

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.58 OF 2016

Between:

Md. Raj Mohammed

... Petitioner

And

The Singareni Collieries Company Ltd and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.12.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No.58 OF 2016**

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< Gist:

> Head Note:

! Counsel for the Petitioner : Sri A.K.Jaya Prakash Rao

**^Counsel for the Respondents: Sri P.Sri Harsha Reddy
Standing counsel for
Singareni Collieries**

? Cases Referred:

1. (1992) 2 ALT 198
2. (2007) Law Suit Jharkhand 526
3. WA No.1621 of 2008, judgment dated 11.06.2009

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No.58 OF 2016****ORDER:**

Heard learned counsel for the petitioner and learned standing counsel for respondents.

2. This Writ Petition is filed to issue an appropriate Writ, order or direction, particularly one in the nature of Writ of Mandamus, declaring that the age Assessment Report passed by the 3rd respondent in proceedings Ref. No.SRP/PER/15-031/3972, dated 14.09.2015, determining age of petitioner as 62 years as on 20.07.2015 instead of 04.03.1962 i.e. 53 year as illegal, unjust, contrary to law, and in violation of principles of natural justice, violative of Articles 14, 16 and 21 of the Constitution of India and consequently set aside the same declaring the petitioner's date of birth is 04.03.1962 and that the petitioner is entitled to continue in service upto 31.03.2020 with all consequential benefits.

3. The case of the Petitioner, in brief, is as follows:

a) The petitioner was appointed as Badli Filler in the respondent company on 27.07.1979 and promoted as Coal

Filler on 01.02.1987 and that further promoted as General Mazdoor Category I on 02.03.1994 and to General Mazdoor Category II on 01.01.2003.

b) The petitioner studied upto 9th class and as per school records, the date of birth of the petitioner was 04.03.1962.

c) During the year 1987 the petitioner worked as Timber Man in SRP-I Incline and accordingly Identity Card was issued wherein the petitioner date of birth was mentioned as 04.03.1957. The petitioner was transferred from SRP-I to SRP Workshop in the year 1992 and that the date of birth of the petitioner was altered in the office of the respondents by some persons, who are enimically disposed towards him.

d) In the Form PS3 as well as EPR records maintained by the respondent company, family particulars were recorded and the date of birth of the petitioner was recorded as 30.01.1953 and his mother's date of birth was mentioned as 1954.

e) The petitioner filed W.P.No.34933 of 2012 before the High Court to refer his case to Apex Medical Board to take corrective measures and the said writ petition was allowed on 31.03.2015. The petitioner had appeared before the Medical

Board on 14.08.2015 and produced school leaving certificate, 7th class marks, 10th class TC and copy of 'B' register. But erroneously the Medical Board determined the age of the petitioner as 62 years as on 20.07.2015. When the petitioner was transferred to Area Workshop, SRP in the year 1995 in B register against the column for age, nothing was mentioned, but in date of retirement was mentioned as 01.02.2013. In the Identity card issued by the respondents, it was mentioned that the petitioner continue in service up to 31.03.2017.

f) The order passed by the 2nd respondent in retiring the petitioner from service vide proceedings dated 25.09.2015 is illegal and arbitrary. Hence, this writ petition is allowed.

4. Counter Affidavit filed by Respondents, in brief is as follows:

a) At the time of initial appointment, the petitioner did not submit any documentary evidence in proof of his age/date of birth, and as such, his age was assessed by the then Colliery Medical Officer as 26 years as on 30.01.1979 in the initial medical examination report, which was converted as his date of birth as 30.01.1953 and the same was recorded in the service records of the petitioner.

b) Once the age or date of birth is recorded in the service records basing on the age as assessed by the then colliery Medical Officer in the initial medical examination report, the same is authentic and final. Therefore, the date of birth already recorded in the authentic records, cannot be changed just basing on the educational qualification certificates.

