

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.19079 OF 2005

Ande Lingaiah, S/o Ellaiah,
Aged about 50 years, Occ:General Mazdoor,
R/o H.No.6-3-80, Power House Colony,
Godavarikhani, Karimnagar District.

....Petitioner

VERSUS

The Singareni Collieries Company Limited,
Rep. by its General Manager,
Ramagundam Area-I, Godavarikhani,
Karimnagar District and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 2ND AUGUST, 2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

J. SREENIVAS RAO, J

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.19079 OF 2005

% Dated 02.08.2023

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... Respondents

! Counsel for Petitioner : P. Sridhar Rao.

^ Counsel for Respondent No.2 : Sri Nandigam Pattabhi Rama Rao.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2011 9 SCC 664
2. 2020 (3) SCC 411
3. 2021(11) Scale 110
4. 1994 6 SCC 302
5. 2016 (6) ALD 734

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.19079 of 2005****ORDER:**

This writ petition is filed seeking the following relief:

“...to call for the records from the Respondents herein by issuing a Writ Order or Direction more particularly one in the nature of Writ of Mandamus by declaring the action of the Respondents in issuing impugned orders Ref.No.RG.I/PH/40/AL/1556 dt.9.9.2004 by the 2nd Respondent retiring the petitioner from service prematurely with effect from 31.8.2005 as illegal, arbitrary, unjust and also in violation of Articles 14 and 21 of the Constitution of India and consequently by setting aside the impugned order dt.9.9.2004 grant me such appropriate order...”

2. Heard Sri P. Sridhar Rao, learned counsel for the petitioner and Sri Nandigam Pattabhi Rama Rao, learned Standing Counsel for respondents.

3. Learned counsel for the petitioner submits that during the year 1973, the District Employment Exchange officer sponsored the petitioner's name to respondent company for consideration for appointment for the post of Badli worker and he was accordingly appointed as a Badli worker *vide* proceedings No.DPO/RG/73/838 dated 10.07.1973 along with others. At the time of appointment

the petitioner's age was 18 years and his date of birth was recorded in the District Employment Exchange as 10.06.1955. He further submits that the petitioner is an illiterate and basing on the statement given by him the date of birth was recorded as 10.06.1955. He further submits that during his tenure the respondent corporation has issued charge sheet on 07.11.1986 on the ground that the petitioner committed a theft and the respondent company after conducting *denovo* enquiry dismissed the petitioner from services by its order dated 13.05.1987. Questioning the said order the petitioner filed W.P.No.11848 of 1987 and the same was dismissed as withdrawn on 21.12.1989 granting liberty to the petitioner to avail alternative remedy. At that stage the petitioner raised dispute invoking the provisions of 2-A(2) of Industrial Dispute Act, 1947 before labour Court, Godavarikhani and the same was dismissed on 12.11.1992 on the ground of jurisdiction. Thereafter, the petitioner raised the dispute i.e, L.C.I.D.No.1 of 2001 before Central Industrial Tribunal - cum- Labour Court, Hyderabad. The Industrial Tribunal was pleased to pass award invoking the provisions of Section 11 A of act by setting aside the dismissal order dated 13.05.1987 and directed the respondent to reinstate the petitioner into service as

Mazdoor on the pay scale as available on the date of absent of the award. However, the petitioner is not entitled for backwages, seniority etc. Pursuant to the said award the petitioner was reinstated into services on 26.03.2002.

4. Learned counsel further submits that during his services the respondent counsel utilized the services of the petitioner as driver in Power House on coal vehicle bearing No.7022 during the year 1982-84 and in the driving license the petitioner date of birth was recorded as 10.06.1955. While things stood thus, the respondent No.2 issued (advance intimation notice) impugned notice dated 09.09.2004 informing the petitioner that he is going to attain the age of superannuation i.e. 60 years on 31.08.2005 and immediately after receiving the said notice the petitioner approached the respondent company and submitted representation requesting the respondent authorities to correct his date of birth as 10.06.1955 taking into consideration the recording in the employment Exchange and driving license. The respondent corporation has not passed any order on the said representation. At that stage, the petitioner filed the present writ petition.

5. Learned counsel for the petitioner vehemently contended that the petitioner is not aware of the wrong date of birth entered

in his service record till he received the advance intimation notice dated 09.09.2004, at no point of time the respondent company has issued notice nor furnished any documents nor sent the petitioner to medical board for determination of age, in spite of his submission of representations. Hence, the action of respondent company retiring the petitioner prematurely is contrary to law.

