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Court : Chhattisgarh

Decided On : Aug-21-2014

Judge : Prashant Kumar Mishra

Appeal No. : W.P. (S) No. 4161 of 2012

Appellant : Sampat Kumar Chauhan

Respondent : South Eastern Coal Field Limited and Others

Judgement :

Oral Order:

1. Heard learned counsel for the parties.
2. In this petition under Article 226 of the Constitution of India the petitioner has called in question the impugned decision of the South Eastern Coalfields Limited (for short, SECL) taken on 27/08/2012 vide Annexure P/1 refusing his prayer for correction of entry of his date of birth in the service record.
3. Petitioner joined the service with SECL on 14/12/1975 as Electrical Helper Category-II. In due course he was promoted and on the date of filing of petition he was working as Electrical Supervisor (Foreman) at Rajnagar Colliery, Hasdeo Area, Anuppur. In the year 1992 petitioner was supplied service certificate under the signature of personnel officer, Rajnagar R.O. Colliery of SECL mentioning his date of birth as 23/01/1955, which is also his recorded date of birth in the

matriculation certificate, however, in the B Form maintained by the SECL, his date of birth was mentioned as 14/12/1952 therefore, the petitioner submitted a representation for correction of date of birth vide Annexure P/6 on 14/07/1998. When no action was taken for correction of his date of birth, petitioner again submitted representation on 15/10/2005 vide Annexure P/7; with this representation petitioner annexed Rashtriya Vyavasayik Praman Patra, Higher Secondary School Certificate and the trainee certificate, however, yet again no action was taken, therefore, petitioner preferred another representation on 25/08/2009 Annexure P/8.

4. Petitioner preferred W.P.(S) No. 6472/2009 seeking correction of date of birth and the said writ petition was disposed of on 16/04/2012 by referring the matter to the Age Determination Committee (for short, ADC) for determination of age/date of birth of the petitioner under Implementation Instructions No. 76 (henceforth, I.I. No. 76). Pursuant to the said direction petitioner was sent to the ADC and thereafter the impugned order has been passed refusing to correct the entry concerning his date of birth in the service record.

5. Learned counsel for the petitioner would submit that rejection of his representation seeking correction of date of birth is mainly on the ground that in Form B register and nomination form, his date of birth is mentioned as 14/12/1952 and the petitioner has signed in both the documents authenticating the entries made therein and further that the entry mentioning his date of birth as 23/01/1955 in the service register is in the red ink whereas other entries in the said register are in blue ink, and in different handwriting, therefore, the same is not believable. According to SECL, the mistake is in the service register and not in the Form B.

6. Learned counsel for SECL would oppose the prayer made in the writ petition. He would submit that since Form B register and the nomination form was authenticated by the petitioner by putting signature, he is estopped from challenging the said entry. He would also submit that the prayer for correction has been made at the fag end of the service; therefore, the writ petition deserves to be dismissed.

7. True it is that the Supreme Court has consistently held that prayer for correction in the entry concerning date of birth should be made at the earliest when the said incorrect entry came to the notice of the employee and he should not be allowed to dispute the entry at the fag end of service, however, in the case in hand the petitioner was issued a service certificate on 23/09/1992 mentioning his date of birth as 23/01/1955 which he claims to be as his correct date of birth, therefore, till 1992 he was not aware of the fact that the entry in Form B register would prevail over the entry in service certificate. When this issue came to his notice in the year 1998 i.e. 14 years prior to his retirement, he submitted representation and thereafter kept on submitting representation in 2005 and 2009, however, steps were not taken by the SECL to correct the entry of his date of birth. Ultimately the petitioner had to prefer a writ petition wherein a direction was issued to the respondents to refer the matter to the ADC. It is this direction which has been complied with and after considering the matter order has been passed vide Annexure P/1 rejecting his claim for change in entry concerning his date of birth. Thus, in view of chronology of events, this Court is of the opinion that the petition does not suffer from delay and laches nor it is a case where the petitioner has raised the dispute at the fag end of the service.

8. Under clause (B) of I.I. No. 76, which deals with review determination of date of birth in respect of existing employees, it is provided that in the case of the existing employees Matriculation Certificate or Higher Secondary 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.

9. Learned counsel appearing for the petitioner would submit that despite the said clear instruction and despite the fact that the petitioner produced matriculation certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal, in the year 1974 wherein the date of birth of the petitioner is mentioned as 23/01/1955, the respondent SECL has rejected the petitioners prayer for correction of date of birth. Learned counsel would further submit that on the strength of law laid down by the Supreme Court in M/s Bharat Coking Coal Ltd. and others Vs. Chhota Birs Uranw, 2014 AIR SCW 2634, his prayer for correction

of date of birth deserves to be allowed.

