

09.04.2024
SI No.15
Court No.8
(gc)

**MAT 370 of 2024
CAN 1 of 2024**

**Md. Sabir
Vs.
M/s. Eastern Coal Fields Ltd. & Ors.**

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Simran Sureka,
Mr. Debasish Das
... for the Appellant.
Ms. Priti Banerjee,
... for the Respondents/E.C.L.

1. The appeal is arising out of an order passed by the learned Single Judge in a writ petition in which the appellant/writ petitioner was directed to appear before the Medical Board for examination in order to ascertain his age. The writ petitioner challenged the letter dated 2nd June, 2023 whereby the Chief Manager (M) Agent, Amritnagar Group of Mines under Eastern Coalfields Limited had directed the writ petitioner to appear before the Apex Medical Board in order to resolve the issue related to the age of the writ petitioner. The communication dated 2nd June, 2023 which was subject-matter of challenge in the writ petition has also stated that such exercise is necessary in view of the inability on the part of the writ petitioner to provide

suitable documentary evidence in support of the claimed age.

2. Briefly stated, the father of the writ petitioner, Late Nasir Mia died in harness on 18th November, 1999. Upon his death, the appellant was appointed on compassionate ground. It is claimed by the writ petitioner that he had submitted his Higher Secondary admit card, certificate and mark-sheet in which the date of birth of the writ petitioner was mentioned as 6th March, 1975. Thereafter, the petitioner had also undergone a medical examination on 25th May, 2000 where the date of birth of the petitioner was reflected as mentioned in the educational documents as 6th March, 1975. On completion of the aforesaid procedure, the appointment letter was issued in favour of the writ petitioner on 4th June, 2004 and the writ petitioner has been working since then on the said Colliery. The service book as well as the identity card records the date of birth of the petitioner as 6th March, 1975. In this background, it is alleged that after working continuously for almost 18 years, a frivolous issue has been raised in respect of the age of the petitioner. The action of

the writ petitioner is challenged as arbitrary, unfair and unreasonable. Before the learned Single Judge, a report in the form of affidavit has been filed by the Manager (Personnel) of the Colliery concerned in which it is stated that he was appointed in terms of Clause 9 of the terms and conditions of the appointment letter which would show that he was appointed on the basis of the information furnished by him regarding his name, age, father's name, qualification, home address, relationship etc. The said clause stipulates that in case it is detected at any point of time that any information was suppressed and proved to be false, his service may be terminated. The affidavit refers to Clause 11 of the terms and conditions in the appointment letter which refers to the certified standing orders of the company, NCWA/Cadre Scheme, Mines Act rules and regulations and other Acts applicable to the Coal Mine industry and all the circulars issued from time to time that would be applicable to the writ petitioner. Based on such terms and conditions, it was stated that the management has the authority to conduct any enquiry and/or

age assessment and/or verification if required and can call for any documents at any stage during the course of the employment in order to ascertain the genuinity of the documents submitted by the employee at the time of his employment. The affidavit refers to the Service Record Excerpt (in short "SRE") of Late Nasir Mia, father of the appellant, in which the appellant was shown as the son of Nasir Mia with the age as on 01.04.1987 as 21 years that is his date of birth could be 01.04.1966. However, such age has been recorded based on the details provided by the ex-employee, namely, Late Nasir Mia and the same was not verified while he was alive. At the time of appointment of the appellant, the appellant mentioned his date of birth as 6th March, 1975 based on the matriculation certificate, however, the matriculation certificate was not found in the employment file of the appellant on a routine verification of service files. Accordingly, the writ petitioner was immediately directed to submit self-attested copy of his admit card, mark-sheet and certificate of Madhyamik (10th)

Examination as well as production of original documents for verification and attestation within three days of receipt of the letter dated 29.12.2015. The writ petitioner, however, in spite of several communications failed to produce the aforesaid documents for verification. It is a stand of the respondents-employer that as per the prevailing rules, guidelines and practice, if a person has completed Secondary Education or Higher Education than primarily the Matriculation/ Madhyamik (10th) Certificate is considered as age proof for assessing the age of the candidate. Since the appellant submitted his claim for employment before the respondents after the death of his father, wherein the petitioner declared his date of birth as 6th March, 1975, thereby praying for consideration of Higher Secondary Certificates as age proof and on his assurance to submit all educational documents including his Matriculation Documents for verification, the appointment letter was issued and such appointment letter is in no way dispensed with the requirement to submit authenticated documents for verification.

