

BHARAT COKING COAL LTD. & ORS.

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v.

SHYAM KISHORE SINGH

(Civil Appeal No. 1009 of 2020)

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FEBRUARY 05, 2020

[R. BANUMATHI AND A.S. BOPANNA, JJ.]

Service Law – Respondent was appointed as trainee in appellant's company – His date of birth in service record was 04.03.1950 – However, he claims that he had declared his date of birth as 20.01.1955 in terms of entry contained in his matriculation certificate – In 2009, just prior to his retirement he sought change of date of birth in the records – Declined by the appellants – Respondent retired on 31.03.2010 and after lapse of four years from the retirement, he filed writ petition before High Court – High Court directed the appellants to make appropriate corrections and pass consequential orders – Division Bench limited the attendant benefits payable to the respondent – Held: If a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service – In the instant case, as on the date of joining in 1982 and as also in 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 – He reiterated the same when Provident Fund Nomination Form was filled in 1998 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment – Thus, merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible – It is only after more than 30 years from the date of his joining service, for the first time in 2009 he had made the representation – Respondent also did not avail the judicial remedy immediately thereafter, before retirement – Indulgence shown to the respondent by the High Court was not justified – Impugned order set aside.

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A Allowing the appeal, the Court

- HELD:** 1.1 If a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. The respondent entered service on 01.03.1982.
- B The date of birth entered as 04.03.1950 has remained on record from the said date. In the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement. Instead, the respondent retired from service on 31.03.2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified. Hence, the order passed by the learned Single Judge in WPS No.6172 of 2014 and the order dated 19.02.2019 passed by the Division Bench in LPA No.115 of 2018 are not sustainable. The impugned order is set aside.
- [Paras 7, 12-14][606-B-C; 606-C-E]

Kamta Pandey v. M/s BCCI & Ors. [2007] 3 JLJR 726; State of Maharashtra and Anr. v. Gorakhnath Sitaram

Kamble & Ors. (2010) 14 SCC 423 : [2010] 14 SCR 752; State of M.P. v. Premlal Shrivastav, (2011) 9 SCC 664 : [2011] 11 SCR 444; Factory Manager Kirloskar Brothers Ltd. v. Laxman (2020) 3 SCC 419; M/s Eastern Coalfields Ltd. & Ors. v. Ram Samugh Yadav & Ors. (2020) 3 SCC 421 – referred to.

G Bharat Coking Coal Ltd. & Ors. v. Chhota Birasa Uranw (2014) 12 SCC 570 : [2014] 4 SCR 887 – distinguished.

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| <u>Case Law Reference</u> | | | A |
|---------------------------|---------------|---------|---|
| [2007] 3 JLJR 726 | referred to | Para 4 | |
| [2010] 14 SCR 752 | referred to | Para 8 | |
| [2011] 11 SCR 444 | referred to | Para 9 | |
| (2020) 3 SCC 419 | referred to | Para 10 | B |
| (2020) 3 SCC 421 | referred to | Para 10 | |
| [2014] 4 SCR 887 | distinguished | Para 11 | |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1009
of 2020.

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From the Judgment and Order dated 19.02.2019 of the High Court of Jharkhand at Ranchi in L.P.A. No. 115 of 2018.

K.M. Natraj, ASG, Parijat Kishore, Nischal Gupta, Vatsab Joshi, Advs. for the Appellants.

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M. Shoeb Alam, Ms. Fauzia Shakil, Santosh Kumar, Mojahed Karim Khan, Advs. for the Respondent.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

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1. Leave granted.

2. The appellants are before this Court assailing the order dated 19.02.2019 passed by the Division Bench of the High Court of Jharkhand at Ranchi in LPA No.115 of 2018. Through the said order the Division Bench though has modified the judgment and order dated 13.10.2017 of the learned Single Judge insofar as the extent of relief granted, the contention of the respondent herein relating to the change of date of birth in the service records is accepted and a direction has been issued to the appellants to pay the sum equivalent to salary of one year for the period between the April, 2010 to March, 2011. The appellants thus being aggrieved are before this Court in this appeal.