10. In M/s Bharat Coking Coal Ltd. (supra), the Supreme Court while dealing with the I.I. No. 76 held thus:

11 Admittedly, the appellant as the employer in view of its own regulations being Implementation Instruction No. 76 contained in the National Coal Wage Agreement III, gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records. This initiative of the appellants clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify the same. Against this backdrop, the stance of the appellant that the records in the Form B register must be relied upon does not hold good as it is admitted by the appellant that errors existed in the same. Even a perusal of the nominee form exhibits the ambiguity regarding the date of birth and date of joining. It was due to the discrepancies which subsisted that the appellants gave all its employees a chance to rectify the same. In such circumstances, the appellants are bound by their actions and their attempt to deny the claims of the respondent is incorrect. The respondent in this case duly followed the procedure available and the attempt of the appellant to deny the claim of the respondent on the basis of technicality is incorrect. We, therefore, feel that the learned Single Judge has correctly held that:

11. Having given the petitioner, like all employees, the benefit of seeking correction of the entries contained in their service records including their date of birth, the petitioners claim cannot be denied, merely because he had signed upon the Form B Register at the time of its opening and containing the entry of date of birth as recorded therein.

(Emphasis supplied)

12. The appellant in the present case should have followed the procedure as laid down by Implementation Instruction No. 76 to determine the date of birth of an existing employee. The provisions of which read as follows:

(B) Review determination of date of birth in respect of existing employees.

(i)(a) In the case of the existing employees Matriculation Certificate of (sic: or) Higher Secondary Certificate issued by the recognized Universities of 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 Sardarship, winding engine or similar other statutory certificate 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, CMP 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 the determination of age.

(D) Age determination: by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or

(E) Medical Board constituted for determination of age will be required to manage (sic 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.

In another case, being G.M. Bharat Coking Coal Ltd. Vs. Shib Kumar Dushad (supra) where the date of birth of an employee of the Bharat Coking Coal was in dispute and the same set of instructions were applicable, this court referring to the Implementation Instruction held that:

20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board.

(Emphasis supplied)

13. We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in R. Kirubakaran Case, (AIR 1993 SC 2647:

1993 AIR SCW 3333) (supra). However, with an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public Corporations/Departments, should not benefit from their own omission of duty. In the present case, the appellant company failed to follow the procedure as laid down in the Implementation Instruction. It is the appellants omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such corporations wherein to avoid the rectification of a date of birth; litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.

14. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, legal inspector of the appellant company on September 6, 2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to implementation Instruction No.76 clause (I)(a) permits rectification of the date of birth by treating the certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words were issued was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.

(emphasis supplied)

11. In the present case the matriculation certificate was issued in 1974 whereas the petitioner joined the service in 1975. Thus, the petitioners case squarely falls within the sweep of clause (B)(i)(a) of the I.I. No. 76.

12. In a similar case i.e. W.P. No. 268 of 2004 (Amar Singh Vs. Sub Area Manager and Others) the coordinate Bench of this Court has allowed the writ petition on

14/09/2011 placing reliance on the matriculation certificate issued in favour of the writ petitioner herein. The said order passed by the learned Single Judge has been affirmed by the Division Bench of this Court on 28/09/2012 in Writ Appeal No. 559 of 2011 (Sub Area Manager and Others Vs. Amar Singh.).

13. In Manoj Kumar Vs. Government of NCT of Delhi and Others, (2010) 11 SCC 702, it has been held by the Supreme Court that the matriculation certificate is a strong material to prove the date of birth.

14. On the basis of provisions contained in I.I. No. 76 and the judgment rendered by the Supreme Court in the M/s Bharat Coking Coal Ltd. And Others (supra) it is manifest that when the petitioner is seeking correction of date of birth on the strength of matriculation certificate which was issued to him in the year 1974, much prior to joining his service in the December, 1975 and more so when the said date of birth has already been accepted by issuing a service certificate on 23/09/1992 Annexure P/5, the same ought to have been accepted and acted upon for making review/correction of date of birth in terms of clause (B) (i) (a) of I.I. No. 76 and by not doing so the respondents have committed serious illegality.

15. Accordingly, the respondents are directed to take steps to correct the petitioners date of birth as 23/01/1955 and correct the entry in his service book/service record. It is informed that on correction of his date of birth, the petitioner would be retiring in January 2015, therefore, the respondents directed to reinstate the petitioner in service and pay him all consequential benefits like arrears of pay, seniority etc. from the date he was made to retire till his date of joining pursuant to this order.

16. The writ petition is allowed to the extent indicated above.

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