

22.8. 2024
item No.106
n.b.
ct. no.24

WPA 11751 of 2018

Lalmuni Devi
Vs.
Coal India Ltd. & Ors.

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Ms. Maitrayee Chatterjee
..... for the petitioner.

The present petitioner is an employee of Eastern Coal fields Ltd., who was appointed on compassionate ground vide appointment letter dated 5.12.2009. The date of birth of the present petitioner was in dispute. The respondent authority has proceeded to fix his date of birth, which appears to the petitioner to be erroneous so far as the earliest statement of the husband of the present petitioner in his PF documents.

The present petitioner approached this Court seeking mandamus against the respondent authority, so that her date of birth in service record may be properly recorded. A co-ordinate bench of this Court in WP 29793(w) 2017 dated January 3, 2018 directed the concerned authority to consider the representation of the petitioner and to take a prompt decision on that matter. The concerned authority has taken the impugned decision on 29.3.2018, wherein the date of birth of the present petitioner was made out as 20.10.1967.

Learned counsel appearing on behalf of the petitioner submits that the present petitioner was never examined medically according to the prelevant rules and circular of Implementation Instruction number 76 dated April 25, 1988.

Learned counsel for the petitioner further submits that as per the rule, in case of illiterate person, the age of the employee has to be determined by Colliery Medical Officer. It is a positive case of the petitioner that no such medical examination was done for the determination of age of the petitioner.

Learned counsel for the petitioner further argued that the impugned order passed by the Eastern Coal Fields Ltd./respondent is not in conformity with the said instruction dated April 25, 1988.

Heard the learned counsel perused the affidavit-in-opposition filed by the respondent no.1, it appears from annexure "R-2" of the affidavit-in-opposition that one purported medical examination was done on April 28, 2009.(prior to the appointment) The said annexure (annexure R-2) is not at all eligible and it is not clear whether the age was determined medically by such examination. The age was written in the annexure "R-2" as "age by appears". I have perused the Implementation Instruction no.76 dated April 25, 1988. Annexure-1 of the said Instruction regarding the determination of age and the time of appointment is read as follows:

“(A) Determination of the age at the time of appointment.

i) Matriculates.

In the case of appointees who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

ii) Non-matriculates but educated.

In the case of appointees who have pursued studies in a recognised educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.

iii) Ex-servicemen.

In the case of Ex-servicemen who are not matriculates, the date of birth recorded in the Army Discharge Certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. In the case of Ex-servicemen who have passed Matriculation examination, the date of birth recorded in the Matriculation certificate will be treated as correct date of birth, provided they have passed the Matriculation examination

before entering the Defence Services; otherwise the date of birth recorded in Army Discharge Certificate will be taken as correct date of birth.

IV) *Illiterate.*

In the cases of appointees not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances.”

The said instruction also enumerated the scope of review of determination of date of birth in respect of existing employees. The present petitioner is an existing employee.

Considering the entire aspect, it appears to me that determination of age of the present petitioner by virtue of annexure R-2 is appears to me not proper. As to the direction to the Implementation Instruction no.76. No medical examination was conducted by the concerned authority for the determination age of the petitioner. Thus at this juncture, it appears to me justify to pass a necessary direction upon the concerned authority.

The instant writ petition hereby disposed of with a direction to the concerned authority to form a Medical Board to re-assess the age of the present petitioner as per the Implementation of Instruction no.76. Authority shall serve a notice to the petitioner to appear in the Medical Board, after thorough medical examination of the petitioner regarding the determination of age, the authority shall pass necessary order on the strength of the said medical report.

The authority concerned is further directed to complete all exercise as directed above, within six weeks from the date of communication of this order.

Such decision of the authority together with medical report, shall be communicated to the petitioner within two weeks thereafter.

Under the above observation, the instant writ petition is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)