

Eastern Coalfields Ltd.& Ors vs Bajrangi Rabidas on 23 September, 2013

Equivalent citations: 2013 AIR SCW 6642, 2014 (13) SCC 681, 2014 LAB. I. C. 1510, AIR 2014 SC (SUPP) 919, (2014) 140 FACLR 732, (2014) 134 ALLINDCAS 55 (SC), (2014) 2 SCT 581, (2015) 1 SERVLR 254, (2013) 4 JCR 268 (SC), (2013) 12 SCALE 69, (2014) 1 PAT LJR 15

Author: Dipak Misra

Bench: Dipak Misra, Anil R. Dave

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8634 OF 2013
(Arising out of S.L.P. (C) No. 22813 of 2007)

Eastern Coalfields Ltd. and others

... Appellants

Versus

Bajrangi Rabidas

...Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. Calling in question the legal sustainability of the judgment and order dated 17.8.2007 passed by the High Court of Judicature at Calcutta in F.M.A. No. 169 of 2006 whereby the Division Bench has overturned the judgment and order dated 14.6.2004 passed by the learned single Judge in W.P. No. 5700(W) of 2001 whereunder he had given the stamp of approval to decision dated 26.2.2004 by the General Manager of the appellant-company, who had rejected the objection of the respondent for changing his date of birth as recorded in his service excerpts and Form 'B' Register, the appellants have preferred their appeal by special leave.

3. The facts which are requisite to be exposted are that the respondent had joined at Chinakuri Mine No. 111 on 9.1.1970 as Mining Sirdar and for being selected on the said post he had appeared in Gas Testing Examination held on 15.5.1969. He had also appeared in Sirdarship examination held on 2.7.1969 and Overmanship certificate examination on 3.7.1973. At every stage, he had mentioned his date of birth as 2.4.1946. On the basis of the declaration made by the respondent his date of birth was clearly reflected in Form 'B' Register and service book and he had signed both the documents. Be it noted, the appointment of the respondent as Mining Sirdar was in a private colliery. After enactment of Coal Mines (Nationalization) Act, 1973 all private collieries were taken over by the Central Government and handed over to the Coal India Ltd. and its subsidiaries. It is not disputed that the respondent was absorbed in the Eastern Coalfields Ltd., a subsidiary of Coal India Ltd. It may be noted here that as disputes with regard to date of birth of employees had arisen, the "Implementation Instruction No. 76" was issued in the year 1987 laying down the procedure for determination/verification of age of employees. On 15.5.1987 the respondent filed an objection stating that there has been an erroneous entry as regards his date of birth because his correct date of birth is 2.4.1948 and not 2.4.1946 as recorded in the service register and Form 'B' Register. After filing the said objection the respondent chose to maintain silence and, eventually, approached the High Court in Writ Petition No. 6156 (W) of 2001 stating, inter alia, that his date of birth is 2.4.1948 as per the Matriculation Certificate. The High Court vide order dated 30.7.2003 directed the respondent therein to take a decision on the objections filed by the workman regarding his date of birth in his service excerpts after offering a reasonable opportunity of being heard to him and further keeping in view the provisions contained in "Implementation Instruction No. 76".

4. In pursuance of the order passed by the High Court the General Manager, Sodepur Area, conducted an enquiry give due regard to the principles of natural justice and the guidelines enumerated in "Implementation Instruction No. 76" and rejected his claim vide order dated 26.2.2004.

5. Being dissatisfied the respondent preferred W.P.(W) No. 5700 of 2001. The learned single Judge took note of series of facts, namely, that the respondent was signatory to the documents, namely, the Form 'B' Register and the service book; that his date of birth as 2.4.1946 was mentioned in the two certificates, namely, Gas Testing and Overmanship Certificate and Sirdarship Certificate; the Gas Testing examination was held on 15.5.1969 and as per Regulation 14(1) of the Coal Mines Regulations, 1957 (for short "the Regulations") application for the said examination was required to be submitted not less than sixty days prior to the date fixed for the examination and as per Regulation 15(1) of the Regulations no person could have been admitted as a candidate at any examination held by the Board unless he had completed 21 years of age; that had the respondent

produced his Matriculation Certificate which reflected his date of birth as 2.4.1948, he would not have been in a position to appear in the Gas Testing examination as by the time the form was filled up he would have been less than 21 years of age; that he had not correctly stated his age was only to avail a benefit at that juncture is writ large; that he had half-heartedly raised an objection in the year 1987 pertaining to the service record though it was within his knowledge that as per the Matriculation Certificate his date of birth is 2.4.1948; that he approached the court quite belatedly in 2001 for redressal of his grievances; and that he cannot be allowed to take the benefit of securing an appointment by stating a different date of birth and thereafter endeavour to have further advantage of continuance of service on the basis of age mentioned in the Matriculation Certificate. Being of this view the learned single Judge dismissed the writ petition.