The affidavit also referred to Column 5 of the report of medical examination to show that the age was assessed by the medical officer on the basis of the documents produced by the appellant and not on medical examination of the writ petitioner. The affidavit also disclosed the documents based on which the authority decided to verify the documents and determination of the age through Apex Medical Board at least for the purpose of reaching an approximate biological age as per extant rules of medical jurisprudence, however, it has been stated that the requirement may be fulfilled in case the writ petitioner submits his matriculation certificate along with mark-sheet, admit card as well as original and duplicate copy. It is alleged in the said affidavit that in spite of several communications sent to the writ petitioner requiring him to submit such documents, the appellant maintained a studied silence.

3. Mr. Partha Ghosh, learned Counsel appearing on behalf of the writ petitioner/appellant has questioned the jurisdiction of the authority concerned in directing the petitioner to appear for the medical examination on the ground that

after the authority concerned was satisfied both on medical examination and the documents furnished in proof of his age at the time of his appointment, the writ petitioner could not be asked to appear before the Apex Medical Board. It is submitted that the relevant rules do not give jurisdiction to the authority concerned for medical examination for the purpose of correction of the date of birth. The reason for such medical examination has not been disclosed. The writ petitioner having produced all relevant documents at the time of his appointment could not be asked after 18 years to produce the original documents for the purpose of determination of the age which again would be an approximation in comparison to the documents disclosed by the writ petitioner at the time of his appointment.

4. Mr. Ghosh has referred to the Implementation Instruction No.76 which laid down the procedure for determination/verification of age of determination. The learned Single has also referred to the said instruction in the judgment. The said Implementation Instruction No.76 is reproduced below:-

“(B) Review determination of date of birth in respect of existing employees.- (i)(a) In the case of the existing employees matriculation certificate (SSC) or higher secondary certificate (HSC) issued by the recognized universities of Board or middle pass certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said universities/Boards/institutions prior to the date of employment.

(i)(b) Similarly, Mining Sardarship, winding engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) will be treated as authentic.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board.

(c) Age Determination Committee/Medical Board for the above will be constituted by the management. In the case of employees whose date of birth cannot be determined in

accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the Company, namely, Form B register, CMP records and identity cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the management for the determination of age.

(D) Age determination by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or.

(E) The Medical Board constituted for determination of age will be required to manage (sic assess) the age in accordance with the requirement of medical jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed and not approximately.”

5. On a bare reading of the perusal for determination it cannot be said that the employer cannot exercise its authority and right to verify the age of the petitioner in case there are reasonable doubts raised subsequent to such appointment. The authority concerned has disclosed at least three documents wherefrom it can be reasonably inferred that there are discrepancies with regard to the date of

birth. However, the authorities have not taken any final decision with regard to the said three documents and have merely directed a medical examination of the appellant for the purpose of determination of the age of the writ petitioner which is also necessary to decide on the duration of a service and terminal benefits. The authorities have also clearly stated that in the event original documents are produced for the purpose of verification, the medical board examination may be dispensed with. It was by reason of failure on the part of the appellant to produce authenticated and verifiable documents with regard to the date of birth of the appellant that the employer was constrained to refer the appellant for medical examination.

6. Mr. Ghosh has referred to the decision of the Hon'ble Supreme Court in ***i) Bharat Coking Coal Limited & Ors. Vs. Chhota Birsa Uranw reported at (2014) 12 SCC 570, ii) Shankar Lal Vs. Hindustan Copper Ltd. & Ors. reported at 2022 LiveLaw (SC) 407 decided on 20th April, 2022, iii) G.M., Bharat Coking Coal Ltd. West Bengal Vs. Shib Kumar Dushad & Ors. reported at (2000) 8 SCC 696, iv)***

Dibyendu Chakraborty Vs. Union of India & Ors. reported at 2022 (1) CLJ (Cal) 550, v) The General Manager, Kajora Area, Eastern Coal Field Ltd. Vs. Nimai @ Nemai Bouri (MAT 1789 of 2022 with CAN 1 of 2022, CAN 2 of 2022) decided on 2nd December, 2022

for the proposition that once the date of birth of the employee is recorded in form-B, a statutory form stipulated under the Rules and the documents produced by the appellant was verified at the time of his appointment, it cannot be revisited after a prolonged period and, accordingly, the decision of the authority to refer the writ petitioner for medical examination by the Apex Medical Board is arbitrary, unreasonable and unjust.

