

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****W.P. No. 8715 of 2020**

Between:

Kambam Venkata Rao

... Petitioner

And

The Chairman and Managing Director,  
Singareni Collieries Company and others

... Respondents

JUDGMENT PRONOUNCED ON: 01.11.2022

**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  
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : yes

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 8715 of 2020**

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Singareni Collieries Company and others

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< Gist:

> Head Note:

! Counsel for the Petitioners : Mr Sriman

^Counsel for the Respondents:  
Standing counsel for respondents

? Cases Referred:

(2011) 9 SCC page 664,

(2016) 15 SCC 781,

(2020) 3 SCC 411,

[(2005) 11 SCC 477 : 2006 SCC (L&S) 106],

[1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828]

(2011) 9 SCC 664

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 8715 of 2020**

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

**2. PERSUED THE RECORD :****FACTS NOT IN DISPUTE:**

3. The Petitioner joined the Respondent organization on 03.04.1986 as Floating Badli Filler on Piece-Rated wages. At the time of Petitioner's appointment, Petitioner's age is fixed at 26 years as on 03.04.1986 by the Respondents basing on assessment done by the Medical Officer. The Petitioner passed SSC examination conducted by the Board of Secondary Education, Andhra Pradesh in the month of October 1986 and thereafter Petitioner made a representation to the Respondents to correct the Petitioner's date of birth as per the entry in the Secondary School Certificate i.e., 09.02.1963. The Director (P,A&W) vide its ref. No.GC/BPA35/90/969, dt. 31.03.1990 informed that the case of the Petitioner will be examined in terms of Memo of Settlement dt. 12.03.1990 and Petitioner was advised to approach General Manager,

Bellampalli. The 5<sup>th</sup> Respondent issued Notice vide Ref.No.KGM/JVR/MGR/WO/PF/270 /1237, dt. 20.03.2020 informing the Petitioner that the Petitioner is going to complete 60 years as on 30.04.2020 and 30.04.2020 is the last working day to the Petitioner. The 4<sup>th</sup> Respondent issued removal notice vide Ref.No.KGM/JVR/MGR/ WO/PF/270/1333, dt. 01.04.2020 informing the Petitioner that after working hours of 30.04.2020 the name of the Petitioner will be removed from the company rolls.

**4. Counter affidavit filed on behalf of the Respondents filed on 10.09.2020 with certain documents, paras 6, 7 and 8 read as under :**

***Para 6 :** In this connection, it is submitted that the petitioner was appointed in the Company as Badli Coalfiller on 13.05.1980 At the time of his appointment, the petitioner could not submit any proof for his age/date of birth. As per the rules of th respondent company, he was referred to Colliery Medic Officer for assessment of his age/date of birth. The Collicery Medical Officer has assessed his date of birth as 26 years as on 03.04.1986 and accordingly the petitioner's date of birth was recorded in the service book as well as in the Initial Medical Examination report (Form-O) as 26 years as on 03.04.1986 is his date of appointment and based on which he was issued one month advance superannuation notice at his place of work Le.. JVR OCP, Sathupalli in Kothagudem area. It is pertinent to mention that the petitioner himself has agreed that he did not submit any proof of his age/date of birth at the time of his appointment.*

***Para 7 :** In reply to averments in para 4 it is submitted that in reply to his representation submitted to the Director*

*(P.A&W). the petitioner was informed that his case will be examined in terms of memo. Of settlement dated 12.03.1990 and was advised to approach General Manager, Bellampalli Area, but the petitioner has not approached the General Manager, Bellampalli Area with regard to correction of his age/date of birth. The petitioner's claim that he has approached the General Manager, Bellampalli Area for correction of his date of birth and subsequently claiming that his date of birth has been altered as 09.02.1963 is not true and it is denied and the petitioner is put to strict proof of the same. As per the JBCCI guidelines, the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Institutions 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.*

**Para 8 :** *In reply to averments in Para 5, it is submitted the petitioner has appeared as private candidate for SSC examination in October 1986, whereas he has appointed in the respondent company on 13.05.1986 which indicates that the petitioner did not produce any proof of his age/date of birth at the time of his appointment and he admitted the same. Due to non-submission of any proof to his age/date of birth, the petitioner was referred to Colliery Medical Officer for assessment of his age. Accordingly, the Colliery Medical Officer has assessed the age of the petitioner to be 26 years as on 03.04.1986, to which the petitioner has agreed and joined in the respondent company. As per the JBCCI guidelines, the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Institutions 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. The Petitioner has passed SSC after his appointment in the Respondent Company and as such, his request for change of date of birth as per his SSC Certificate was not considered. Further, while verifying the service records of the petitioner, it was noticed that there was difference in date of birth of the Petitioner in the Employee Personal Record and Service book and clarification was sought from the higher authorities in this regard. The*

*competent authority, vide letter No. CRP/PER/PM/4/EPR/563, dt. 11.04.2020 has clarified and confirmed the correct date of birth of the petitioner as 03.04.1960 and also advised to correct the date of birth of the petitioner in all the records of the respondent company accordingly. Based on the above, the petitioner was issued one month advance notice of superannuation vide letter no. KGM/JVROC.I/MGR/PF/270/1333, dtd. 01.04.2020 informing him that he would be attaining the age of superannuation on 30.04.2020 and to which the petitioner has received the letter and acknowledged the same. Accordingly, the petitioner has retired from the services of the company after the duty hours of 30.04.2020. Subsequent to this, the petitioner has received all his Terminal Benefits as follows.*

CMPF	:	Rs. 15,18,213.00
Pension	:	Rs. 16,187.00 (Per Month)
Gratuity	:	Rs. 15,19,231.00
FBIS (A)	:	Rs. 11,856.00

