

Ram Nihora Singh Vs. Bharat Coking Coal Ltd. and Ors

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Court : Jharkhand

Decided On : Jul-26-2017

Appellant : Ram Nihora Singh

Respondent : Bharat Coking Coal Ltd. and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6783 of 2007
----- Ram Nihora Singh, son of Late Ram Charitra Singh, resident of - Ghurni Joria, Near Check Post, B.C.C.L. Colony, P.O & P.S. - Bank More, Dhanbad, District - Dhanbad. ... Petitioner Vs. 1.Bharat Coking Coal Limited through its Chairman-cum-Managing Director having its office at Koyala Bhawan, Koyala Nagar, Dhanbad 2.Director (Personnel) Koyla Bhawan, at (P.O) District: Dhanbad 3.The General Manager, Kusunda Area of BCCL, P.O - Kusunda, District - Dhanbad. 4.Deputy Chief Personnel Manager, Kusunda Area of BCCL, P.S. - Kusunda, District - Dhanbad. 5.The Project Officer, Kusunda Colliery of Bharat Coking Kusunda Area, P.S. Kusunda, District: Dhanbad. Respondents -----
CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Mrinal Kanti Roy, Advocate. For the Respondents : Mr. Amit Kumar Sinha, Advocate. ----- 07/ Dated:

26. h July, 2017 Per Pramath Patnaik, J.: In the instant writ application, the petitioner has inter alia prayed for quashing letter dated 31.10.2007 whereby the petitioner was informed that he would be attaining the age of sixty years on 28.02.2008 and hence he would be retired with effect from that date and further

prayer has been made for direction upon the respondents to correct the date of birth in conformity with the entry made in statutory Form-B record and NEIS (Non-Executive Information System).

2. Learned counsel for the petitioner submits that the petitioner was employed in BCCL as an Electrician in the year 1971. In the year 1987, he was issued service excerpts by the Management giving his personal details, wherein rightly his date of birth was given as 20 years as on 01.01.1977 meaning thereby his date of birth was 01.01.1957. Thereafter, the management prepared a Centralized Service detail of employees, which was known as Non-Executive Information System (in short 'NEIS'), wherein also his date of birth was shown as 01.01.1957 and basis of entry in NEIS was stated to be Form-B register. Learned counsel for the petitioner further submits that because of entry made in service excerpt and NEIS, the petitioner has every reason to believe that he is going to retire in the year 2017. But, the all of a sudden, the petitioner was served with a letter dated 31.10.2007 informing him that he is going to superannuate w.e.f 28.02.2008 on completion of age of sixty years. Learned counsel for the petitioner submits with vehemence that service excerpts and NEIS, the basis of which is statutory Form-B register, is the documents prepared and maintained by the respondents-Management, which the respondents cannot deny. In such view of the matter, the impugned letter dated 28.02.2008 is bad in law and is liable to be quashed.

3. As against this, learned counsel appearing for the respondents- BCCL submits that there is no dispute relating to date of birth of the petitioner, as it has consistently been recorded as 01.02.1948, which has duly been acknowledged by the petitioner. Learned counsel for the respondents submits that at the time of initial appointment, the date of birth of petitioner was recorded in Old Form-B Register as 01.02.1948, on which, for authentication, the petitioner has put his signature, as evident from Annexure A to the counter affidavit. Thereafter, when the petitioner was transferred from Industry Colliery to Dhansar Colliery, where also his date of birth in Form- B was recorded as 01.02.1948 and in token thereof, he again put his signature at the relevant place, as evident from Annexure B to the counter affidavit and thereafter again on transfer to other collieries, his date of birth was recorded as 01.02.1948 in Form-B Register and declaration that the contents

in the Form are correct, the petitioner put his signature without any demur. Learned counsel for the respondents further submitted that entries made in N.E.I.S does not have any statutory force, hence, the entries made therein, which is not made on the basis of Form-B Register, is not acceptable and the entries made in Form-B register is binding on the parties.

4. On perusal of record, it is manifestly clear that consistently the date of birth of the petitioner has been recorded as 01.02.1948 in Form - B register and the petitioner on all the Form-B register has put his signature, thereby he accepted the contents made therein. It is now no more res-integra that in absence of matriculation certificate, Statutory Form-B register is conclusive and the same is binding upon the parties. Further, it is also settled principles of law that service excerpts have thinner force of law in comparison to Form - B Register and further service excerpts cannot override Form B. So far contention of the petitioner that his date of birth recorded in NEIS was 01.01.1957 is concerned, the same is not tenable as it does not have statutory force whereas Form B Register as statutory force. For better appreciation, it would be apposite to refer the relevant statutory provision of law, i.e. Section 48 of the Mines Act, 1952 which is quoted herein below:

48. Registers of persons employed - (1)For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing in respect of each such person - (a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars as may be necessary for purposes of identification; (b) the age of and sex of the employees; (c) xxx xxx xxx (d) xxx xxx xxx (e) xxx xxx xxx

5. In the instant case, the petitioner has challenged for correction in date of birth at the fag end of service and on this score alone, this Court is not inclined to exercise the judicial discretion under Article 226 of the Constitution of India and it would be apt to refer the decision of the Hon'ble Apex Court in the case of Secretary and Commissioner, Home Department & Ors Vs. R. Kurubakaran as reported in (1994)Suppl 1 SCC155, wherein the Hon'ble Apex Court has been pleased to inter alia hold that whenever an application for alteration of date of birth is made on the

eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. Similar view has been taken by Hon'ble Apex Court in the case of State of Maharashtra & Anr Vs. Gorakhnath Sitaram Kamble & Ors as reported in (2010) 14 SCC423 and further in the case of State of T.N. vs. T.V Venugopalan as reported in (1994) 6 SCC302 wherein the Hon'ble Court has consistently the same and similar view that alteration in date of birth cannot be challenged at the fag end of service. Even otherwise also, if the date of birth of the petitioner is taken as 01.01.1957 then on the date of appointment in the year 1971, he was of 14 years of age, which is incredible on the part of petitioner to have entered services at such tender age. Hence, on that count also, the case of the petitioner does not warrant interference by this Court.

7. For the reasons aforesaid, the writ petition being devoid of any merit, is dismissed. (Pramath Patnaik, J.) Alankar/-

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