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Court : Jharkhand

Decided On : Nov-18-2017

Appellant : Anandi Ram

Respondent : Ms Bharat Cocking Coal Limited Through Its Managing Director and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6485 of 2013
Anandi Ram Petitioner Versus M/s Bharat Cocking Coal Limited, a Subsidiary of Coal India Limited, Dhanbad through its Managing Director and others
Respondents ----- CORAM: HONBLE MR. JUSTICE ANIL KUMAR CHOUDHARY
----- For the Petitioner : M/s A.K. Sahani & Mahesh Tiwari, Advocates For the BCCL : M/s Indrajit Sinha & K.Panda, Advocates ----- 5/18.11.2017 Heard the parties.

2. This writ application has been filed by the petitioner with a prayer to quash the letter/notice issued under Memo No 805 dated 29.5.2013 (Annexure-2) by respondent no. 4, whereby and whereunder, respondent no. 4 has according to the petitioner illegally and arbitrarily fixed 31.10.2013 as the date of superannuation of the petitioner ignoring the actual date of birth entered in the service book and other allied documents.

3. Learned counsel appearing for the petitioner submits that though in paragraph-10 of the counter affidavit, it has been mentioned that the petitioner was much qualified and Form-B Register was duly signed by the petitioner but from page-14 (Annexure-A) of the counter affidavit, it appears that the petitioner has put thumb impression in the signature or thumb impression column of the said register which shows that he is an illiterate person. Learned counsel for the petitioner further submits that Annexure-1, which is the Identity Card issued by the respondents, shows the date of birth of the petitioner to be 10.10.1958 and Annexure-4, which is the information, supplied by the respondent no. 4 under Right to Information Act, shows the date of appointment of the petitioner as 30.10.1980 and in the information furnished by Maheshpur Colliery the date of birth has been mentioned as 22 years in the year 1980, which fact supports the claim of the petitioner that his date of birth is 10.10.1958. Further, vide Annexure-4, respondent no. 4 has also informed that the date of birth of the petitioner has been mentioned as 10.10.1958 in the following documents:- (i) second Form-B Register; (ii) CMPF Register; (iii) Identity Card; (iv) Service Record and (v) List of employees sent by Govindpur Colliery to the System Department of BCCL-respondent no.

1. 4. The learned counsel for the petitioner relying upon the judgment rendered by the Full Bench of this Court in the case of Kamta Pandey Vs. M/s B.C.C.L. through its Chairman-cum-Managing Director, Koyla Bhawan, Koyla Nagar, Dhanbad & Ors. reported in 2007 (3) J.L.J.R. 726 in paragraph-14, of which it has been held as under :- the Instruction No. 76 of National Coal Wage Agreement-III is applicable to the respondent-Company as well as to the petitioner. In fact, there is no dispute over the applicability of provisions of Instruction No. 76 of National Coal Wage Agreement-III in this case as the same has been admitted by the counsel for the respondents also. The Instruction No. 76 of National Coal Wage Agreement-III dated 24.5.1988 is a Bilateral Agreement between the Company and the Union and this deals with the procedure for verification of the age of the employees. submitted that the documents filed by the petitioner justifies determination of the date of birth of the petitioner by Age Determination Committee/Medical Board in terms of Instruction No. 76 of National Coal Wage Agreement-III.

5. The learned counsel for the petitioner further placed the relevant portion of the Implementation Instruction No. 76 which reads as under:- B. Review determination of date of birth in respect of existing employees. i)a) In case of existing employees matriculation certificate or Higher Secondary Certificate issued by the recognized University or Board or Middle Pass certificate issued by the Board of Education and/ or Department of Public Instruction and admit cards issued by aforesaid Bodies should be treated as correct provided they were issued by the University/Board/.Institution 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 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. (D) For determination of the age, the Committee/Medical Board referred to above may consider the evidences, available with the Colliery Management and/or adduced before the employees concerned. (E) Medical Board constituted for determination of age will be required to assess the age in accordance with the requirement of Medical Jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed and not approximately. (F) Where the Management (i.e.) Area Age Assessment Committee consisting of General Manager, Personnel Manager and Medical officer-in-charge of the Area is satisfied that there is a glaring disparity between the date of birth recorded in the identity cards and the

apparent age of the employees, the cases may be referred to the Apex Medical Board located at Headquarters of the company for determination of age. (H) After the assessment of the age by the Age Determination Committee/ Medical Board the same will be computerised and print out of the same will be given to the employee concerned and the unit from where the reference was received within a month. If age is not, however, computerised, still the same will be intimated to the employee concerned and the Unit within a month.

6. Learned counsel for the respondents also admits that there is no dispute over the applicability of the provision of Implementation Instruction No. 76 to the petitioner.

7. In view of the above, learned counsel for the petitioner modifies his prayer by submitting that respondent no. 4 be directed to constitute the Age Determination Committee/Medical Board in terms of Implementation Instruction No. 76 and in accordance with the procedure for determination or verification of age of the petitioner so that his age be determined.

8. Learned counsel for the respondents has no objection to it.

9. Considering the aforesaid facts and circumstances of the case, this writ petition is disposed of with the following directions:- (i) The respondents are directed to constitute the Age Determination Committee/Medical Board in terms of Implementation Instruction No. 76 within three months from the date of this order and the Age Determination Committee/Medical Board will determine the age of the petitioner and will intimate the date of the birth of the petitioner so determined in terms of Implementation Instruction No. 76 to the respondents within one month of its constitution. (ii) The respondents are directed to act upon the date of birth arrived at by the Age Determination Committee/Medical Board within two months of receiving the report regarding date of birth of the petitioner. (iii) In case, the date of birth of the petitioner is determined as 10.10.1953, then respondents are directed to pay all post retirement dues payable to the petitioner as per law within three months from the date of report. (iv) In case, the date of birth of the petitioner is determined as any date other than 10.10.1953, then respondents are directed to accept the same and intimate the same to the petitioner and to give all such

benefits to the petitioner to which he would have been entitled had his date of birth been the date of birth which is determined by Age Determination Committee/Medical Board. (Anil Kumar Choudhary, J.) AKT

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