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3. The brief facts are that the respondent herein was appointed as a trainee in the appellants company. He was allotted Personnel No. 00473470 and joined service as Trainee Dozer Operator with effect from 27.02.1982. Though the respondent claims that he had declared his date of birth as 20.01.1955 in terms of the entry contained in his

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- A matriculation certificate the fact remains that his date of birth entered in the service record was 04.03.1950 and had remained so from the date of his appointment on 27.02.1982 till his retirement on 31.03.2010. In the year 1998 the respondent has submitted the Provident Fund Nomination Form wherein he has indicted the details of his family and shown his wife as his nominee. In the relevant Form also, the respondent had indicated his date of birth as 04.03.1950. The respondent thus having continued in service till the age of superannuation had retired from service on 31.03.2010. Just prior to his retirement, in the year 2009, a representation had been made by the respondent seeking change of the date of birth entered in the records, which was declined by the appellants.
- B indicated his date of birth as 04.03.1950. The respondent thus having continued in service till the age of superannuation had retired from service on 31.03.2010. Just prior to his retirement, in the year 2009, a representation had been made by the respondent seeking change of the date of birth entered in the records, which was declined by the appellants.
- C The respondent not having agitated the matter further at that point of time and having retired on 31.03.2010 has after the lapse of four years filed the W.P.(S) No.6172/2014 before the High Court of Jharkhand at Ranchi. The appellants herein having appeared, filed their objection statement. The learned Single Judge on taking into consideration the nature of the claim put forth was of the view that when the respondent raised the issue regarding correction of the date of birth in the year 2009 the appellants secured verification of the date of birth claimed by the respondent from the Bihar School Examination Board, Patna. On verification it was confirmed that the date of birth in the school records was 20.01.1955. The said verification made by the appellants herein has been held against them by the learned Single Judge and it was observed that if the date 04.03.1950 as entered by the respondent in the service records was correct, there was no occasion for the appellants to verify the same from Bihar School Examination Board. In that circumstance the learned Single Judge being of the opinion that the respondent had passed the matriculation prior to joining the services and in that circumstance the entry of date of birth in the matriculation certificate being 20.01.1955 even before joining the service, has accepted the contention put forth by the respondent and in that background arrived at the conclusion that the appellants are to be directed to make appropriate corrections and pass consequential orders.
- G 4. The Division Bench has in fact referred to the said reasoning adopted by the learned Single Judge relating to the verification made relating to correctness of the matriculation certificate from the Bihar School Examination Board and in that circumstance since the learned Single Judge had also relied on the Full Bench judgment of the Jharkhand High Court in the case of *Kamta Pandey vs. M/s BCCI & Ors.* [2007
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(3) JLJR 726] has upheld the said reasoning assigned by the Learned Single Judge. However, the Division Bench had taken note that the respondent herein had filed the writ petition four years after his retirement for restoration of his employment. It has further taken note that the respondent had filled up several forms in the course of his services where the respondent had not disclosed his educational qualification. In that view, the Division Bench was of the opinion that the learned Single Judge had not properly dealt with the aspect of delay in approaching the Court. In that circumstance the Division Bench had limited the attendant benefits payable to the respondent to the salary for one year between the period April, 2010 to March, 2011 as prevailing at that point. It is in that background the appellants being aggrieved both by the order passed by the learned Single Judge as also the Division Bench are before this Court in this appeal.

5. Heard Mr. K.M. Natraj learned Additional Solicitor General appearing for the appellants, Mr. M. Shoeb Alam learned counsel for the respondent and perused the appeal papers.

6. The fact that the respondent had joined the services of the appellants on 01.03.1982 is the accepted position. Though the respondent relies on the matriculation certificate to indicate that the date of birth stated therein is 20.01.1955, there is no material on record to indicate that the said document had been produced before the employer at the time of joining employment. In that background, the service record maintained by the appellants will disclose that the date of birth indicated in the document is 04.03.1950 which had been furnished by the respondent himself as the relevant forms under his signature contain the said date. Though the learned counsel for the respondent contended that the High Court had noticed certain alteration of the date of birth as indicated in Form "B" the relevance of the said document cannot be considered without reference to the other documents in the service records. The very fact that the respondent through his representation made in the year 2009 was seeking for change of the entry relating to date of birth will indicate that what was contained in the service records is 04.03.1950, which was the position from 27.02.1982.

