9, 10, 15 and 16 of SCC) :

“8. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far-reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Home Deptt. v. R. Kirubakaran [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] , which is as under: (SCC pp. 158-59, para 7)

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure

prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.”

(underlined to supply emphasis)

The same approach had been followed by this Court while deciding on date of birth disputes irrespective of the relief being in favour of the workman or the employer. (See *State of Punjab v. S.C. Chadha* [(2004) 3 SCC 394 : 2004 SCC (L&S) 469] , *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] , *State of Gujarat v. Vali Mohd. Dosabhai Sindhi* [(2006) 6 SCC 537 : 2006 SCC (L&S) 1445] and *State of Maharashtra v. Gorakhnath Sitaram Kamble* [(2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] .)

9. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum. (See *State of Maharashtra v. Gorakhnath Sitaram Kamble* [(2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] , *High Court of Madras v. M. Manickam* [(2011) 9 SCC 245 : (2011) 4 SCC (Civ) 588 : (2011) 2 SCC (L&S) 464] and *High Court of*

A.P. v. N. Sanyasi Rao [(2012) 1 SCC 674 : (2012) 1 SCC (L&S) 310] .)

10. As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form B register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non-statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in *Mohd. Yunus Khan v. U.P. Power Corpn. Ltd.* [(2009) 1 SCC 80 : (2009) 1 SCC (L&S) 83] , that: (SCC p. 84, para 14)

(underlined to supply emphasis)

“14. ... An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.”

Thus, the case of the respondent should not be barred on account of unreasonable delay.

15. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the appellant Company on 6-9-2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction 76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words “were issued” was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted

and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.

16. Therefore, the order of the High Court does not call for any interference. We endorse the reasoning given by the High Court and affirm the same. In these circumstances, we do not find any merit in the appeal. Accordingly, this appeal is dismissed.”

(underlined to supply emphasis)

Applying the principles laid down in **Bharat Coking Coal v. Chhota Birsa Uranu** (*supra*), it has to be held on the basis of the School Leaving/Transfer Certificate (Ext.3) which is conclusive in nature, the opposite party-workman has made out a case for correction of date of birth. Further not correcting date of birth has resulted in real injustice to the workman. The evidence so produced by the workman has been further certified by the superior authority : Block Education Officer of the issuing authority : of the school wherefrom School Leaving/Transfer Certificate was issued. The date of issuance of the School Leaving/Transfer Certificate is 09.08.1967, the duplicate being issued on 25.07.1978. The period of study of the petitioner in the school as referred to in the School Leaving/Transfer Certificate is from 22.07.1965 in Class-VI when he took admission and did not

pass the Middle School Certificate Examination. It can be seen that the workman/opposite party as early as on 03.07.1978 in his statement recorded by the doctor of the company had stated his age to be 24 years thereby indicating his year of birth to be 1954. The fact of recording of date of birth of the O.P. NO.3-employee to be 03.07.1952 in the school admission register when he took admission on 22.07.1965 is much prior to he seeking employment with the petitioner-employer in 1978 when he was medically examined on 03.07.1978.

18. In view of the above discussions, the writ petition is dismissed upholding the award dated 31.12.2013 passed by the learned Labour Court, Sambalpur in I.D. Case No.31 of 2013 with the following further orders :

since the workman concerned has already superannuated on attaining the age of superannuation and received his retiral dues, his wages from 01.08.2012 till the date of retirement, i.e., 28.02.2014 are to be calculated taking in view then prevailing schedule of wages and other entitlements like increments etc, the differential amount deducting the amount received by the workman, if any shall be paid to the workman within a period of eight weeks from the date of pronouncement of this judgment. The last pay drawn by the workman as would be fixed on 28.02.2014 which would be his date of superannuation by taking the date of birth to be

07.02.1954, shall be fixed and accordingly the retiral dues are to be recalculated within the said period of eight weeks. The differential amount of recalculated retiral dues and the amount that has been actually received by the workman shall also be paid within eight weeks.

Ordered accordingly.

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M.S.Sahoo, J.

S.Talapatra, J. I agree

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S.Talapatra, J.

Orissa High Court, Cuttack
The 14th December, 2022/dutta/Gs

