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Court : Jharkhand

Decided On : Feb-02-2009

Reported in : [2009(1)JCR697(Jhr)]

Judge : R.R. Prasad, J.

Appellant : Phoolchand Tripathi

Respondent : Steel Authority of India Ltd. and ors.

Disposition : Petition dismissed

Judgement :

ORDER

R.R. Prasad, J.

1. It is the case of the petitioner that he had been appointed on 19.9.1972 on the post of Electrician in the Chasnala Colliery, a unit of Indian Iron and Steel Company. At the time of appointment, the petitioner had furnished his matriculation certificate showing date of birth as 3.7.1948 and hence, the petitioner was always under impression that the same date of birth has been recorded in the relevant records of the company. In course of time, the petitioner was given promotions and at every occasion, the concerned authority before giving promotion, used to scrutinize documents including educational certificate. But all on a sudden, the petitioner was served with a letter dated 31.3.2007 (Annexure-6)

intimating therein that the petitioner is to retire on superannuation on 30.9.2007 as he will be completing 60 years of age on 19.9.2007. Being shocked with the said communication, the petitioner immediately made representation before the respondent No. 3 that as per the age recorded in the matriculation certificate the petitioner is supposed to retire on 31.7.2008 and therefore, he may be allowed to work till that date. But no order was passed, in spite of repeated reminders being given to them and hence, there was no option left with the petitioner but to move this Court for quashing the order contained in Annexure-6 intimating therein about the date of superannuation as 30.9.2007 and also for a direction to the authority to accept the age of the petitioner as recorded in the matriculation certificate.

2. Learned Counsel appearing for the petitioner submits that as per the instruction No. 76(A) of NCWA-III, age of the employee shall be governed by the date of birth recorded in the matriculation certificate but the authority by giving complete go-bye to the said instruction made the petitioner to retire prematurely which is quite illegal, in view of the instruction No. 76(A) and also in view of the decision rendered by this Court in LPA No. 493 of 2006 and is also against the judgment rendered by the Full Bench of this Court in the case of Kamta Pandey v. Bharat Coking Coal Limited and Ors. , holding therein that the date of birth recorded in the matriculation certificate would prevail over any other document showing age of the petitioner and, therefore, the impugned order dated 31.3.2007 as contained in Annexure-6 is fit to be quashed and the petitioner is entitled to consequential relief.

3. However, the stand of the Steel Authority India Limited as has been made out in the counter-affidavit is that at the time of appointment, the petitioner had not produced any document whatsoever in proof of his age and, therefore, the petitioner was medically examined by the Medical Officer and age of the petitioner was assessed as 25 years as on 19.9.1972 and, accordingly, date of birth was recorded as 19.9.1947 in statutory Form B register which bears the signature of the petitioner indicating therein about the acceptance of the age by the petitioner at the time of appointment and accordingly, when the petitioner was intimated about the date of superannuation as 30.7.2007, controversy was raised that the petitioner's date of birth as per matriculation certificate is 3.7.1948, though such

certificate had never been produced by the petitioner and as such, the petitioner cannot take any advantage of that and under this situation, this writ application is fit to be dismissed.

4. Thus, the question falls for consideration as to which date of birth recorded in the matriculation certificate or in the statutory Form B register be treated to be the correct date of birth.

5. There has been no dispute that as per Instruction No. 76(A)(i) age of the appointee is to be determined on the basis of matriculation certificate but if a person is illiterate, then age of the appointee is to be determined by the Medical Officer. In the instant case, the petitioner does claim the age on the basis of date of birth recorded in the matriculation certificate but such certificate never seems to have been produced before the authority at the time of assessment of the age as had the said certificate been produced before the authority, the petitioner may not have been asked to get the age assessed by the Medical Officer. Further it does appear that when the age of the petitioner was assessed corresponding date of birth was entered into the statutory Form B register which seems to have been acknowledged by the petitioner as statutory Form B register bears the signature of the petitioner. But when the letter dated 31.3.2007 as contained in Annexure-6 was communicated to the petitioner at the fag end of his service intimating therein about the date of superannuation, controversy was raised and, therefore, the petitioner cannot be allowed now to raise the controversy relating to age. Under this situation, the ratio laid down by the Full Bench of this Court will not be helpful to the petitioner as in that case identity card issued to the petitioner was bearing the same date of birth as it was there in the matriculation certificate and even Seva Abhilekh contained the same date of birth, though it was different in statutory Form B register and under this situation, it was held that date of birth as recorded in the matriculation certificate would prevail over other document showing age of the person but, in the instant case, nothing seems to be there on the record to establish or even to suggest that the matriculation certificate was produced at the time of recording age. Almost in identical situation, this Court in a case of Nand Kishore Singh v. The Indian Iron and Steel Co. Ltd. and Ors. LPA No. 550 of 2006 was pleased to hold that date of birth cannot be allowed to be changed at the fag

end of the service when certificate showing different date of birth was never produced before the authority at the time of recording the age.

6. Thus, I do not find any merit in this writ application. Hence, it is dismissed.

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