

M/S Bharat Coking Coal Ltd.& Ors vs Chhota Birsa Uranw on 25 April, 2014

Author: Pinaki Chandra Ghose

Bench: Gyan Sudha Misra, Pinaki Chandra Ghose

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4890/2014

(Arising out of Special Leave Petition (C) No. 34133 of 2011)

M/S Bharat Coking Coal Ltd and Ors.
Appellants

...

vs.

Chhota Birsa Uranw

Respondent

...

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted.

2. The present appeal arises against the order of the High Court of Jharkhand at Ranchi in Letters Patent Appeal No.90 of 2010 dated September 20, 2010, which was filed against the order dated December 11, 2009 passed by the learned Single Judge in a writ being W.P. (S) No. 496 of 2007 filed by the respondent in the present matter, wherein the court quashed the order dated August 2, 2006 passed by the Project Officer, Jamunia Open Cast Project (hereinafter referred to as 'Project Officer') Area of the Bharat Coking Coal Ltd. (being appellant No. 1 in the present matter), which stated that the respondent will superannuate on February 28, 2007.

3. The brief facts leading to the same are as under :

1. The respondent joined appellant No. 1, Bharat Coking Coal Ltd.

(‘BCCL’), a ‘Government Company’ as under Section 617 of the Companies Act, 1956, his date of joining as per the impugned order is stated to be March 31, 1973. At the time of joining, his date of birth was recorded as February 15, 1947, in Form ‘B’, a statutory form stipulated under the Mines Rules, 1955, the basis of recording the same is not clear. The respondent obtained a Secondary School Leaving Certificate issued on October 12, 1979, which indicated that he attended Rajya Samposhit Uchcha Vidyalaya, Baghmara, a Government school in Dhanbad from January, 1964 to August, 1964. In the said certificate, the date of birth of the respondent is recorded as February 6, 1950, which is in conflict with his date of birth as entered by him in the service records being the aforementioned Form ‘B’.

2. Subsequently, in 1983, he was transferred to the Jamunia Open Cast Project and as stated, he once again signed the Form ‘B’ wherein his date of birth was recorded as February 15, 1947 and he allegedly did not raise any objections then.

3. In 1986, the respondent passed the Mining Sardarship and in the certificate acknowledging the same his date of birth was recorded as February 6, 1950, corresponding to the date recorded in the aforementioned School Leaving Certificate. Therefore, there existed two sets of records of the respondent’s details; first being the Form ‘B’ register on one hand in which the date of birth was recorded to be February 15, 1947 and second being the Mining Sardar Certificate and the School Leaving Certificate wherein the date of birth was recorded as February 6, 1950.

4. In 1987, the National Coal Wage Agreement III (hereinafter referred as ‘NCWA III’) being Implementation Instructions were put into operation for stabilizing service records of employees. Pursuant to Implementation Instruction No. 76, appellant No. 1 provided its employees with Nominee Forms as prescribed by the Implementation Instructions which contained relevant extracts from the service records in the Form ‘B’ register, thereby enabling the employees to identify any discrepancy or error in the records and get the same rectified as per the prescribed procedure. In wake of the same the respondent became aware of inconsistencies in the records regarding his date of birth, date of appointment, father’s name and permanent address; therein the respondent made representations to the Project Officer, Jamunia Open Cast Project for rectification of the abovementioned errors and he specifically sought the incorrect date of birth to be corrected as per the date mentioned in the Mining Sardar Certificate and the School Leaving Certificate. It appears that the concerned authorities rectified the discrepancies regarding the name of the father and the permanent address; however the date of birth and date of appointment remained unchanged. Thereafter, as stated by the respondent, he made a subsequent representation to the concerned Project Officer on July 16, 2006 for correction of the date of birth in the Form ‘B’ register in accordance with the Mining Sardar Certificate and the same was rejected by the appellant company vide letter dated July 19, 2006.

5. The Project Officer vide order dated August 2, 2006 intimated the respondent that he is to superannuate from February 28, 2007. Aggrieved by the same, the respondent filed a writ bearing W.P. (S) No. 496 of 2007 for quashing of the order of superannuation by the Project Officer on the grounds that the date of superannuation has been incorrectly calculated by relying on the erroneous date of birth which should have been rectified in terms of the NCWA III, which provided that the

Mining Sardar Certificate and the School Leaving Certificate must be treated as authentic documents by the employer as proof of the date of birth of the employee. The appellant company without challenging the genuineness of the same countered the respondent on the grounds that the Form 'B' register was a conclusive proof of date of birth as it was verified by the signature of the employee being the respondent; and having accepted the entry then, the respondent is not entitled to raise any dispute after twenty years and at the fag end of his service. The High Court while allowing the writ determined that the respondent did not raise such a claim at the fag end of his career, rather such a claim was made in 1987 itself and the appellant company had failed to respond suitably to the dispute raised by the respondent. Thereby, the Court directed the appellant company to conduct an enquiry on the basis of the certificates produced by the respondent and to effectively communicate to the respondent the decision taken together with the reasons assigned within three months of the passing of the order.