#### **DISCUSSION & CONCLUSION :**

**5. The main contention of the Petitioner is that in pursuance to the letter of the Director dated 31.03.1990, in response to the petitioner's representation to correct the petitioner's date of birth as per the entry in the Secondary School Certificate i.e., 09.02.1963, the petitioner met the General Manager and the date of birth of the petitioner is corrected as 09.02.1963 and this correction is entered in the Service Register of the petitioner and the retirement of the Petitioner is due in the month of February, 2023. This contention of the petitioner is specifically denied in**

para 7 of the counter affidavit filed on behalf of the respondents on 10.09.2020 (extracted above) and it is stated that it is totally incorrect to state that the petitioner approached the General Manager, Bellampalli area for correction of his date of birth and further that his date of birth is altered as 09.02.1963 in the Service Register. In fact, at para 8 of the counter affidavit (extracted above), it is specifically pleaded that while verifying the service records of the petitioner it was noticed that there was difference in date of birth of the petitioner in the employee personal record and service book and clarification was sought from higher authorities in this regard and further the competent authority, vide letter No. CRP/PER/PM/4/EPR/563, dt. 11.04.2020 has clarified and confirmed the correct date of birth of the petitioner as 03.04.1960 and also advised to correct the date of birth of the petitioner in all the records of the respondent company accordingly.

6. The very fact that the Petitioner did not chose to challenge the letter dated 11.04.2020 vide Ref. No. CRP/PER/PM/4/EPR/563, after having acknowledged

the same itself indicates that the present writ petition is only an afterthought of the Petitioner after his due retirement on 30.04.2020. There is no material on record i.e., a representation or notice or any communication filed by the Petitioner to establish that the petitioner corresponded with the Respondent authorities for correction of date of birth except for the letter dt. 31.03.1990 of the Director (P, A&W) issued by the Director to the Petitioner, informing the Petitioner to meet the General Manager, Bellampalli, for correction of Petitioner's date of birth.

7. A bare perusal of Clause B of Implementation Instruction No. 76 of the Joint Bipartite Committee for Coal Industry (JBCCI) which deals with the procedure in determination of the age/date of birth at the time of appointment or in respect of existing employees reads as under :

*(B) Review/determination of date of birth in respect of existing employees :*

*(i) a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Institutions*



*and admit cards issued the aforesaid Bodies should be treated as correct 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.*

8. Here even as per the petitioner's own affidavit, it is averred at para 3 that the petitioner joined the respondent organization on 03.04.1986 and thereafter, in the month of October, 1986 the Petitioner passed SSC examination conducted by the Board of Secondary Education, Andhra Pradesh. Therefore, as per Clause-B the petitioner's SSC certificate cannot be relied upon by the petitioner.

9. In the case of State of M.P. v. Premlal Shrivastava, reported in (2011) 9 SCC page 664, in paragraph 8 and 12, it is observed and held as under:—

*"8. It needs to be emphasised 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."*

10. In the case of Life Insurance Corporation of India v. R. Basavaraju (2016) 15 SCC 781, it is observed as under:—

*"5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and*

*accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement"*

11. In the case of M/s Bharat Coking Coal Limited v. Shyam Kishore Singh reported in (2020) 3 SCC 411 - of which one of us (Justice A.S. Bopanna) was a party to the bench has observed and held in paragraph 9 & 10 as under:—

*"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 the case of State of Maharashtra v. Gorakhnath Sitaram Kamble (2010) 14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:*

*"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 [(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.*

12. In another judgment in 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 of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

13. 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* [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] 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 promotion 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."*

14. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P. v. Premlal Shrivastava*, reported in (2011) 9 SCC 664 - it is held as hereunder:—

*" It needs to be emphasised 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 sleepover their rights" (see Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993)."*

15. In view of the fact that there is no request on behalf of the Petitioner for correction of date of birth in pursuance to the letter of the Director dated 31.03.1990, nor Petitioner has filed any representation, legal notice or correspondence or any material on record in this regard evidencing the steps initiated from his end for correction of Petitioner's date of birth anytime after 31.03.1990, it is evident that Petitioner's request by filing the present Writ Petition for the relief as prayed for herein is only an afterthought entertained by the Petitioner at the fag end of his career, more so when admittedly the Petitioner did not chose to challenge the letter of the Competent Authority dt. 11.04.2020 which clarified and confirmed the correct date of birth of the Petitioner as 03.04.1960 vide Ref.No.CRP/PER/PM/4/EPR/563 after having acknowledged the same.

16. Taking into consideration the circumstances referred to and discussed above and also Clause-B of Implementation Instruction No.76 of the Joint Bipatriate Committee for Coal Industry (JBCCI) and the fact that the petitioner passed SSC examination subsequent to joining the respondent organization as per the petitioner's own averments in the affidavit filed in support of the present Writ Petition and duly considering the law laid down by the Apex Court on the subject issue in State of M.P. v. Premlal Shrivastava, reported in (2011) 9 SCC page 664, Life Insurance Corporation of India v. R. Basavaraju reported in (2016) 15 SCC 781, M/s Bharat Coking Coal Limited v. Shyam Kishore Singh reported in (2020) 3 SCC 411, State of Uttaranchal v. Pitamber Dutt Semwal reported in (2005) 11 SCC 477 : 2006 SCC (L&S) 106], Home Deptt. v. R. Kirubakaran reported in 1994 Supp (1) SCC 155 referred to, discussed and extracted above this Court opines that the petitioner is not entitled for the relief as prayed for in the present Writ Petition and the same is dismissed.

Miscellaneous petitions, if any, pending shall stand dismissed.

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**SUREPALLI NANDA, J**

Date: 01.11.2022

Note: L.R. Copy to be marked  
b/o  
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