7. We have carefully read the decisions relied upon by Mr. Ghosh. The issue here is with regard to the genuineness of the documents and the documents that are received by the employer subsequent to the appointment of the writ petitioner. In our respectful reading of the aforesaid decisions it does not appear that an employer would be without jurisdiction to call for verifiable documents after the letter

of appointment was issued based on informations gathered subsequent to the letter of appointment. The letter of appointment also gives power to the employer to call for informations based on appointment if there are reasons to believe that the documents may not be genuine or requires further scrutiny and/or verification. The medical examination on which reliance has been placed on the basis of which appointment was made clearly stipulates that the date of birth was recorded on the basis of the certificates produced by the candidate and based on the informations furnished by the candidate. The employer proceeds on the basis that all the informations and documents furnished by the candidate is true and genuine. However, when during the course of employment, the employer comes across documents which may be in apparent conflict with the documents produced by the candidate at the time of his initial appointment, the employer is well within its right to call for an explanation and production of necessary documents to clear the doubts. In fact, before the medical examination was

started, the candidate was directed to produce the original documents which the writ petition evaded for almost nine years and only thereafter his medical examination had become necessary. In fact, the learned Single Judge has taken note of the said fact in paragraph 8 of the impugned judgment in which it is observed:-

“8. The petitioner has been repeatedly requested to inter-alia submit the Matriculation Certificate. There are materials which suggest contradictory and irreconcilable dates of birth of the petitioner as per the Service Record based on the Admit Card of Bihar Intermediate Shiksha Parisad, Patna, Service Record Excerpt of Late Nasir Mia and the records of Raniganj Maroari Sanatan Vidyalay. This obviously requires investigation. Significantly, at the time of induction it was mentioned in his letter of appointment that such investigation could be conducted at any point of time. Repeated reminders have also been given to the petitioner to submit necessary documents. The petitioner has deliberately and intentionally chosen not to furnish any such documents and has unnecessarily procrastinated matters. Every employee is obliged to produce irrefutable proof relating to his or her date of birth [Home Deptt v R. Kirubakaran, 1994 Supp (1) SCC 155].”

8. Mr. Ghosh has submitted that instead of the Apex Medical Board, the writ petitioner for the purpose of determination of age may be referred to any government hospital. At this stage, we cannot accede to the said request as we cannot presume that the Apex Medical Board would act at the dictate of Eastern Coal Fields Limited or any of its officers. It is expected that the Medical Board comprised of experienced Doctors would discharge their duty impartially following the medical ethics.

9. The learned Single Judge has referred to the decision in **Shib Kumar Dushad** (supra). In paragraph 7 of the judgment it has been held as follows:-

“7.

“20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/ Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to the Medical Board. The Medical Board as laid down in the

instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of mandamus that the date as claimed by the employee (the respondent herein) should be accepted.”

10. The said decision, in fact, is a pointer to the right of the employer to refer the matter to the medical board where there is neither a matriculation certificate nor a secondary school education certificate, nor a statutory certificate. In the instant case, the matriculation certificate was not produced and there are other documents including a communication received from the West Bengal Board of Secondary Education on 10th August, 2023 regarding the date of birth of the writ petitioner which raises doubt about the declaration of age by the writ petitioner at the time of his appointment.

11. Mr. Ghosh has submitted that the name of the father of the writ petitioner mentioned in the communication from the West Bengal Board of Secondary Education is in relation to the different persons as the name of the writ petitioner is Md. Sabir and his father's name is Nasir Mia. However, it is not necessary at this stage to go into such question as the justification for a medical examination has been clearly spelt out in the report filed before the learned Single Judge particularly in Paragraph 2 (vi) and Paragraph 6 of the said affidavit.
 12. Moreover, the writ petitioner would not be remediless in the event the Apex Medical Board has given a finding adverse to the interest of the writ petitioner.
 13. We also concur with the view expressed by the learned Single Judge that at this stage there is no perversity, illegality, irrationality or procedural impropriety which justifies any interference with the impugned communications as the purpose is to have the record clean and it benefits the employer and the employee both.
- [Sarvapalli Ramaiah vs District Collector, Chittoor, (2019) 4 SCC 500,***

Indian Overseas Bank & Ors. vs Om Prakash Lal Srivastava, (2022) 3 SCC 803 and Neeharika Infrastructure Private Limited vs State of Maharashtra and Ors, (2021) 19 SCC 401].

14. Moreover, the decisions relied upon by Mr. Ghosh are all after final adjudication. In the instant case, no final decision has been taken by the authorities concerned adverse to the interest of the writ petitioner.
15. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.
16. With the aforesaid observation, the appeal and the application are disposed of.
17. However, there shall be no order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)