

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 962 of 2022

With

IA No. CAN 1 of 2022

Tarun Kumar Srivastava

Vs

Coal India Limited & Ors.

For the Appellants : Ms. Ashmita Chakraborty
Mr. Chhandak Dutta

For the Respondents : Mr. Shiv Shankar Banerjee
Ms. Sanchita Barman Roy
Mr. Selim Malik

Heard On : 16.01.2023

Judgement Delivered On : 13.04.2023

Supratim Bhattacharya, J.:- This instant appeal has been preferred against the Order passed by the Hon'ble Single Bench on the 8th day of June, 2022 in writ petition being W.P.A. 7106 of 2022, wherein the Hon'ble Single Bench has stated as follows:-

“...

After hearing the parties and considering the materials on record, I find that there is no scope of passing any interim order. The matter requires to be heard after affording the respondents an opportunity to put forth their stand on affidavit.

Let affidavit in opposition be filed within a period of six weeks from date. Reply, if any, thereto be filed by two weeks thereafter. ... ”.

Being aggrieved by the said order through which no interim order was passed, the appellant/ writ petitioner has preferred this instant appeal.

Though no effective order has been passed through the impugned order but it is apparent from the face of the order that the Hon'ble Single Bench has stated categorically that there is no scope of passing any interim order as such there is denial of interim order which according to the appellant affects his legally enforceable right. Accordingly, this Court has the jurisdiction to hear the instant appeal, as a result the appeal has been heard.

The fact of the instant *lis* is that the appellant/writ petitioner is an executive of the Coal India Ltd. (for short CIL) working as a General Manager

(Mining) posted in the Western Coal Fields Ltd. The said appellant has joined CIL on the 10th day of August 1987. At the time of his joining it was mandatory to submit proof of date of birth and at that material point of time the proof which was available to the appellant/writ petitioner was his 10th standard mark-sheet. It has been stated that the aforesaid mark-sheet had the date of birth wrongly recorded as the 18th day of July 1963.

It has also been stated that having no other alternative the appellant/writ petitioner was constrained to mention his date of birth as the 18th day of July, 1963. It has been further stated that the appellant had immediately taken steps to correct his date of birth in the said mark-sheet and the School Final Certificate.

The appellant is therefore claiming that his correct date of birth is 21.12.1965 instead of 18.07.1963, which has been corrected in the High School Certificate issued to the appellant in the year 1991 by the Principal of Janta Inter College, Lucknow. The appellant/writ petitioner has thereafter sought for correction of his date of birth which was provided by him at the time of his joining claiming it to be wrongly recorded and has prayed for correction of the same time and again but his prayer being not accepted so, the appellant/writ petitioner has preferred the instant *lis*.

The Learned Counsel appearing on behalf of the appellant has submitted that the appellant/writ petitioner has joined the CIL on the 10.8.1987 and at the time of his joining it was mandatory to submit a proof of an employee's date

of birth as such the appellant had furnished his 10th standard mark-sheet which was available to him at that point of time. The Learned Counsel had further submitted that the date of birth which was recorded in the said 10th standard mark-sheet was 18.07.1963 which is not the correct date of birth of the said appellant and having no other alternative the appellant was constrained to mention his date of birth as 18.7.1963. The Learned counsel has further submitted that the appellant had immediately taken steps to correct his date of birth in the said mark-sheet and School Final Certificate and the corrected High School Exam Certificate bearing the date of birth as 21.12.1965 was obtained by the appellant having the signature and dated 23.09.1991, on the back side of the said certificate, of the Principal of the School namely Janta Inter College.

The Learned Counsel has further submitted that the appellant had soon thereafter prayed for correction of his date of birth and since then the appellant has several times prayed for correction of his date of birth but has not received any fruitful result. The learned Counsel has further submitted that it was only by a communication dated the 19.06.2020 that the Western Coal Fields Ltd. (for short WCL) intimated the appellant that CIL *vide* letter No. 3094 dated 24th December 2018 had informed that the application for correction of the date of birth of the appellant cannot be entertained at the fag end of his service after completion of 31 years. As such, the appellant filed the writ petition.

