

Vijay Kumar Vs. The Central Coalfield Limited Through Its Chief Manager M P and Rectt and Ors

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Court : Jharkhand

Decided On : Sep-14-2017

Appellant : Vijay Kumar

Respondent : The Central Coalfield Limited Through Its Chief Manager M P and Rectt and Ors

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI W.P.(S) No. 1078 of 2017
Vijay Kumar, son of Late Sukhdeo, resident of Village Bhatabodaya, P.O.Baroudi, P.S.Burmu, District Ranchi. Petitioner Versus 1.The Central Coalfields Limited, through its Chief Manager (M.P.& Rectt.), having office at Darbhanga House, P.O.G.P.O., P.S.Kotwali, Town & District Ranchi 2.The Head of Department (M.P/R), Central Coalfields Limited, having office at Darbhanga House, P.O.GPO, P.S.Kotwali, Town & District Ranchi 3.The Project Officer, Urimari Project, Barka Sayal Area, Central Coalfields Limited, having office at P.O.Sayal, P.S.Urimari, District Hazaribagh 4.The Staff Officer (P&A), Barka Sayal Area, Central Coalfields Limited, having office at P.O.Sayal, P.S.Bhurkund, District Ramgarh . Respondents
CORAM : HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR
For the Petitioner : Mr. Manoj Tandon, Advocate Mr. Ranesh Anand, Advocate
For the Respondent CCL: Mr. Bhaiya Vishwajeet Kumar, Advocate 6/ 14.09.2017
Petitioner's claim for compassionate appointment has been regretted on the

ground that on the date of submission of application, he had crossed the age of 35 years which is the maximum age provided for employment under the respondent M/s Central Coalfields Limited. In the present proceeding, the petitioner has challenged communication dated 14.09.2015 and the consequential order dated 08.12.2016 declining compassionate appointment to him. 2. The issue involved in this writpetition is, whether date of birth recorded in the Matriculation or other equivalent examinations would take precedence over the age of a claimant 2. recorded in the service excerpt and/or age determination by the Medical Board? 3. Petitioner's father, who was a WagonLoader at Barka Sayal Area, died on 18.06.2014. Petitioner's mother submitted an application on 03.07.2014 for compassionate appointment to the petitioner. The petitioner claims that he has also submitted another application on 03.09.2015. He was medically examined for age assessment and he was found aged about 3540. His age was assessed by the Medical Board on 15.09.2016. The respondents have pleaded that age of the petitioner recorded in the service excerpts of his father indicates that as on 01.04.1987, he was 8 years old and accordingly, on 03.07.2014 when his mother submitted application for his compassionate appointment he had already attained age of 35 years 3 months and 2 days. In the company's records age of the petitioner recorded in LLTC Option Form is 35 years 2 months 21 days, in LTC FormA 35 years and 29 days and in P.S.3 Form 36 years 1 month and 5 days, as on 03.07.2014. Accordingly, he has been found ineligible for appointment under M/s Central Coalfields Limited as he had already crossed the maximum age for employment under the company. 4. Mr. Manoj Tandon, the learned counsel for the petitioner contends that the discrepancies in the service record of petitioner's father are liable to be ignored, for he was illiterate who has just put his thumb impression in the service excerpt which was prepared on 31.08.1987. It is contended that the 3. Matriculation certificate issued from Hindi Sahitya Sammelan, Allahabad in which petitioner's date of birth is recorded as 20.06.1984 must be held conclusive proof of petitioner's age and the service record of his father which contains different dates of birth of the petitioner must be ignored. 5. Implementation Instruction no.76 contained in National Coal Wage Agreement lays down procedure for determination of date of birth of an existing employee. It reads as under: Procedure for Determination/ Verification of age of Employees (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, 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 Exservicemen 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 Exservicemen who have passed Matriculation examination, the date of birth 4. 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 Office 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. (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 recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction 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. i) b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic. Provided that where both documents mentioned in (i)(a) and (i) (b) above are available, the date of birth recorded in (i)(a) will be treated as 5. authentic. ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate

action for correction through Determination Committee/ Medical Board. (C) Age Determination Committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the company, namely, Form B register, CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/ Medical Board constituted by the Management for determination of age. 6. A perusal of the above Instructions makes it abundantly clear that at the time of appointment age of an appointee, who has passed Matriculation or equivalent examinations, recorded in the such certificate shall be treated as correct date of birth. The communication dated 14.09.2015 vide Annexure5 would disclose that the petitioner produced the Matriculation certificate issued from Hindi Sahitya Sammelan, Allahabad. It is further revealed that the respondent authority has accepted that date of birth of the petitioner recorded in the said certificate brings his age within the prescribed age limit. In *Kamta Pandey vs M/s BCCL through 6. Chairman cum Managing Director, Dhanbad & Ors.* reported in 2007 (3) JLJR 726, a Full Bench of this Court has held that the date of birth of an employee recorded in the Matriculation certificate, if issued prior to entering into the service, would be a conclusive proof of date of birth of the employee. A similar view has been taken by the Division Bench in *Bharat Coking Coal Limited and Others vs Chhota Birsa Uranw* reported in 2010 (4) JCR 509(Jhr), which was affirmed by the Supreme Court in *Bharat Coking Coal Limited and Others vs Chhota Birsa Uranw* reported in (2014) 12 SCC 570. 7. The learned counsel for the respondent Central Coalfields Limited has contended that the Matriculation certificate issued from Hindi Sahitya Sammelan, Allahabad is not a valid certificate and therefore, date of birth of the petitioner recorded therein must be ignored. 8. Whether a degree is recognized by the respondent company or not, is an altogether different issue. The date of birth recorded in such certificate cannot be ignored because the Matriculation certificate produced by the petitioner has not been found a fake certificate. Moreover, the respondent Central Coalfields Limited has not produced a notification whereunder Matriculation certificate issued from Hindi Sahitya Sammelan, Allahabad has been declared inadmissible. The

respondent company is bound by its own Instructions. Implementation Instruction no.76 which deals with the procedure for age determination of a Matriculate at the time of appointment would 7. be equally applicable in the case of the petitioner, for he is a claimant for compassionate appointment and his age is determined for ascertaining his eligibility at the time of appointment. The age determined by the Medical Board is not conclusive and the wide range in age indicated by the Medical Board renders its opinion useless for the present purpose. When each month and each day becomes crucial, on the basis of age assessment of the petitioner by the Medical Board, his claim for compassionate appointment cannot be declined. Moreover, under Implementation Instruction no.76 only an existing employee can be directed to undergo age determination by the Medical Board. Different dates of birth of the petitioner recorded in service records of his father are also equally liable to be ignored, in particular, in view of the Matriculation certificate produced by the petitioner. 9. In view of the aforesaid discussions, the impugned communications dated 14.09.2015 and 08.12.2016 are quashed. The writpetition stands allowed. Within six weeks' the Project Officer, Urimari Project, Barka Sayal Area, Central Coalfields Limitedrespondent no.3 shall call upon the petitioner to produce necessary documents, if any required for his appointment on a suitable post. (Shree Chandrashekhar, J.) SI, ,

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