c) The respondent company is bound to follow the guidelines/instructions issued from time to time by the Central and State Governments and other governmental bodies constituted like the Joint Bipartite Committee for Coal Industry. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. The counter affidavit filed by the respondents, particularly in paras 5, 7, 11 and 13 reads as under:

Para 5 : At the outset, it is submitted that the entire writ petition as filed is not maintainable in law in view of the fact that since the petitioner did not submit any documentary proof of his age/date of Birth as per guidelines formulated by the Joint Bipartite Committee for Coal Industry(JBCCI), at the time of his initial appointment in the Respondent Company, the then Colliery Medical Officer had assessed the age of the Petitioner as 26 years as on 30.01.1979 in the Initial Medical Examination(IME) Form-O and the age so assessed was converted as his date of birth as 30.01.1953 and the same age/date of birth was entered in the authentic service records of the

respondent company and accordingly he will be attaining the superannuation age of 60 years as on 31.01.2013. As such the claim of the Petitioner for correction of his age in service records simply basing on the 9th class certificate subsequently obtained and said to have been submitted vide his representation dated 23.10.2012, is not tenable in law and is liable to be dismissed in limine.

Para 7 : It is submitted that every person while entering into the service of the respondent company shall have to declare his date of birth by submitting necessary proof/record. In case of appointees who have passed matriculation or its equivalent examination, the date of birth recorded in the said certificate will be adopted without any modifications in the service record and the same cannot be altered under any circumstances. In the case of illiterates or applicants who do not produce any evidence or proof of age as required as per JBCCI guidelines the age is assessed by the Colliery Medical Officer in the Initial Medical Examination Form-O and the age so assessed will be authentic and final age and the same is recorded in the service records and the employee also signs in IME-Form as a token of acceptance of the age as assessed by Medical Officer. It is submitted that since the Petitioner did not submit any documentary evidence in proof of his date of birth/age as per the JBCCI guidelines, his age was assessed as 26 years as on 30.01.1979 by the then Colliery Medical Officer in the Initial Medical Examination Form-O, which was also converted as his date of birth as 30.01.1953 and the same was recorded in the Service Records of the petitioner maintained in the Respondent Company. His age date of birth recorded in various records are furnished here under:

1. Initial Medical Examination-Form-O-26 years as on 30.01.1979
2. Age Assessment Form - 26 years as on 30.01.1979
- 3 Age entered in Identity &Service card - 26 years as on 30.01.1979
4. Office Order empanelling Coal Filler -30.01.1953 Date of Birth
5. Age as per B Register - 30.01.1953 Date of Birth
6. Pension Nomination Forms (Forms PS-35 and PS-4) - 30.01.1953-Date of Birth
7. Employee Personal Record(EPR) -30.01.1953- Date of Birth

It can clearly be seen from the above records/documents that in all the service records of the Petitioner, the age is recorded as 26 years as on 30.01.1979 i.e. the age as assessed by the Colliery

Medical Officer and the same was entered in the records or as converted date of birth was recorded in the Employee Personal Record, on which the Petitioner has affixed his thumb impression/signature accepting his date of birth to be 26 years as on 30.01.1979. Copies of the Initial Medical Examination Form-O; Identity & Service Card, B-Register, Initial Empanelment Office Order, Pension Forms, EPR Form, are filed as material papers and the same may be read as part and parcel of this Affidavit.

Para 11 : In reply to Paras - 8 to 17, it is submitted that the Petitioner had filed a WP No. 34933 of 2012 before the Hon'ble High Court wherein this Hon'ble Court disposed of the writ petition by Judgment dated: 31.03.2015 along with the batch of Writ Petitions, referring the case to Apex Medical Board to take corrective measures which are required to be taken. It is further submitted as per the Hon'ble Court order the Petitioner was referred to Apex Medical Board on 14.08.2015 and the age assessed by the Panel of Doctors and the Petitioner Age was determined as 62 years as on 14.08.2015 and hence Petitioner Age/DOB recoded in the Respondent Company i.e., 26 years as on 30.01.1979 had been confirmed.