The Learned Counsel has also submitted that it is not the fact that the appellant/writ petitioner has prayed for correction of his date of birth at the fag end of his career but the appellant has been praying for correction of his date of birth from 18.07.1963 to 21.12.1965 since obtaining the correct High School examination certificate signed by the Principal of the Janta Inter College dated 25.09.1991. As such there are no laches on the part of the appellant and there has been no lack of diligence on his part.

The learned Counsel appearing on behalf of the CIL has submitted that the appellant on 06.09.2022 when called for inspection of his original documents has submitted his college leaving certificate dated 10.07.1987 issued by the Principal, Chandrapur Engineering College. So, the Learned Counsel has stressed upon the point that it is an incorrect submission on the part of the appellant that at the time of his appointment, that is on 10.08.1987 the appellant had only the 10th standard mark-sheet having recorded the wrong date of birth that is 18.07.1963 in his possession instead of the said college leaving certificate which reveals that on 10.07.1987 the appellant had the certificate bearing the date of birth 21.12.1965, which the said person himself is claiming to be the correct one. He further submitted that it is very much astonishing to note that a person in spite of possessing a certificate which, according to him bear the correct date of birth, has not been produced at the time of his joining the service.

As the Hon'ble Single Bench has not disposed of the issue and has only opined that there is no scope of passing any interim order against which the appellant/writ petitioner has preferred the instant appeal, so this Court intends to dispose of the instant *lis*. From the submissions of the Learned Counsels appearing on behalf of the respective parties it is evident that the appellant has joined the CIL on the 10th day of August 1987 and at the time of joining having no other alternative he had furnished his 10th standard mark-sheet wherein his date of birth was recorded as 18th day of July 1963. It has been also revealed that the appellant had immediately taken steps to correct his date of birth in the said mark-sheet and the School Final Certificate and ultimately the said date of birth was corrected on the 25th day of September 1991.

It has been further revealed that soon thereafter the appellant being posted at the Central Coal Fields Ltd. (for short CCL) had applied before the authority for correction of his date of birth on 12th December 1995. The CCL had conducted an independent enquiry and received confirmation from the Principal of the said school namely, Janta Inter College as to the fact that the date of birth of the appellant is 21.12.1965 and not 18.07.1963 and thereafter CCL had requested CIL to take appropriate steps for correction of the date of birth of the appellant in the record of the company.

It has been further revealed that the appellant continued to pursue the issue and had requested CIL on several occasions. It has been revealed that the

South Eastern Coal Fields Ltd (for short SECL) had initiated an enquiry into the said issue and upon verification of all relevant documents had forwarded its recommendations to the CIL requesting CIL to correct the appellant's date of birth. It has been revealed Western Coal Fields Ltd (for short WCL) had also conducted a fresh investigation on the said issue when the appellant was posted in the WCL. An investigating Committee was formed, and the said Committee had sought for confirmation from the Secretary, Board of High School and Intermediate Education.

After investigation the committee also had come to the conclusion that the appellant's actual date of birth is 21.12.1965 and had submitted a report and the said report was duly approved by the Director Personnel and the said WCL had requested the CIL for correction of the appellant's date of birth. Thus it stands revealed that CCL, ACCL and WCL on different occasions had investigated and had verified and ultimately had come to the conclusion that the date of birth of the appellant is 21.12.1965 and had recommended the CIL time and again to correct the date of birth of the appellant in its record.

It is revealed that ultimately on 19.06.2020 the WCL communicated to the appellant that CIL *vide* a letter No. 3094 dated 24.12.2018 has informed that the application for correction of the date of birth of the appellant cannot be entertained at the fag end of his service after completion of 31 years. Being unable to get the date of birth rectified the appellant has been compelled to prefer the writ petition.