6. Grieved by the order passed by the writ court the respondent preferred an appeal and the Division Bench took note of the fact that the Identity Card issued by the private colliery at the time of initial appointment reflected his date of birth to be as 2.4.1948; that the respondent-authorities were not in a position to explain how and under what circumstances the date of birth of the workman was subsequently changed in the service book; that for appearing in the Sirdarpur Certificate examination under the Regulations the prescribed minimum age of a candidate is 20 years and not 21 years; that the authorities have not taken the decision correctly in view of the "Implementation Instruction No. 76"; and that when the initial date of birth in the Identity Card mentioned the date of birth to be 2.4.1948, the same could not have been changed by the ECL authorities. Being of this view, the Division Bench directed for rectification of the records and grant of admissible arrears of salary and other consequential service benefits.

7. We have heard Mr. Mahabir Singh, learned senior counsel for the appellants and Mr. Bijan Ghose, learned counsel for the respondent.

8. At the outset, it is essential to be stated that the learned single Judge had dismissed the writ petition in a summary manner and the Division Bench has taken note of certain facts which are not correct and also relied upon the amended regulation. As has been stated earlier, on the basis of the order passed by the writ court on 30.7.2003 the General Manager conducted an enquiry. The facts that have been enumerated in the enquiry proceeding are absolutely relevant for apposite delineation of the lis in question. The concerned authority had issued notice to the respondent who appeared before him on 6.2.2004. He had clearly stated before him that he had joined the service on 9.1.1970 as Mining Sirdar and had appeared in the Gas Testing Examination held on 15.5.1969, Sirdarship Examination on 2.7.1969 and Overmanship Certificate Examination on 3.7.1973. He had obtained all the three statutory certificates where his date of birth was recorded as 2.4.1946. It is worthy to note that the Division Bench has referred to Regulation 15(2) of the Regulations to express the view that the appellant therein could not have been admitted as a candidate to the said Examination in the year 1969 without submitting the passed certificate of the secondary school examination of a recognized Board or its equivalent. The said assumption by the Division Bench is incorrect as it has not at all taken note of the facts that have come out in the enquiry conducted by the General Manager. The enquiry report clearly reveals that the respondent could not produce the Madhyamik certificate at the time of his appointment as he had not received the same at that time and the said certificate was received by him sometime in the year 1970. He had categorically stated

that he never produced the certificate of Madhyamik examination before the Management but verbally told the fact of his passing of the said examination to the then Welfare Officer. It was also told that he had not mentioned passing of the examination at the time of submission of application to appear before the statutory examination. This being the factual position, the finding of the Division Bench that he had produced the Madhyamik School certificate at the time of appearance in examination is not correct.

9. It is perceptible that the Division Bench has referred to Regulation 15(1)(a) of the Regulations to come to the conclusion that the respondent had not availed any benefit as the prescribed minimum age of a candidate is twenty years. In this context, we may refer to Regulation 15(1)(a) and (b) which read as follows:-

15. Age and general qualifications of candidates – (1) (a) No person shall be admitted as a candidate at any examination held by the Board unless he is 20 years of age.

(b) No person shall be admitted as a candidate at any examination for a Manager's, Surveyor's, Overman's, Sirdar's, or Shotfirer's Certificate unless he holds a valid first aid certificate of the standard of the St. John Ambulance Association (India):

Provided that if any candidate satisfies the Board that he has not sufficient opportunity to obtain such first-aid certificate, the Board may, by order in writing admit him to the examination on such conditions, if any as it thinks fit to impose :

10. It is imperative to note that "20 years of age" occurring in Regulation 15(1)(a) was substituted by Notification No. G.S.R. 32 dated 16.12.1978. Regulation 15(1)(a) prior to 1978 read as follows:

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"15. Age and general qualifications of candidates – (1) (a) No person shall be admitted as a candidate at any examination held by the Board unless he is 21 years of age." Thus, in 1969 the above quoted regulation was in force.

