

**Mohan Dome Vs. Eastern Coalfields Ltd. and ors.**

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**Court :** Kolkata

**Decided On :** Apr-10-2001

**Reported in :** (2001)2CALLT208(HC),[2001(90)FLR605]

**Judge :** Mahemmad Habeeb Shams Ansari, J.

**Acts :** [Constitution of India, 1950](#) - Article 21;; [Industrial Disputes Act, 1947](#) - Sections 2A, 10 and 33C(2);; [Code of Civil Procedure \(CPC\), 1908](#) - Section 9

**Appeal No. :** Constitutional Writ Jurisdiction [Appellate Side] W.P. No. 3099(W) of 2001

**Appellant :** Mohan Dome

**Respondent :** Eastern Coalfields Ltd. and ors.

**Advocate for Pet/Ap. :** Mr. Manas Kumar Kundu, Adv.

**Judgement :**

**M.H.S. Ansari, J.**

1. The brief facts as stated in the instant writ application are that the petitioner had joined the erstwhile Coal Company on or about 1968. At the time of entry into the erstwhile Coal Company, petitioner declared his date of birth as 1st July, 1945 which petitioner claims was duly recorded in the original 'B' Form and in other records. Later on. the said date of birth was also incorporated in the Coal Mines

Provident Fund Register. The account of which was numbered as B/62533. According to the petitioner, after passing the Mining Sirdar Examination, he became a MtnIng Sirdar. The Manager of the Colliery duly recorded the date of birth of the petitioner as 1st July, 1945 in the application for Mining Sirdar Examination which date was also recorded in the Mining Sirdar Certificate. The petitioner further states that accordingly he had all along been under bona fide belief that date of birth has been correctly maintained in the office records as on 1st July, 1945.

2. It is, therefore, the contention of the petitioner he would attain the age of superannuation viz., 60 years on 1st July, 2005.

3. Subsequent to the nationalization of the erstwhile Company in the year 1973, the petitioner's service came under the respondent No. 1. It is the case of the petitioner that he came to know from Service Record Excerpt that the date of birth was recorded in the 'B' Form as 4th March, 1937. Based upon the said record, the respondent employer took steps to superannuate the petitioner on and from 4th March, 1997. Thereupon, the petitioner filed a suit for declaration and permanent injunction before the Court of learned 2nd Munsif at Assansol which was registered as T.S. No. 12 of 1996. The suit upon contest was decreed on 27th November, 1996. Copy of the judgment and decree dated 27th November, 1996 in the said T.S. No. 12 of 1996 is annexed and marked as annexure 'P'.

4. It is stated that the respondents being aggrieved against the said judgment preferred an appeal and the petitioner came to know from the information slip that the said appeal has been dismissed on 3rd March, 1998.

5. The grievance of the petitioner in the instant writ application is that despite the said judgment and decree, no action has been taken by the respondent authorities for correcting the Service Record and despite representations in that behalf made by the petitioner, petitioner was not allowed to join duty. The petitioner was shown a copy of the letter dated 27th July, 1999 and was allowed to make a copy of the said letter being annexure P-3 wherein. It is stated that approval has been accorded for accepting the date, of birth of the petitioner as 7th January, 1945. It is further directed therein as under:

'The workman concerned may be allowed to join his duty but the period of idleness will be treated as dies-non.'

6. It is this portion of the orders passed by the respondent in annexure P-3 that the petitioner being aggrieved thereby has filed the instant writ application and has prayed for directions for payment of all consequential benefits for the said period.

7. On 21st March, 2001 when the matter was called on for hearing before Court, learned counsel for the respondents prayed for adjournment to 28th March, 2001 to enable the learned counsel to obtain instructions with regard to the status of the appeal which was said to have been dismissed for default.

8. On 28th March, 2001, however, none appeared when the matter was called on. Arguments of the petitioner were heard and Court adjourned for Verdict.

9. Before the rising of the Court on that day, learned counsel for the respondents appeared and sought to make their submissions whereupon liberty was granted to the respondents to file their written notes of arguments, if they so desired. Pursuant to the said liberty granted to the respondents, notes of arguments have been filed. Let the same be kept with the record.