From the facts mentioned above it reveals that the authority, wherever the appellant had been posted from time to time, has taken the initiative to investigate and verify about the date of birth of the appellant and after coming to a conclusion has time and again recommended to the CIL to rectify the date of birth of the appellant. It has not been revealed that during such lengthy period the respondent authority has ever found that the document filed by the appellant is incorrect and during such period no adverse report has been obtained by the respondent authority and no step has been taken by the respondent authority. After several independent investigations made by the CCL, WCL and SECL none of the said authorities have come to the conclusion that the documents furnished by the appellant are incorrect and they have taken any step against the appellant ever. On the contrary, all the authorities being associates of the CIL have recommended time and again to rectify the date of birth of the appellant.

In this context this Court would refer to the Judgement passed by the Hon'ble Apex Court reported in (2007) 15 SCC 553, wherein the Hon'ble Judges have been pleased to hold as follows:

“4. Having heard the counsel for the parties, we are at a loss to understand as to how the appellant could have been non-suited on the ground of delay. He first represented against his wrong recording of the date of birth within six years of his joining service. Two years after his representation the Railway Board issued an office order dated 4-8-1972 inviting representations for correction of date of birth, this representation was filed. When no action was taken reminders were sent, the last reminder being of 22-4-1974. As we have already noticed 21 years thereafter the representation was not rejected but vide a letter dated 6-3-1995 certain more documents

were asked for from the appellant. These documents were supplied. There was no lack of diligence on the part of the appellant. For the Tribunal to state that his last representation was in 1974 is not correct because pursuant to the respondents' letter of 6-3-1995 the documents were supplied. Merely because the appellant did not want to litigate and sought relief from the respondents departmentally and as his application had not been rejected till the year 2001, 31 years after he had first made the representation the appellant cannot be regarded as not having acted diligently. On merits, the respondents have not stated that the date of birth of the appellant was not 4-6-1945 as per the school certificate. There is obviously an error committed by the respondents and the date of birth should have been corrected. On the other hand, the appellant has been driven to years of litigation for no fault of his.

5. For the aforesaid reasons, these appeals are allowed. The order dated 5-1-2001 is set aside. The appellant will be treated as being in service as per his date of birth being 4-6-1945. The appellant will be entitled to reinstatement and all consequential benefits including arrears of salary after deducting the terminal benefits if received by the appellant. This order shall be complied with within eight weeks from today. The appellant will be entitled to costs."

As such this Court finds neither any laches nor lack of diligence on the part of the appellant in taking initiative for rectification of his date of birth in the record of the respondent authority. To the contrary it is the CIL, that is the respondent who had sat tight over the said issue and ultimately on the 24th day of December 2018 has come up with an allegation that the date of birth of the appellant cannot be rectified as because the appellant has preferred the same at the fag end of his service. The point raised by the respondent authority is not found to be sustainable by to this Court.

It is also not a fact that the respondent authority has alleged that the documents bearing the date of birth of the appellant as 21.12.1965 are incorrect and has never taken any step against the appellant.

This raises doubt as regards to the diligence of the respondent authority and the stand of the appellant has limbs on which the prayer of the appellant as sought for stands allowed.

Accordingly, this Court allows the prayer of the appellant/writ petitioner praying for rectification of his date of birth to be the 21st day of December 1965 (21.12.1965) instead of the 18th day of July 1963 (18.07.1963).

The Order impugned of the Hon'ble Single Bench stands set aside.

MAT 962 of 2022 with IA No. CAN 1 of 2022 stands accordingly **allowed.**

The respondent Coal India Ltd. is directed to rectify the date of birth of the appellant as 21.12.1965 instead of 18.07.1963 which has been recorded in the service records of the appellant/writ petitioner within four (4) weeks from this date. The respondent/ Coal India Ltd. is also directed to take consequential steps in terms of the above rectification.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)