Para 13 : It is reiterated that the authentic document i.e., Initial Medical Examination Form-O is available in which the age of the Petitioner was assessed as 26 years as on 30.01.1979 by the then Colliery Medical Officer at the time of initial appointment in absence of any documentary evidence produced by the Petitioner at the time of his appointment in proof of age/date of birth, and the said age or converted date of birth was recorded in all the service records of the Petitioner. As such, the claim of the Petitioner to change his date of birth basing on the educational qualification documents, which are actually not valid as per JBCCI guidelines, and that too subsequently obtained and submitted by the Petitioner, cannot be considered at all, and further the Petitioner did not raise any dispute with regard to his age/date of birth at the time of his initial appointment or at any point of time during his service for more than 30 years, and now the Petitioner approached this Hon'ble Court at the fag end of his service by filing the present writ petition to take undue

advantage for continuation of service in the Respondent Company even beyond actual superannuation age of 60 years by 31.01.2013. It is further submitted that all the terminal benefits were settled. Further in Hindustan Lever Ltd., vs. S.M. Jadhav & another on 21.03.2001 the Supreme Court has clearly rendered its judgement that representation for change of DOB at the fag end of the service is not maintainable.

DISCUSSION AND CONCLUSION :

6. According to the averments made by the Petitioner in the affidavit filed in support of the present Writ Petition, the Petitioner joined the Respondent Company as Badli Filler on 27.07.1979 and at the time when the Petitioner joined the service Petitioner studied upto 9th class and Petitioner's date of birth as per school records is 04.03.1962. It is further pleaded that the Petitioner had passed 7th class common examination prior to Petitioner joining the service and had produced the documentary evidence of Petitioner's school records showing Petitioner's age. This, however, is seriously disputed at para 13 of the counter affidavit filed by the respondents, which states that the petitioner did not produce any documentary evidence any documentary evidence at the time of his appointment in proof of age/date of birth. It is further

averred that curiously however in the Form-PS3 as well as EPR records maintained by the Respondent Company family particulars were recorded wherein date of birth of the petitioner has been recorded as 30.01.1953 and Petitioner's date of birth was shown as 1954 and the same thing also reflected in Employees Personal Details wherein Petitioner's date of birth is shown as 30.01.1953 and Petitioner's mother's date of birth is shown as 01.06.1954 and that the Respondents committed an error in recording Petitioner's date of birth as 30.01.1953 instead of 04.03.1962.

7. It is further pleaded by the Petitioner that Petitioner on an earlier occasion filed WP No.34933/2012 and the High Court disposed of the Writ Petition by judgment dt. 31.03.2015 along with batch of writ petitions referring Petitioner's case to Apex Medical Board to take corrective measures which are required to be taken, and that the Petitioner appeared before the Medical Board on 14.08.2015 wherein Petitioner specifically produced Petitioner's school leaving certificate and 7th class marks memo and

10th class TC No.7852 issued by the Head Master, Zilla Parishad High School, Mandamarri and copy of B-Register which was issued while the Petitioner was initially in SRP-I incline, Srirampur where B-Register was prepared and in the column mentioned for age Petitioner's age was specifically recorded as about 22 years as on the date of Petitioner's appointment in 1979 but the Medical Board did not consider Petitioner's actual fitness and did not determine the Petitioner's age basing on the medical jurisprudence and erroneously determined the Petitioner's age as 62 years as on 20.07.2015.

8. As per the Circular instructions dated 01.08.1988 vide Ref.No.P49/4702/IR/1270 of the Singareni Collieries Company Ltd., there is a clear procedure prescribed for determination/ verification of the age of the employee and for resolution of dispute cases of service record. Curiously however in the present case the said procedures have not been resorted to solve the dispute of the Petitioner.