10. The learned counsel for the petitioner Mr. Manas Kr. Kundu contended that by the aforesaid decree, a direction has been made to record the correct date of birth in the 'B' Form Register and other records of the Company and, therefore, the imposition of the condition in the Impugned letter is arbitrary, mala fide and unreasonable. It was further submitted that for their aforesaid illegal act, the petitioner cannot be made to suffer. The petitioner was not allowed to join duty for no fault of his and, therefore, treating the period of idleness, occasioned solely on account of the respondents, the same cannot be treated as dies-non. There is no valid reason, it was further contended, for imposing the aforesaid condition and thereby depriving the petitioner's service benefits for no fault of his and it, therefore, tantamounts to denial of his right of livelihood and, therefore, violative of Article 21 of the constitution.

11. The question for consideration in the instant writ application is whether the relief as prayed in the writ application can be granted to the petitioner when the same had neither been prayed for nor granted in the Title Suit No. 12 of 1996.

12. A perusal of the said Judgment and decree would show that no relief has been granted to the petitioner with regard to back wages. Also, it does not appear that any relief in relation thereto or any ancillary relief was claimed in the said suit.

13. For decision of the point as framed, it would be useful to have a brief look at the judicial conspectus. In *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh*, reported in : (1962)ILLJ266SC , it was observed as under

'This rule has no application to cases like the present in which the dismissal of a public servant is declared Invalid by a Civil Court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared Invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the Civil Courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.'

14. In *Rajasthan State Road Transport Corporation v. Ladulal Mali*, reported in : [1996]2SCR143 . the Supreme Court held that where the decree in a suit merely declared the termination of service to be illegal without any direction for consequential payments of monetary benefits and the Executing Court has refused to grant relief for back wages in execution proceedings, it acts rightly.

15. In *State of Madhya Pradesh v. Mangilal Sharma*, reported in : (1998)ILLJ995SC dealing with the effect of the declaratory relief, the Supreme Court declared as under:

'A declaratory decree merely declares the right of the decree-holder vis-a-vis the judgment-debtor and does not in terms direct the Judgment-debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary the executing Court could not issue any process for the purpose as that would be going outside or beyond the decree. Respondent as a decree-holder was free to seek his remedy for arrears of salary in the suit for declaration. The executing Court has no Jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree,'

16. No doubt, as contended by the petitioner, declaratory decree has been granted in his favour. Declaratory decree granted by the Court was for correction of the date of birth in the service records of the respondent and for determination of the age of superannuation of the plaintiff in relation thereto.

17. In *State Bank of India v. Ram Chandra Dubey & Ors.* reported in 2000 AIR SCW 4176. the Supreme Court considered the question whether the employees are entitled to back wages when by an award passed by the Tribunal, they were held entitled to be reinstated in service. The award in that case was, however, silent in regard to payment of back wages for a period between the date of termination and their reinstatement. The Supreme Court held that when a question arises as to the adjudication of a claim for back wages, all relevant circumstances will have to be gone into and are to be considered in a judicious manner. It was held that the appropriate forum where such question of back wages could be decided is only in a proceeding to whom a reference under section 10 of the Act is made. After referring to its various judgments and more particularly to the provisions contained in section 33C(2) of the [Industrial Disputes Act, 1947](#), the Supreme Court summed up the principles emanating therefrom as under:

'Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33C (2) of the Act. The benefit sought to be enforced under section 33C (2) of the Act is necessarily a pre-existing benefit or one flowing

from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within Jurisdiction of Labour Court exercising powers under section 33C (2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workmen as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all-relevant circumstances, which will have to be gone into, are to be considered in a Judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only is a proceeding to whom a reference under section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms or award, to all his arrears 'of pay and allowances would be Incorrect because several factors will have to be considered, as stated earlier, to fine out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.'

18. In the Instant case, the suit was filed before the date of superannuation of the petitioner even as per the service records maintained by the respondent. The contention of the petitioner is that the respondent authorities did not act in terms of the said judgment and decree dated 27th November, 1996 and despite the said judgment and decree, the petitioner was sought to be superannuated based upon the incorrect date of birth recorded in the service records of the respondent and contrary to the judgment and decree of Court. It is further contended that the petitioner was sought to be wrongly superannuated despite the existence of the said judgment and decree. As the petitioner was in service when the title suit was filed and even after the decree was passed therein in favour of the petitioner, there was no need or necessity for the petitioner to have prayed for any ancillary reliefs.

19. It can also be stated with fair amount of certainty on the authority of the judgment of the Supreme Court in *Ishar Singh v. National fertilizers & Anr.*, reported in : AIR 1991 SC1546 that ancillary relief could have been granted by the Civil Court where the suit was filed before the date of superannuation but no such relief can be granted for back wages after the employee stands superannuated.