11. At this juncture, we may fruitfully refer to Regulation 14 of the Regulations. It reads as follows: -

"14. Submission of application – (1) Application for an examination conducted by the Board shall be made to the Board not less than 60 days prior to the date fixed for the examination and on a form supplied for the purpose.

(2) Notice regarding the date and place of examination for the Manager's, Surveyor's and Overman's certificate shall be published under the order of the Board in such periodicals as the Board may direct, not less than 60 days prior to the date fixed by the Board for receiving applications."

12. From the conjoint reading of Regulations 14(1) and 15(1)(a) it is quite clear that an application has to be submitted to the Board not less than 60 days prior to the date fixed for examination. The respondent had passed the Matriculation Certificate examination in December, 1963. It is quite unusual that he could not have obtained the certificate till 1969. Be that as it may, if the date of birth, as reflected in the certificate, is taken into account, then the respondent would have been eligible to submit the application for examination. The construction that can be placed on reading of the clauses can only be that he has to be 21 years of age by the time he submitted his application. To avoid his disqualification to appear in the examination he took the plea as has come out in the enquiry that he had passed the examination and his date of birth was 2.4.1948.

13. Learned counsel for the respondent has invited our attention to the “Implementation Instruction No. 76” has tried to support the order passed by the Division Bench. Para (A)(i) deals with Matriculation certificate. It reads as follows: -

“(i) Matriculates.

In the case of appointees who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.”

14. Para (A)(v) deals with revision of determination of date of birth in respect of existing employees. Paras (A)(v)(i)(a) and (b) are as follows: -

“(v) Review determination of date of birth in respect of existing employees.

i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or 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.

(b) Similarly, Mining Sirdarhip, Winding Engine or similar other statutory certificates 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.”

15. On an apposite reading of the instructions there can be no iota of doubt that the date of birth mentioned in Matriculation or Higher Secondary certificate has to be accepted as authentic. But, a

pregnant one, as has been indicated hereinbefore, the case at hand depicts a different picture. The respondent did not produce the Matriculate Certificate, though he had passed the said examination. It is because, we are inclined to think, had he produced the said certificate, he could not have undertaken the examination and consequently could not have been appointed. To secure an appointment, as has been found in the enquiry, he made a statement that he had not obtained the certificate though he had passed the examination and the same was accepted by the Welfare Officer of the then private company.

16. The question that arises for consideration is that once he had availed the benefit by not stating the correct fact, whether the equitable jurisdiction under Article 226 of the Constitution of India should be extended to him. The Division Bench has recorded a finding the respondent could not have been allowed to participate in the examination without producing the Matriculation certificate. The said finding is based on an assumption and has been arrived at totally being oblivious of the enquiry report which records the statement of the respondent. In this context, we may profitably reproduce a passage from *Union of India v. C. Rama Swamy and others*[1]: -

“In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to access suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned.” [Underlining is ours]

17. The controversy can be viewed from another angle. Thereafter, the learned Judges opined that there is no justification in the proposition that principle of estoppel would not apply in such a situation. As is manifest, in the case at hand the respondent stated this on the higher side to gain the advantage of eligibility and hence, we have no trace of doubt that principle of estoppel would apply on all fours. It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised “to reach injustice wherever it is found”. In *Sangram Singh v. Election Commissioner, Kotah* and another[2], it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to

ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play. If a person has taken an undue advantage the court in its extraordinary jurisdiction would be within its domain to deny the discretionary relief. In fact, Mr. Singh, learned senior counsel for the appellants, has basically rested his submission on this axis. In our considered opinion, the Division Bench has erred in extending the benefit to the respondent who had taken undue advantage by not producing the Matriculation Certificate solely on the motive to get an entry into service. It is apt to note here that this Court in G.M., Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others[3] has ruled that the decision on the issue of date of birth of an employee is not only important for the employee but for the employer also.

18. In view of our aforesaid premised reasons we are unable to concur with the view taken by the High Court in F.M.A. No. 169 of 2006 and, accordingly, the Judgment dated 17.8.2007 passed by the Division Bench is set aside.

19. Resultantly, the appeal is allowed with no order as to costs.

.....J. [Anil R. Dave]J. [Dipak Misra] New Delhi;

September 23, 2013.

[2] (1997) 4 SCC 647 [4] (1955) 2 SCR 1 [6] (2008) 8 SCC 696