6. Aggrieved, the appellant company preferred a Letters Patent Appeal, the order in which is impugned herein. The High Court dismissed the appeal having found no merit in the same in light of the clauses in Implementation Instruction No. 76.

7. Thereafter, the matter lies before us.

4. The appellant in the present appeal has come before us seeking that the impugned judgment be set aside. The case of the appellant is, firstly, when a school leaving certificate is not a document mentioned in Implementation Instruction No. 76, the High Court was incorrect in substituting the same with the documents given in the said Instruction, thereby creating a situation which supersedes all other statutory documents like Form 'B' register. Secondly, the High Court should have considered that the date of birth recorded in Form 'B' register being a statutory document under Mines Act is binding and cannot be preceded by a non-statutory document and therefore, the inter alia holding of the High Court that School Leaving Certificate and Mining Sardar Certificate would take precedence over company records and other statutory documents is contrary to the judgment of this Court in G.M. Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Ors.[1]. Thirdly, the appellant has challenged the exercise of jurisdiction by the High Court under Article 226 considering that the respondent as workman could avail efficacious remedy from the forum under the Industrial Disputes Act and the respondent could raise such a dispute at the fag end of his career de hors the judgment in Bharat Coking Coal Ltd. vs. Presiding Officer and Anr[2]. Fourthly, that the documents on which the respondent has relied being School Leaving Certificate and Mining Sardar Certificate are not those mentioned in Implementation Instruction No. 76 for review of determination of date of birth with respect to existing employees and that the implementation of the impugned order would give way to many unscrupulous employees to procure such documents and take advantage of the same. Fifthly, the respondent while signing the Form 'B' register at the time of appointment had verified his date of birth as February 15, 1947 on his joining on January 1, 1973 and later on his transfer in 1983; since he is a supervisory staff capable of reading and writing and understanding English his verification amounts to acceptance and his raising of dispute in 1987, fourteen years after is incorrect. Sixthly, the appellant has challenged the reliance placed on the School Leaving Certificate by the respondent on the grounds that the same was issued on October 12, 1979 six years after his appointment and as the Mining Sardar Certificate was based

on the same reliance on it is also doubtful; furthermore, since both the documents were issued after the date of employment they cannot form basis of correction of date of birth; furthermore, the appellant has challenged the correctness of the School Leaving Certificate on the grounds that the alleged Certificate was not verified by the District Education Commissioner; that the attendance register for relevant period when the respondent allegedly attended school was not available and the verification was with respect to one Sri Birsa Prasad Uranw; it is further submitted that these discrepancies which were covered by legal inspector of company (who was duly charge-sheeted) in collusion with the respondent make the school leaving certificate dubious. Finally, it was submitted that the respondent has raised the issue at the fag end by means of a belated writ i.e. thirty years after appointment and after twenty years (as claimed by him) of his knowledge.

5. Per contra, the respondent has denied the averments of the appellant and has submitted that he has not disputed his date of birth at the fag end of his service as found by the learned Single Judge. It has been submitted that the respondent joined service on March 31, 1973, when his date of birth was recorded as February 15, 1947 basis of which is not clear; that subsequently in 1986 he cleared his Mining Sardarship and was given a Mining Sardar Certificate where his date of birth was recorded as February 6, 1950 same as in his School Leaving Certificate; that subsequently in 1987, on noticing the incorrect date of birth and other details in his service records, the respondent immediately submitted an application for the correction of his date of birth as February 6, 1950 and other minor corrections in his service records. On receiving no information regarding the same on inquiry from his superiors, he was given the impression that the necessary corrections were made in the service records and the respondent was surprised to receive his superannuation order in 2006 on the basis of the incorrect date of birth being February 15, 1947.

6. In these circumstances, the respondent has contended, firstly, that it is not the case that the respondent disputed date of birth at the end of service, instead he had disputed the same way back in the year 1987, it is the employer who disputed the same at the fag end by creating the impression that claim of respondent for correction of date of birth was accepted when, in reality, it was not and even the learned Single Judge has concurred that the rectification was not sought at the fag end. Secondly, it was contended that the respondent has relied on two documents for correction of his date of birth as February 6, 1950, namely the statutory Mining Sardar Certificate and the School Leaving Certificate. Thirdly, it has been contended that in light of the policy contained in part (B) of Implementation Instruction No. 76, the appellant as per clause (i)(a) accepted the School Leaving Certificate but it was contended before the High Court that as the same was issued in 1979 and as the workman joined service in 1979, the certificate was thus, 'not issued' prior to the date of employment and therefore cannot form the basis of correction of date of birth. However, this contention was rejected by the High Court, which held that the school records were created prior to joining and a copy issued on a subsequent date does not create a difference as the date of issue of certificate refers to the date when the relevant record was created on the basis of which the certificate has been issued. In addition to the same, it has also been submitted that the appellate court had granted time to the appellant to verify the genuineness of the School Leaving Certificate and in response through a supplementary affidavit, the appellants have admitted the school leaving certificate to be genuine, thus contended by the respondent that as the School Leaving Certificate was found to be genuine, it warrants no interference. Fourthly, it has been contended by the

