

**Premrata Devi Vs. Central Coalfields Ltd. and Ors**

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**Court :** Jharkhand

**Decided On :** Aug-03-2015

**Appellant :** Premrata Devi

**Respondent :** Central Coalfields Ltd. and Ors

**Advocate for Def. :** Mr. Ananda Sen

**Advocate for Pet/Ap. :** Mr. Mahesh Tewari

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 3861 of 2009  
--- Premrata Devi wife of Late Deo Kumar Sharma resident of village Rewar, PO Dhamaul, PS Pakri Berma, District Nawada (Bihar) Petitioner Versus 1. Central Coalfields Ltd. through General Manager, (Personnel and Industrial Relation), Darbhanga House, Ranchi 2. Director (Personnel), Central Coalfields Ltd., Darbhanga House, Ranchi 3. Chief Medical Service Officer, Central Coalfields Ltd., Darbhanga House, Ranchi 4. Manager, Personnel, Central Hospitals, Nai Sarai, Central Coalfields Hq., Ramgarh Respondents --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : Mr. Mahesh Tewari, Advocate For the Respondents : Mr. Ananda Sen, Advocate --- 6/03.08.2015 The petitioner in this writ application has prayed for a direction upon the respondents to make correction in the date of birth of the petitioner from 05.03.1952 to 04.08.1957 as has been held by the Medical Board on examination of the petitioner on 04. 08. 1982.

2. The petitioner upon the death of her husband late Deo Kumar Prasad was appointed on compassionate basis on 04.08.1982 as a Piece Rated Worker vide letter dated 31.07.1982 and was posted in Sarubera Colliery. Since the petitioner was an illiterate lady and was not in possession of any documentary proof of date of birth, she was sent by the management to a duly constituted Medical Board, who on examination of the petitioner had assessed the age of the petitioner as 25 years as on 04.08.1982. The petitioner on coming to know that the respondents have treated her date of birth as 05.03.1952 on the basis of the Coal Mines Provident Fund records, agitated her grievance before the respondents, but the same was never considered. The petitioner therefore was constrained to move this Court for redressal of her grievances.

3. Heard Mr. Mahesh Tewari, learned counsel for the petitioner and Mr. Ananda Sen, learned counsel for the respondents - CCL.

4. Mr. Mahesh Tewari, learned counsel for the petitioner submits that the background for sending the petitioner before the Medical Board was that neither the petitioner had any proof of her date of birth -2- nor has any date of birth been assessed and entered in the statutory Form B Register maintained under the Mines Act. It has been submitted that the petitioner was appointed on 31.07.1982 whereas Medical Board had examined the petitioner on 04.08.1982 and in absence of any other concrete document to the contrary, the age assessed by the Medical Board has to be treated as a conclusive proof of age. It has further been submitted that the basis on which the date of birth of the petitioner has been treated as 05.03.1952 and by virtue of which the petitioner had already superannuated from service has not been disclosed by the respondents and only on the ground of a fictitious date of birth, the petitioner had been made to superannuate. The learned counsel for the petitioner has further referred to the excerpt of the service register which reflects two dates of birth, one on account of the age assessed by the Medical Board and the other on the basis of the CMPF records. Mr. Tewari has also submitted that in terms of the provisions of the Joint Bipartite Committee for the Coal Industry (in short 'JBCCI') which lays down that in case of an illiterate appointee, the date of birth will be determined by the colliery Medical Officer keeping in view any documentary and other relevant evidence as

produced by the appointee. It further mentions that the decision of the Medical Board shall be binding and final.

5. Mr. Ananda Sen, learned counsel for the respondents, on the other hand, has submitted that the petitioner has been superannuated from service on the basis of a date of birth existing in the CMPF records which is 05.03.1952. It has further been submitted that in the Form B Register maintained in Central Hospital, Nai Sarai, the date of birth of the petitioner has been entered as 05.03.1952. In such circumstances, learned counsel for the respondents submits that the petitioner has not made out a case for interference; and that during the pendency of the writ application, the petitioner has already superannuated from service. Moreover, learned counsel for the petitioner asserts that the dispute of date of birth had been raised by the petitioner towards the fag end of her service, which cannot be looked into by this Court.

