

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

WRIT PETITION NO. 1031 OF 2023

(Vijaykumar Shantayya Kamilla Vs. Western Coalfields Limited, through Chairman-cum-Managing Director, Nagpur & Ors.)

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

Court's or Judge's order

Shri M.M. Sudame, Advocate for the petitioner.

Shri A.M. Ghare, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JUNE 26, 2023

Heard.

2] The challenge raised in this Writ Petition is to the communication dated 5/8/2022 issued by respondent No.4 – Chief Manager, Mining to the petitioner informing him that the petitioner would superannuate on 30/6/2023 on attaining the age of 60 years. A further challenge is also raised to the communication dated 21/3/2023 by which the said respondent has refused to correct the date of birth of the petitioner in the records of the employer – Western Coalfields Limited (WCL).

3] According to the petitioner, his actual date of birth is 4/7/1965 as per the School Leaving Certificate as well as the certificate issued by the Headmaster of the Zilla Parishad Upper Primary School, Rajura on 29/8/2022. On the basis of the order dated 29/7/1990, the petitioner was engaged as a Badli Worker. It was stated in his service book that he was aged about 27 years and that his date of birth was 1/7/1963. The petitioner sought correction in his date of birth by moving an application/ objection dated 22/10/2011. The said objection was raised in view of the communication dated 16/9/2011 that was issued by the Deputy General Manager to all the Senior Managers in various areas of the WCL. Despite moving such application, the same was not adjudicated and instead the petitioner was served with the impugned communication dated 5/8/2022. The petitioner thus approached this Court on 18/1/2023 for raising a challenge to the communication dated 5/8/2022. When the present proceedings were pending, respondent No.4 issued the impugned communication dated

21/3/2023 stating therein that there was no merit in the claim for correction in the date of birth as made by the petitioner. By amending the Writ Petition, this communication is also under challenge.

4] The learned Counsel for the petitioner submitted that since the petitioner's date of birth was 4/7/1965 which could be easily gathered from the petitioner's School Leaving Certificate as well as the certificate dated 29/8/2022 issued by the Headmaster of the Upper Primary School, the WCL ought to have corrected its records and permitted the petitioner to continue in service till 31/7/2025. Without giving any reason and without considering the provisions of the Implementation Instructions – 76 under the National Coal Wage Agreement – III, the petitioner's claim had been denied. In view of Clause (B) thereof, since the School Leaving Certificate was issued by the Competent Authority, the same ought to have been relied upon and such correction ought to have been permitted. In that regard, reliance was placed on the decision in *Bharat Coking Coal Limited And Others Vs. Chhota Birsra Uranw [(2014) 12 SCC 570]*. The learned Counsel also invited attention to the decisions in *Mohan Mahto Vs. Central Coal Field Ltd. And Others [(2007) 8 SCC 549]* and *Prabhat Kumar Titus Vs. Western Coalfields Ltd., Nagpur and others [2021(6) Mh.L.J.]* and urged that this Court could in the present case direct the WCL to correct the date of birth of the petitioner enabling him to continue in service till he attained the age of 60 years.

5] The learned Counsel for the WCL opposed the aforesaid submissions. At the outset, he submitted that though the impugned communication was issued on 5/8/2022, the petitioner approached this Court belatedly on 18/1/2023 without explaining the reason for not invoking the jurisdiction of the Court earlier. It was submitted that correction in the date of birth could be undertaken if there was a mistake while recording the same with the WCL. There was no error in entering the date of birth of the petitioner in the records of the WCL since the date 1/7/1963 was supplied by the petitioner himself while entering service. The petitioner was seeking such correction on the basis of School Leaving Certificate. The learned Counsel invited attention to the driving license of the petitioner wherein the date of birth of the petitioner was indicated as

4/7/1963. It was thus clear that the petitioner had furnished the said date even in his driving license and he could not be now permitted to raise challenge to the same. Further in the merit-cum-seniority list for promotion to the post of Dumper for the years 2019-2020, 2020-21 and 2021-22, the petitioner's date of birth was shown as 1/7/1963. The petitioner therefore had ample knowledge even in the year 2021-22 that his date of birth was recorded as 1/7/1963. At the fag end of his career, such correction was sought. It was thus submitted that for the said reasons, there was no case made out to interfere in writ jurisdiction.

6] Having heard the learned Counsel for the parties and having perused the documents on record, we are not inclined to interfere with the impugned communications dated 5/8/2022 and 21/3/2023. It is seen from the record that during the service career of the petitioner, his date of birth as 1/7/1963 was considered by the Departmental Promotion Committee when promotion to the post of Dumper was undertaken. The performance of the years 2019-20, 2020-21 and 2021-22 was taken into consideration and on the basis of his seniority, the petitioner was allotted marks. The documents in that regard prepared by the Departmental Promotion Committee (page 85 of the Writ Petition) clearly reveal his date of birth as 1/7/1963 to which no objection has been raised by the petitioner. The Nomination Form filled-in by the petitioner also indicates the said date of birth. Similarly, the driving license issued to him that was valid till 21/1/2018 also records his date of birth as 4/7/1963. All this would indicate that even in documents not related to the WCL, his date of birth has been noted as 4/7/1963. In these facts therefore we find that without substantiating his claim that the correct date of birth was 4/7/1963, a finding cannot be recorded that such date has been wrongly recorded in the petitioner's service records. In extraordinary jurisdiction, such exercise cannot be conducted.

7] Though the petitioner has sought to rely upon Clause (B) of the Implementation Instructions – 76, it is seen that in absence of there being any variation in the records of the WCL, the case is not liable to be re-opened. The statutory forms submitted by the petitioner also indicate his date of birth as 1/7/1963. Though the petitioner is stated to have submitted his application seeking correction on 22/10/2011, he has not pursued the said matter

thereafter. Though the impugned communication was issued on 5/8/2022, a belated challenge has been sought to be raised to the said communication. Since we find that merely on the basis of the School Leaving Certificate produced by the petitioner such declaration cannot be granted especially when his date of birth as 4/7/1963 is also recorded in his driving license, we are not inclined to undertake such exercise of granting a declaration that his correct date of birth is 4/7/1965. Unless such finding is recorded, the impugned communications cannot be set aside.

8] Hence, with liberty to the petitioner to invoke appropriate remedy for having a declaration that his correct date of birth is 4/7/1965 and not 1/7/1963, the Writ Petition is not entertained. It is accordingly dismissed with no order as to costs. It is clarified that the observations made herein are only for considering the prayers made in the Writ Petition and in case the petitioner seeks a declaration as regards his correct date of birth, the observations made in this order shall not come in the way of the petitioner. Order accordingly. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

SUMIT