7. In the above background it is to be noticed as to whether the consideration as made by the High Court is justified. The learned counsel for the respondent with specific reference to para 10 in the order of the learned Single Judge referred to the aspect wherein the learned Single

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- A Judge has taken note of the representation made by the respondent in the year 2009 and the verification that was secured by the appellants from the Bihar School Examination Board. Though such reference is made, in our opinion, the same was not appropriate in the present facts when three decades had elapsed from the date of employment. The position is well established that if a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. In the instant facts the position is that the respondent entered service on 01.03.1982. The date of birth entered as 04.03.1950 has remained on record from the said date. The requirement to submit the nomination form indicating the particulars of the family and the nominee was complied and it was submitted by the respondent on 25.05.1998. In the said Nomination Form the date of birth of the employee was required to be mentioned, wherein the respondent in his own handwriting has indicated the date of birth as 04.03.1950. Apart from that fact, the learned Additional Solicitor General would also point out that since there was a change in the method of maintaining the service register, all the employees were provided an opportunity to verify and seek for change in the service record in the year 1987. At that stage also the respondent did not seek for any change. Therefore, in that circumstance, when the opportunity available at the first instance in 1987 had not been availed and thereafter on 25.05.1998 when the respondent himself in the Provident Fund Nomination Form had indicated the date of birth as 04.03.1950 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment, merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible.

8. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of *State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors.* (2010) 14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:

“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha*

Parishad v. Raj Kumar Agnihotri [(2005) 11 SCC 465 : 2006 SCC (L&S) 96] . In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in *State of Uttarakhand v. Pitamber Dutt Semwal* [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in *Home Deptt.v. R. Kirubakaran* [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] reads as under: (SCC pp. 158-59, para 7)

“7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 promotion forever. . . . 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

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- A 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. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book.”
- B 9. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P. vs. Premlal Shrivastav*, (2011) 9 SCC 664 it is held as hereunder;
- “8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service.
- C Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous.
- D No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).
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- G 12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent
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25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

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10. The learned Additional Solicitor General has also relied upon the decision of this Court in the case of **Factory Manager Kirloskar Brothers Ltd. vs. Laxman** in SLP (C) Nos.2592-2593/2018 dated 25.04.2019 wherein the belated claim was not entertained. Further reliance is also placed on the decision of this Court in the case of **M/s Eastern Coalfields Ltd. & Ors. vs. Ram Samugh Yadav & Ors.** in C.A.No.7724 of 2011 dated 27.05.2019 wherein this Court has held as hereunder:

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“Nothing is on record that in the year 1987 when the opportunity was given to Respondent No.1, to raise any issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent No.1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to accept such an issue.

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The Division Bench of the High Court has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent No.1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier.”

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11. The learned counsel for the respondent, on the other hand, has relied upon the decision of this Court relating the very same employer namely, the appellants herein in the case of **Bharat Coking Coal Ltd. & Ors. vs. Chhota Birasa Uranw** (2014) 12 SCC 570 wherein this Court with reference to the earlier decisions of this Court has upheld the order of the High Court wherein a direction had been issued to effect the change in the date of birth. Having perused the same we are of the opinion that the said decision cannot render assistance to the respondent herein. This is for the reason that in the said case it was taken note that

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- A in 1987 on implementation of the National Coal Wage Agreement (iii) was put into operation for stabilising the service records of the employees and all its employees were provided a chance to identify and rectify the discrepancies in the service records by providing them a nomination form containing details of their service records. In the cited case the respondent (employee) therein had noticed the inconsistencies in the records regarding his date of birth, date of appointment, father's name and permanent address and availed the opportunity to seek correction. Though he had sought for the correction of the errors, the other discrepancies were set right but the date of birth and the date of appointment had however remained unchanged and it is in that view the employee had again raised a dispute regarding the same and the judicial remedy was sought wherein the benefit was extended to him.
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- 12. On the other hand, in the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement.
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- E Instead, the respondent retired from service on 31.03.2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified.

- 13. Hence, the order dated 13.10.2017 passed by the learned Single Judge in WP(S) No.6172 of 2014 and the order dated 19.02.2019 passed by the Division Bench in LPA No.115 of 2018 are not sustainable.
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14. In the result, the impugned order is set aside and the appeal is allowed with no order as to costs. Pending applications if any, shall also stand disposed of.

Divya Pandey

Appeal allowed.