respondent that his claim for correction was not considered on the basis of the Mining Sardar Certificate which as claimed has been given by the Central Government and was submitted by him, which is also mentioned as a basis for correction of date of birth in Clause (i)(b) in Part B of Implementation Instruction No. 76. It is further submitted that the appellant did not give any reason as to why the Mining Sardar Certificate was rejected by them. Finally, the respondent has submitted that he was made to retire prematurely and not allowed to work inspite of favourable orders from the High Court; furthermore, the respondent filed a contempt petition but was not allowed to work by the petitioners on the pretext of pendency of matter before higher courts. It is also the case of the respondent that he was not gainfully employed anywhere else during that period.

7. It is pertinent to note at this point that during the oral proceedings, this Court vide order dated July 4, 2013 directed the appellants as under:

“List after four weeks to enable the counsel for the petitioners to produce the original and also photocopy of the Form ‘B’ register where it is alleged that the respondent had affixed his signature on the date of birth which was recorded as 15.02.1947.” However, as found by us and pointed out by the respondent instead of filing the original Form ‘B’ prepared in 1973, at the time of joining of the respondent with designation as Explosive Carrier (which as claimed admittedly did not bear the signature of the respondent), filed a photocopy of the alleged Form ‘B’ dated January 27, 1987 which showed the designation of the respondent to be that of Mining Sardar. It has been submitted by the respondent that his signature was taken on the alleged form on January 27, 1987 while handing over the photocopy of the same for necessary correction of the record.

8. On the basis of the above, we find that within the given set of facts the dispute is regarding the manner in which the date of birth should be determined; whether the reliance should be placed on the set of records being the Mining Sardar Certificate and the School Leaving Certificate which state the date of birth to be February 6, 1950 or reliance should be placed on the extracts of the Form ‘B’ register which state the date of birth to be February 15, 1947. The position which emerges on the basis of the above is that after having joined service in 1973 when the Form ‘B’ register was filled and when it was filled once again in 1983 when the respondent was transferred, there were certain discrepancies regarding permanent address, father’s name and date of joining. In 1987, when the appellant made available the details of all employees for verification of service records, the respondent raised the dispute regarding his incorrect particulars being the date of joining, father’s name, permanent address and date of birth. Apparently, the abovementioned corrections other than date of birth were made. Thus, it is evident and correctly determined by the learned Single Judge that the dispute was not raised at the fag end of service or on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when the respondent became aware of the discrepancy. As the factum of when the dispute was raised is settled what remains to be determined is the issue of date of birth.

9. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in

date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Secretary and Commissioner, Home Department vs. R. Kirubakaran (supra), which is as under:-

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.” The same approach had been followed by this Court while deciding on date of birth disputes irrespective of the relief being in favour of the workman or the employer. (See: State of Punjab vs. S.C. Chadha[3], State of U.P. & Anr. v. Shiv Narain Upadhyay[4], State of Gujarat & Ors. v. Vali Mohd. Dosabhai Sindhi[5], State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble[6])

10. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court inspite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum. (See: State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble & Ors.[7] Registrar General, High Court of Madras vs. M. Manickam & Ors.[8] High Court of Andhra Pradesh vs. N. Sanyasi Rao[9])

11. As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form 'B' register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in Mohd. Yunus Khan v. U.P. Power Corporation Ltd.[10], that, "an employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer." Thus, the case of the respondent should not be barred on account of unreasonable delay. 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 petitioner's 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 a recorded therein."

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.”

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 (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 appellant's 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 be genuine. We have further noticed that Implementation Instruction No.76 clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving 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

15. Therefore, the order of the High Court does not call for any interference. We endorse the reasoning given by the High Court and affirm the same.

16. In these circumstances, we do not find any merit in the appeal. Accordingly, this appeal is dismissed.

.....J. (Gyan Sudha Misra) New Delhi;

.....J. March 25, 2014. (Pinaki Chandra Ghose)

- [1] (2000) 8 SCC 696
- [2] (1995) Suppl. 2 SCC 598
- [3] (2004) 3 SCC 394
- [4] (2005) 6 SCC 49
- [5] (2006) 6 SCC 537
- [6] (2010) 14 SCC 423
- [7] (2010) 14 SCC 423
- [8] (2011) 9 SCC 425
- [9] (2012) 1 SCC 674
- [10] (2009) 1 SCC 80