9. The plea of the Respondents in the counter affidavit filed in the present writ petition that the claim of the Petitioner to change his date of birth basing on the educational qualification documents, which are not actually valid as per JBCCI guidelines and that too subsequently obtained and submitted by the Petitioner and further that the Petitioner did not raise any dispute with regard to Petitioner's age/date of birth at the time of his initial appointment or at any point of time during Petitioner's service for more than 30 years cannot be sustained in view of the law laid down in the judgments as discussed hereunder.

A) In a judgment reported in (1992) 2 ALT 198, in W.P.No.1697/1992, dated 31.03.1992 in B.Komaraiah vs. The Singareni Collieries Company Ltd., & Another it has been observed in paras 7, 8, 9 and 10 as under :

7. I am not referred to any rule which provides for a Middle Pass Certificate or an Admit Card, whereas the rules do provide for a Transfer Certificate. In the ordinary course, Transfer Certificate issued by the Government Institution is prima facie evidence of its contents. A presumption-may be rebuttable-under Section 114(c) of the Evidence Act may attach to such a document. In the absence of any evidence that it was obtained fraudulently or was tampered with or was otherwise undependable, respondents are bound to

consider the same as authentic document, indicating the date of birth of the person in whose favour it was issued. This aspect of the matter escaped the attention of the respondents in dealing with the representations which the petitioner had submitted.

8. It may be true that the petitioner had requested the respondents to set the machinery in motion, for correction of his date of birth, even by reference to the Age Determination Committee. According to him, that does not disentitle him from insisting on the respondents considering the Transfer Certificate issued in accordance with the requirements of the Education Rules and to which a presumption of correctness attaches unless proved otherwise. I am inclined to agree. If a Middle Pass Certificate or an Admit Card issued by the Institution which is not provided by any statute can be a document which shall be taken into consideration correction of date of birth of existing employees, whether it shall not be so in the case of a Transfer Certificate which indicates the elements of both of them was a consideration which was completely ignored by the respondents.

9. It is not necessary to burden this decision with authorities. If there be such need, reference to Ranjit Kumar Chattarjee v Union of India, Manak Chanu vs State of H.P., and Pandurangam v General Manager, South Central Railway will be sufficient to make out this point that entries in records maintained by Government Schools have to be considered as valid unless proved otherwise.

10. In this view, the impugned order cannot be sustained nor can the determination of the age of the petitioner arrived at by the Age Determination Committee without considering the Transfer Certificate be considered as correct. The 1st respondent is therefore directed to consider the request of the petitioner for correction of the date of birth on the basis of the Transfer Certificate which the petitioner had produced. Admittedly, the original of that Certificate was issued prior to the date of his entry into service. The 1st respondent shall consider the effect of that certificate and correct the date of birth of the petitioner in the service record, so as to enable him to

continue in service till he attains age of retirement determined on a consideration of the above certificate. There will be a direction that till such time a final decision is rendered, petitioner shall be continued in service.

B) The judgment dated 11.06.2009 passed in WA No.1621 of 2008 of the Division Bench of erstwhile High Court of Andhra Pradesh, reads as under:

The certificates relied upon by the respondent-driver would show that he studied from 6th to 10th class during the years 19.6.1973 to 5.7.1978 in ZPSS Gowthampur, Kothagudem, Khammam District. He is in a position to produce the study and conduct certificate as well as the transfer certificate issued by the said school. The respondent also filed the memorandum of marks for failed candidates issued by the Board of Secondary Education, Andhra Pradesh. The said certificate however, does not contain the date of birth as reflected in the certificates issued by the ZPSS Gouthampur, Kothagudem, Khammam District.

It is not open to the appellant-company to lightly brush away the certificates issued by the ZPS School. In the event the appellant_company entertains any doubt about the genuineness of the certificates produced by the respondent-driver, it is always open to it to verify the same. However, the mere fact that the respondent-driver did not produce the said certificates at the time of his entry into service cannot be treated as a ground to reject the said certificates for the purpose of determination of his age.