20. The distinguishing feature in the instant case is that the petitioner was not dismissed from service as in *State Bank of India's* case, (supra) nor was the suit filed after superannuation to warrant any ancillary relief with regard to back wages or even for reinstatement of the petitioner. The petitioner was in service when the title suit was filed. The petitioner was in service when the judgment and decree in the title suit was passed. It is thereafter that the petitioner was sought to be superannuated without giving effect to the judgment and decree in the title suit. The respondent authorities having subsequently rectified the date of birth accepting the date of birth as January 7, 1945 and allowed the petitioner to join his duty, there is no valid reason why the petitioner's period of idleness should be treated as dies-nan. The matter would have been entirely different had the petitioner attained the age of superannuation during the pendency of the suit. In such a case, the necessity for reinstatement and claim for back wages would have arisen for consideration. The question would then have merited consideration in the light of the observations in *Ishar Singh's* case, (supra) in that case the appellant before the Supreme Court had superannuated even on the basis of the corrected record. The Supreme Court opined that the relief to back wages could not have been granted by the Civil Court. Such a contingency does not arise in the Instant case.

21. In *Ishar Singh's* case, cited (supra) the question for consideration was whether the Civil Court had jurisdiction to entertain a suit filed by an employee for correction of his date of birth and for injunction against superannuation. The said question was considered in the light of the provisions contained in section 9 of the Code of Civil Procedure and section 2A of the [Industrial Disputes Act, 1947](#), The Supreme Court declared as under;

'The main challenge to the Civil Court's Jurisdiction is by placing reliance on section 2-A of the Industrial Disputes Act. On a reference to that provision, we find that on the happening of certain eventualities, the reliefs available under that provision can be asked for. On 7-1-1988, none of the situations contemplated under section 2-A had happened so as to give the appellant a cause of action to approach the Industrial Court. It cannot be doubted that the maintainability of the suit has to be decided with reference to the date of Institution of the proceeding and since on 7-1-1988 when the civil suit was filed none of the eventualities covered by section 2-A had happened, the appellant could not have approached the forum under the 1947 Act for relief.

The other question which Mr. Ashwini Kumar has raised is as to whether the civil Court would have Jurisdiction to give injunction against superannuation or the other ancillary reliefs contemplated to a workman against his employer. Law is equally well settled that if for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor. In that view of the matter, so far as the relief of rectification of the record relating to date of birth is concerned, the Civil Court had jurisdiction and the High Court was not right in saying that the suit was not maintainable at all.

It is unnecessary to go into the other aspect, namely, whether the residuary reliefs were available in the Civil Court inasmuch as the appellant has by now superannuated, even on the basis of the corrected record the only relief to which he is entitled is one of backwages. We do not think that is a relief which the Civil Court could have granted. On the basis of the rectification of the date of birth granted by the Civil Court, the appellant is entitled to work out his remedy in a different forum prescribed by law, but we find that the respondent is Public Sector Undertaking and it would do well in settling the claim of the appellant instead of driving him to a proceeding under section 33C (2) of the Industrial Disputes Act. The appeal is allowed. We award no costs.'

23. The respondent in the instant case is also a Public Sector Undertaking and can be directed to grant the reliefs for the period of Idleness which was occasioned not on account of the petitioner but by Inaction on the part of the

respondent for not giving effect to the judgment and decree of the Court of competent jurisdiction. For the fault of the respondents, the petitioner cannot be deprived of the monetary benefits for the said period.

24. Accordingly, the writ application is allowed in terms of prayer 'a'. The monetary benefits for the period in question shall be paid to the petitioner within three months from date hereof.

25. It is, however, clarified that the instant writ application was filed and directions as above are given, on the premise that the appeal preferred by the respondents being Appeal No.39 of 1997 has been dismissed. However, in the event the Title Appeal being No.39 of 1997 is restored and the same is disposed of by setting aside the judgment and decree in the Title Suit No.12 of 1996, then any monetary reliefs that may be paid by the respondents to the petitioner by virtue of this judgment and order shall be liable to be reimbursed by the petitioner to the respondents. It is also clarified that the directions hereby given in the instant writ application are without prejudice to the rights and contentions of the respondents in the Title Appeal No.39 of 1997.

The costs are quantified at Rs. 1,500/- which shall be paid by the respondent to the petitioner.

Let urgent Xerox certified copy of the judgment and order be furnished to the parties, if applied for, on priority basis.

26. Application allowed