6. Section 48 of the Mines Act, 1952 is with respect to maintaining statutory Form B Register in the mines. Surprisingly in the present case, no date of birth of the petitioner has been mentioned in the Form -3- B Register and being handicapped with the absence of recording of any date of birth in the Form B Register, this case has to proceed on the basis of the documents submitted by both the parties. Admittedly, the petitioner was issued an appointment letter on 31.07.1982 and immediately thereafter, the matter was referred to the Medical Board which assessed the age of the petitioner as 25 years as on 04.08.1982. The natural corollary flowing from such assessment of age by the Medical Board would have been to enter the date of birth of the petitioner in the statutory Form B Register. However, the register was kept blank and on the basis of a purported date of birth entered in the CMPF record i.e., 05.03.1952, the petitioner was superannuated from service. The respondents have failed to show as to under what circumstances 05.03.1952 was recorded in the CMPF records or for that matter in the Form B Register which has been kept at the Central Hospital, Nai Sarai. The date of birth/age assessed by the Medical Board was at the very initial stage of joining of the petitioner and the respondents without considering the same had superannuated the petitioner on the basis of the date of birth recorded in the CMPF records.

7. Mr. Mahesh Tewari, learned counsel for the petitioner has referred to the judgment in the case of Bharat Coking Coal Ltd. Vs. Presiding Officer and another reported in 1995 Supp. (2) SCC598 to substantiate his argument that no challenge was ever made with the findings of the Medical Board and accordingly the same has attained finality. In this context, he has also referred to the judgment in the case of Seema Ghosh Vs. Tata Iron & Steel Co. reported in (2006) 7 SCC722 8. With respect to the thrust of the learned counsel for the petitioner that there is no basis for entering the date of birth of the petitioner as 05.03.1952 in the CMPF records, reference has been made to the judgment in the case of Prasadi Singh Vs. M/s. Bharat Coking Coal Ltd. & others reported in 2011 (1) JCR387(Jhr.). In the case under reference, the date of birth which was recorded in NEIS records was not the date of birth which was recorded in the statutory Form B Register and since there was no basis for mentioning any date of birth in NEIS, the premature retirement of the petitioner concerned was quashed. -4- 9. The assessment of the Medical Board treating the age of the petitioner as 25 years as on 04.08.1982 could have been taken as a secondary consideration, if in the statutory Form B Register, the date of birth of the petitioner was recorded otherwise. The subsequent Form B kept at Central Hospital, Nai Sarai and the CMPF records, although suggest the date of birth of the petitioner as 05.03.1952, but neither the respondents have come up with any basis as to why such date of birth was recorded nor is there any other document on record which can inspire confidence that the date of birth of the petitioner is indeed 05.03.1952. In absence of any substantial proof of age as asserted by the respondents, the opinion of the Medical Board assumes primary importance. The reason behind the same apart from the inability of the respondents in justifying the date of birth recorded in the CMPF register as well as the subsequent Form B kept at Central Hospital, Nai Sarai is the fact that the Medical Board had examined and assessed the age of the petitioner immediately after she was granted compassionate appointment and as such in the peculiar facts and circumstances of the case, it has to be held that the date of birth of the petitioner should have been treated by the respondents as one which has been assessed by the Medical Board and not what has been recorded in either the CMPF records or subsequent Form B register maintained at Central Hospital, Nai Sarai. In such circumstances therefore, the respondents are directed

to pass necessary orders permitting the petitioner to continue to render her services till she attains the age of superannuation in terms of the age as assessed by the Medical Board. So far as the period from the date of superannuation of the petitioner as per the date of birth recorded in the CMPF records till the date the respondents issue necessary orders allowing the petitioner to continue in service is concerned, the respondents are directed to make payment of salary to the petitioner as on account of the laches on the part of the respondents, the petitioner was deprived from her livelihood.

10. This writ application is accordingly, allowed. (Rongon Mukhopadhyay, J) R. Shekhar Cp 2

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