

Shankar Lal vs Hindustan Copper Ltd. on 20 April, 2022

Author: Aniruddha Bose

Bench: Aniruddha Bose, Dhananjaya Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2858 OF 2022
(Arising out of Special Leave to Appeal (Civil) No. 16886
of 2019)

SHANKAR LAL

.....APPELLANT(S)

VERSUS

HINDUSTAN COPPER LTD. & ORS.

.....RESPONDENT(S)

JUDGMENT

ANIRUDDHA BOSE, J.

The appellant is before us primarily questioning the validity of an order of the employer (Hindustan Copper Limited □the first respondent in this appeal) treating his date of birth as 21st September 1945. This date has relevance for computation of his benefits accruing from a Voluntary Retirement Scheme (“VRS”), for which he applied and was granted. The appellant’s stand is that his date of birth is 21 st September 1949. The appellant had invoked the writ jurisdiction of the High Court of Judicature for Rajasthan at Jaipur (“the High Court”), but was unsuccessful before a Single Judge and the Division Bench in sustaining his case. If the latter date, i.e. 21st September, 1949 was accepted by the employer to be his date of birth, his financial benefits from the said scheme would have been higher, as he would have had longer service tenure left. It appears that the tenure of service left was the basis on which the VRS benefit was to be computed. We would like to point out here that in the pleadings and copies of various other documents forming part of the paperbook, there are overlapping dates claimed by the appellant to be his actual date of birth. These are 20 th September 1949 and 21st September 1949. This variation, however, is insignificant so far as adjudication of this appeal is concerned. In this judgment, we shall ignore this variation and proceed on the basis that 21st September 1949 is the date claimed by the appellant to be his birthdate.

2. The VRS was operational in the appellant's case with effect from 3rd October 2002. Admitted position is that 21st September 1949 was recorded as his date of birth in his service book. This was opened in 1975. He had joined the organisation in the year 1971 and the Form "B" reflects his date of birth as 21st September 1945. The appellant claims that at the time of his voluntary retirement, he came to learn for the first time that his date of birth was being changed to 21st September 1945. He invoked the writ jurisdiction of the High Court in the year 2008 as his representations for adhering to 21st September 1949 as his birthdate failed to evoke positive response from the employer. That writ petition (S.B. Civil Writ Petition No.5690/08) was disposed of by a Single Judge with a direction to the appellant to make a fresh representation in light of the recommendations made by a committee of the employer themselves in his favour on the subject controversy. The competent authority was directed, in the same judgment delivered on 15th July 2008, to consider and decide on the same in accordance with law.

3. The appellant's representation was rejected by the competent authority□employer by an order passed on 13 th October 2008 ("the rejection order"). The appellant's plea against the rejection order (S.B. Civil Writ Petition No. 13195/2008) was dismissed by a learned Single Judge of the High Court by an Order dated 24 th November 2008 and his appeal (D.B.Special Appeal Writ No.1501/2011) assailing the order of dismissal before a Division Bench of the same High Court also failed. The judgment of the Division Bench was delivered on 8th December 2016. It is this judgment which is under appeal before us. The appellant stakes his claim primarily on his service book maintained by the employer, where his date of birth is shown as 21 st September 1949. Mr. Kaushal Yadav, learned counsel for the appellant has also relied on a Life Insurance Corporation ("L.I.C.") Policy in which the same date of birth has been shown. This policy, however, was subscribed to by the appellant in the month of May, 1980. The appellant's counsel has brought to our notice sample copies of his pay slips for the months of August 1994 and August 2001. Both these pay slips carry the message, "Happy Birthday ***20.09.1949***". The appellant has also relied upon certain clauses of the Standing Orders of the employer in support of his claim. We shall refer to the relevant clauses thereof later in this judgment.