6. Per contra, learned counsel appearing for respondent company submits that at the time of initial appointment the petitioner has not produced any age proof. In view of the same, the colliery medical officers after conducting the medical examination as per the Mines rules 1955, determined the age of the petitioner as 28 years as on 19.08.1973 and the same was accepted by the petitioner and the petitioner affixed his thumb impression in the initial medical examination report and basing on the same the respondent corporation opened service record of the petitioner and in all the statutory records i.e, Identity service card, B-Register and Coal Mines Provident Fund (CMPF), Form – A, the petitioner's age was recorded as 28 years as on 19.08.1973. As per the Company Rules one year advance intimation notice was issued to the petitioner about his due date of retirement. The petitioner has not produced any document at the time of initial

appointment including employment exchange card and basing on the driving license which was obtained during his service in the year 2004 the petitioner is not entitled to seek correction of his date of birth. He further submits that the petitioner has not raised any objection during his entire service and filed this writ petition at the fag end of the services and the same is not permissible under law. In support of his contentions, the learned counsel relied upon the following judgments:

1. State of M.P. v. Premlal Shrivastava¹

2. Bharat Coking Coal Ltd. v. Shyam Kishore Singh²,

3. Karnataka Rural Infrastructure Development Limited Vs. T.P.Nataraja and Ors.³

7. I have considered the rival submissions made by respective parties and perused the material available on record. Admittedly, the petitioner was appointed as Badili filler on 10.07.1973 and at the time of his appointment the petitioner has not produced any age proof. As per the provisions of Rule 29(B) of the Mines Rules, 1955 and also as per the National Coal Wages Agreement - III implementation instruction No.76 dated 25.04.1988, the colliery

¹ 2011 (9) SCC 664

² 2020 (3) SCC 411

³ 2021(11) Scale 110

medical officer after conducting medical examination, determined the age of the petitioner as 28 years on 19.08.1973 and the same was accepted and the petitioner affixed his thumb impression. Basing on the same the respondent company recorded his age in all the statutory records viz., Identity service card, B-Register and Coal Mines Provident Fund (CMPF), Form – A, as 28 years as on 19.08.1973.

8. It further appears from the records that the petitioner was dismissed from services on 13.05.1987 and in pursuance of the award passed by Industrial Tribunal in I.D.No.1 of 2001 the petitioner was reinstated into service on 24/26.3.2002. The petitioner was sent for medical examination once again at the time of reappointment, as per the provisions of Rule 29F(2) and 29(B) of Mine Rules, 1955 wherein the petitioner's age was mentioned as 28 years as on 19.08.1973 and the same was accepted by the petitioner and he affixed his thumb impression in Form 'O' dated 14.03.2002.

9. It is very much relevant to mention here that respondent company issued one year advance intimation notice to the petitioner on 09.09.2004 informing him that he is going to attain the age of superannuation i.e., 60 years on 31.08.2005. After

receiving advance intimation letter dated 09.09.2004, the petitioner approached this Court and filed this writ petition on 29.08.2005 after lapse of nearly one year i.e., before two days of his retirement i.e., 31.08.2005. The petitioner alleged that he submitted representation to the respondent corporation after receiving impugned letter to reconsider his plea on humanitarian grounds, whereas, the representation filed along with writ petition clearly shows that no date is mentioned and also the petitioner has not produced any acknowledgment to establish that he submitted representation to the respondent company on particular date and the respondents have specifically denied the same in their counter affidavit.

10. In ***State of M.P. v. Premlal Shrivastava*** the Hon'ble Supreme Court held that:

"It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a

direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said Rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the Rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said Rule which is caused due to the negligence or want of proper care on the part of some person

other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

11. In ***Bharat Coking Coal Ltd. v. Shyam Kishore Singh*** the Hon'ble Apex Court held that:

8. In the above background it is to be noticed as to whether the consideration as made by the High Court is justified. The learned counsel for the respondent with specific reference to para 10 in the order [*Shyam Kishore Singh v. Bharat Coking Coal Ltd.*, 2017 SCC OnLine Jhar 3061] of the learned Single Judge referred to the aspect wherein the learned Single Judge has taken note of the representation made by the respondent in the year 2009 and the verification that was secured by the appellants from the Bihar School Examination Board. Though such reference is made, in our opinion, the same was not appropriate in the present facts when three decades had elapsed from the date of employment. The position is well established that if a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. In the instant facts the position is that the respondent entered service on 1-3-1982. The date of birth entered as 4-3-1950 has remained on record from the said date. The requirement to submit the nomination form indicating the particulars of the family and the nominee was complied with and it was submitted by the respondent on 25-5-1998. In the said nomination form the date of birth of the employee was required to be mentioned, wherein the respondent in his own handwriting has indicated the date of birth as 4-3-1950. Apart from that fact, the learned Additional Solicitor General would also point out that since there was a change in the method of maintaining the service register, all the employees were provided an opportunity to verify and seek for change in the service record in the year 1987. At that stage also the respondent did not seek for any change. Therefore, in that circumstance, when the opportunity available at the first instance in 1987 had not been availed and thereafter on 25-5-1998 when the respondent himself in the Provident Fund nomination form had indicated the date of birth as 4-3-1950 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment, merely because a verification was made from the Bihar School Examination Board and even if it

was confirmed that the date of birth was 20-1-1955 such change at that stage was not permissible.