C) The judgment of the Full Bench of High Court of Jharkhand in Kamta Pandey vs. BCCL through Chairman-cum-Managing Director & Others, dated 08.08.2007 reported in (2007) Law Suit Jharkhand 526.

"26. One other point, incidentally, raised by the respondents is that the dispute over date of birth

cannot be raised at the fag end of service. The counsel for the respondents cited the following authorities of the Supreme Court

- (i) 1994 Supp (1) SCC 155 Secretary and Commissioner, Home Department and Ors. v. R. Kirubakaran
- (ii) Burn Standard Co. Ltd. v. Dinabandhu Majumdar (1995 (3) SCR 702
- (iii) (1995) Supp. (2) SCC 598 Bharat Coking Coal Ltd. v. Presiding Officer and Anr.
- (iv) , Hindustan Lever Ltd. v. S. M. Jadav and Anr. 2001(1) LLJ 1695
- (v) AIR 2001 SC 72 : 2001 (2) JCR 251 (SC), G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushand and Ors.
- (vi) State of U.P. and Ors. v. Gulaichi 2003 AIR (SC) 4209
- (vii) (2005) 12 SCC 201 Coal India Ltd. v. Ardhendu Bikas Bhattacharjee and Ors.
- (viii) State of U.P. v. Shiv Narain Upadhyay

27. In these decisions, though it is observed that the employee will not normally be permitted to apply for change of his date of birth at the fag end of his service career, the Supreme Court clearly held that if the Court is 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 when a clear case, relating to the date of birth, is made out on the basis of clinching materials, then necessary direction to make a declaration of the said date of birth can be given.

28. In this case, as indicated above, it cannot be said that the claim has been made only at the fag end of the service. On the other hand, some of the records of the Company, like Identity Card and Seva Ab-hilekh, which have been issued immediately after appointment, would indicate that his date of birth had been mentioned as 1.7.1951 as reflected in the Matriculation Certificate. Therefore, above decisions cited by the counsel for the respondents dealing with claim at the fag end would not be of any help to the respondents.

29. In view of the above discussion, our answer to the question raised in this case is as follows:

The date of birth recorded in the Matriculation Certificate duly authenticated by the Education Board is a conclusive proof of age and no other records, including service records as both the parties are governed by Implementation Instruction No. 76 of National Coal Wage Agreement III.

30. In the light of the above answer, we think it fit to give a direction to Bharat Coking Coal Limited to make necessary correction in the date of birth in the petitioner's service records as 1.7.1951 as per the Matriculation Certificate and pass consequential orders.

This writ petition is, thus, allowed.

10. Taking into consideration the above referred facts and circumstances and the law laid down in the judgments referred to and extracted above duly taking into consideration the fact that petitioner superannuated on attaining the age of 60 years in the year 2015, the prayer of the petitioner for setting aside the Age Assessment Report passed by the 3rd Respondent in proceedings reference No.SRP/PER/15-031/3972, dated 14.09.2015 is to be limited only to the extent of the benefits, which the petitioner would eventually get, in the event, the petitioner would succeed in favourably resolving the dispute of date of birth on due enquiry to be conducted by the Respondent Authority, therefore, the order impugned in proceedings reference No.SRP/PER/15-031/3972,

dated 14.09.2015 is set aside and the writ petition is allowed. This Court, however, makes it clear that it has not expressed any opinion in so far as the merits of the claim of the petitioner that the petitioner's date of birth is 04.03.1962 instead of 15.06.1953 as entered in the Service Records. Though the impugned Age Assessment Report is dated 14.09.2015 yet, the Respondents are however, directed to reconsider the whole issue by giving due opportunity to the Petitioner in compliance with principles of natural justice and take a decision afresh in the matter within a period of four weeks from the date of receipt of the copy of the order, in accordance to law, duly communicating the said decision/reasoned order, to the petitioner and thereby, resolve the dispute of the Petitioner pertaining to the issue of date of birth of the Petitioner. However, there shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 09.12.2022

Note : L.R. copy to be marked

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