4. The appellant had joined the said organisation as a miner on completion of his one□month training in the temporary job. Communication to that effect was issued on 8th September 1971. We have already referred to different documents emanating from or maintained by the employer themselves where his date of birth was shown to be 21st September 1949. In the computation sheet of his estimated "VR benefit" also the same date of birth was reflected. By that time, the post the appellant was holding was that of "drifter operator" (a copy of the estimate sheet forms part of the paperbook, at page 38). The appellant was relieved from his service on 3rd October 2002. The appellant's case is that he came to know that his date of birth was being altered only after he was relieved from service. From the materials available on record, we find reference to his date of birth as 21st September 1945 for the first time in a form issued by the employer on 22nd March 2003. The top portion of this form (a copy of which appears at page 47 of the paperbook) carries an endorsement made by the Assistant Manager of the first respondent: □"Date of birth: 21.09.1945 as per 'B' Form". Immediately below this sentence there is recordal that "D.O.B: 21.09.1949 as per H.O. Application." Rest of the said form contains other particulars of the appellant, which also includes his date of birth, filled in as 20th September 1949. The appellant, however, had knowledge of his

date of birth being taken by the employer as 21 st September 1945 earlier, but according to him, he had noticed this only after being relieved from service. In his service certificate issued on 29th October 2002, 21st September 1945 was shown as his birthdate.

5. Stand of the respondents, represented by Ms. Nandini Sen Mukherjee, learned counsel, is that at the entry point, he had given his age to be 26 years, and that was the age reflected in the Form “B”. That is a statutory form required to be maintained under The Mines Act, 1952. It has also been submitted by her that at that point of time, the medical practitioner during a health checkup had also assessed his age to be about 25 years, which would take his year of birth closer to 1945. In the year 1975, his service book was prepared. In such records, the appellant’s age was entered as 26 years by mistake, repeating his age as it was at the time he joined the organisation. That is how the inconsistent recordal of the appellant’s birthdate is sought to be explained by the employer. She has also emphasised that the appellant had raised the complaint after receiving all the VRS benefits computed on the basis of his age as reflected in the Form “B”.

6. It appears that there had been disputes over age in respect of other employees also in the same organisation, and a three member committee was constituted by an Order passed on 7th September 2004 by the General Manager, Khetri Copper Complex of the first respondent. The committee considered the case of the appellant also, and their report went in his favour. Relevant extract from this report has been annexed at page 54 of the paperbook (Annexure P13). In Clauses 3, 4 and 5 of this report, background has been given in relation to recordal of date of birth of an employee. We quote below the said three clauses from that report: “3. As per the company’s certified standing orders, the basis for determining the date of birth of an employee will be: “

a) Birth Certificate

b) School Leaving Certificate

c) Insurance Policy

d) Horoscope

e) Medical Report In the standing orders followed in KCC, it is nowhere written that the ‘B’ Form will be basis for the determining the age.

4. In one of the court case (Durga Ram Vs. HCL Case No.2427/1990) for age anomaly, the Hon’ble High Court, Rajasthan has declined to accept the ‘B’ Form Register as the basis for age/date of birth determination where the Hon’ble High Court had quoted “when ‘B’ Form entries have not been made by the petitioner in his own handwriting and the entries have been made in ‘B’ Form in a language which the petitioner could not have understood, entries made in ‘B’ Form could not have been made basis for effecting the retirement of the petitioner.

5. During construction period of KCC there was no proper system of recording the particulars of an employee like date of birth, age etc. Most of the workmen were engaged as “daily rated monthly paid

basis” and there was no proper system of recording the exact date of joining, date of birth etc. During this period employees so engaged were never asked for documents etc. in support of their age. Only after the Gopal Das Narayan Award in 1971, all these “daily rated monthly paid” workmen were regularized and their date of initial joining in the company were taken into account, service book was introduced and particulars of these employees were maintained.” (quoted verbatim from the paperbook)

7. In relation to the appellant, the recommendation of the committee was to the following effect: □
“6. Shri Shankar Lal Saini, Code No.36145, Ex□employee.

Shri Shankar Lal joined the company on 21.9.1971. His age was recorded as 26 years in the ‘B’ Form Register at the time of his initial joining. Accordingly, his date of birth comes to 21.9.1945. However, his date of birth was not recorded in his service book. His service book was filled up in the year 1975 where his date of birth was recorded as 21.9.1949 counting 26 years from the year 1975 (year of filling up the service book).