9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in *State of Maharashtra v. Gorakhnath Sitaram Kamble* [*State of Maharashtra v. Gorakhnath Sitaram Kamble*, (2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] wherein a series of the earlier decisions of this Court were taken note and was held as hereunder : (SCC pp. 428-29, paras 16-17 & 19)

“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri* [*U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri*, (2005) 11 SCC 465 : 2006 SCC (L&S) 96] . In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in *State of Uttaranchal v. Pitamber Dutt Semwal* [*State of Uttaranchal v. Pitamber Dutt Semwal*, (2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment [*Pitamber Dutt Semwal v. State of U.P.*, 1999 SCC OnLine All 1610 : 2000 All LJ 2341] of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in *Home Deptt. v. R. Kirubakaran* [*Home Deptt. v. R. Kirubakaran*, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] reads as under : (SCC pp. 158-59, para 7)

‘7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 forever. ... 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. ... the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book.”

13. On the other hand, in the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the nomination form and rectify the defect if any, he had indicated the date of birth as 4-3-1950 and had further reiterated the same when Provident Fund nomination form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement. Instead, the respondent retired from service on 31-3-2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified.

12. In ***Karnataka Rural Infrastructure Development Limited Vs. T.P.Nataraja and Ors*** the Hon’ble Apex Court held that:

9. Even otherwise and assuming that the reasoning given by the High Court for the sake of convenience is accepted in that case also even respondent No.1 – employee was not entitled to any relief or change of date of birth on the ground of delay and laches as the

request for change of date of birth was made after lapse of 24 years since he joined the service. At this stage, few decisions of this court on the issue of correction of the date of birth are required to be referred to.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.

12. However, considering the fact that when the impugned judgment and order passed by the High Court has been implemented and respondent No.1 has retired thereafter considering his date of birth as 24.01.1961, it is observed that the present judgment and order shall not affect respondent No.1 – employee and we decide the question of law in terms of the above in favour of the appellant – corporation. With this Civil Appeal No. 5720 of 2021 stands disposed of.

13. In ***State of Tamil Nadu Vs. T.V. Venugopalan***⁴ the Hon'ble Apex Court held that:

“The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register.”

14. In ***Sundilla Lingaiah Vs. Singareni Collieries Company Ltd.***⁵ this Court held that:

“14.Before parting with the judgment, this Court deems it apposite to observe that the attitude and tendency of approaching the Courts for correction of Date of Birth and for further continuation in service, at the fag end of the service is on higher side in recent times when compared to past. In some deserving cases, such people are emerging successfully also. But there must be proper check and thorough verification of the claims, touching

⁴ 1994 6 SCC 302

⁵ 2016 (6) ALD 734

the alteration of date of birth, otherwise the same would be a burden on the State exchequer and the belated claims shall not be entertained. While considering the claims for correction of Dates of Birth, it is also incumbent and obligatory on the part of the authorities to simultaneously examine the corresponding age of the claimants at the time of passing the examinations such as Seventh Class, Tenth Class etc., also and their relevant eligibilities pertaining to the age, unless the same being exempted by competent authority, as on the date of such examinations. If any claimants are permitted for such examinations without the prescribed age, in the absence of such exemption of age granted by the competent authority, the same shall be a relevant criteria and factor for examining the claims for alteration of date of birth”

15. In the above judgments the Hon’ble Apex Court and this Court clearly stated that an employee is not entitled to seek correction of the date of birth at the fag end of his service.

16. It is already stated supra that at the time of initial appointment the petitioner has not produced any evidence to prove his age and respondent Corporation after conducting medical examination as per the Mines Rules determined the petitioner’s age as 28 years as on 19.08.1973 and the same was recorded in all statutory records of the respondent Corporation and the same was accepted by the petitioner. Respondent Corporation issued one year advance intimation notice to the petitioner on 09.09.2004 informing him about his due date of retirement i.e., on 31.08.2005. The petitioner is not entitled to seek correction of his date of birth as per the Implementation

Instructions No.76 *vide* circular
No.CIL/NCWA/III/I.I.No.76/88/185 dated 25.04.1988, basing on
the driving license which was obtained during his service in the
year 2004, especially before two days of his retirement.

17. For the foregoing reasons, this Court is not inclined to
exercise the jurisdiction under Article 226 of Constitution of India
to grant relief of correction of date of birth and there are no merits
in the writ petition and the same is liable to be dismissed.

18. Accordingly, the writ petition is dismissed. No costs.

As a sequel thereto, miscellaneous applications, if any,
pending in this writ petition shall stand closed.

JUSTICE J SREENIVAS RAO

2nd August, 2023
PSW

HON'BLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION No.19079 of 2005

2nd August, 2023

PSW