In the medical report dated 22.9.1971 also his age was assessed as 25 years, which comes nearer to 1945 and not of 1949. The date of birth recorded in the service book was not disputed for a long time. However, in the year 2002, when the anomaly was noticed the case was processed for rectification but in the meantime, Shri Shankar Lal has submitted V.R. and subsequently released from the committee’s service on 3.10.2002. His V.R. payment was released considering his date of birth as 21.9.1949 and not as 21.9.1949 (which was recorded in his service book) as the Finance Department did not agree to accept the date of birth as 21.9.1949. After receiving the payment the ex□employee made several request to release the balance amount of V.R. benefit considering his date of birth is 21.09.1949. The committee observed that the ex□employee joined this complex on 21.9.1971. Since he was only literate, a ‘B’ register was filled up at that time where his age was recorded as 26 years. In the year 1975 a service book was filled up where date of birth was recorded as 21.9.1949, counting 26 years from the year 1975. There was a medical report dated 22.9.1971 where his age was assessed as 25 years which makes the date of birth as 22.9.1946 but this medical report cannot be considered as this was a routine medical report and no medical board was set up specifically for age determination. The committee felt that the date of birth as 21.9.1949 was recorded in the service book in the year 1975, which was never disputed thereafter. Moreover, the same date of birth was mentioned in his pay□slip ever year which was also published by the committee. His LIC record also indicates the same date of birth. Only at the time of his release of payment in the year 2002 his date of birth was considered from 21.9.1949 to 21.9.1949 which is against the DEP’s guidelines dated 9.2.2001. The committee, therefore, recommended to maintain his date of birth as 21.9.1949.” (quoted verbatim from the paperbook)

8. This recommendation was rejected by the employer, which resulted in the appellant filing the writ petition before the High Court. We have referred to this writ petition and directions issued by the High Court on 15 th July 2008 earlier in this judgment.

9. The recommendation of the committee was not accepted by the employer in the rejection order, relying on Clause 5 of the Standing Order. The relevant extract from this clause has been quoted in

para (iv) of the rejection order made by the competent authority. We reproduce below the said clause, as it appears in the rejection order: □“iv) However, in case of Mining workmen, declaration of age by the individual workman in the ‘B’ Form Register as per the Mines Act/Rules may be relied upon subject to confirmation by the Company’s Medical Officer whenever considered necessary.” (quoted verbatim from the paperbook)

10. In the rejection order, reference was also made to the guidelines of the Department of Public Enterprises, Government of India. In Clauses (v), (vi) and (vii) of the said order, it is recorded: □“v. The department of Public Enterprises, Government of India in its guidelines dated 9th February, 2001 states that the date of birth declared by an employee and accepted by the appropriate authority shall not be altered unless the same is represented against with adequate proof/justification within 5 years of joining the service.

vi. Whereas, Shri Shankarlal never disputed the date of birth recorded in ‘B’ Form, which is the primary document for the purpose of recording date of birth of employee working in Mines as per the Mines Act and as well as the Standing Orders of the Company, until his release from the services of the Company on voluntary retirement on 03.10.2002 i.e. after 31 years of service.

vii. The competent authority has taken note of the recommendation of the Committee, which was appointed in 2004 to examine anomalies in dates of birth of certain number of employees. It is seen that while examining this case, the committee had somehow failed to consider and record the importance of Clause No.5 of the Standing Order applicable in case of mining workmen as referred above. The competent authority has therefore not accepted the recommendations of the said committee.” (quoted verbatim from the paperbook)

11. In the appellant’s writ petition seeking invalidation of the rejection order, the High Court found the stand taken by the authorities in rejecting the appellant’s plea for treating his date of birth as 21 st September 1949 to be justified. The Single Judge of the High Court considered the fact that no documentary evidence was available on record to support his date of birth to be 21st September 1949. The appellant’s writ petition was dismissed. Against the judgment of dismissal, the appellant approached the Division Bench of the same Court. The Division Bench also primarily relied upon the entry in the Form “B” register and dismissed the appeal. The Division Bench, inter alia, held: □“(5) There shall be a presumption of correctness with regard to entries regarding date of birth made as far back as 1971 in the statutory Form ‘B’ register under the Mines Act. If the Appellant seeks to challenge entries in a statutory register duly signed by him also, the onus lies on him to prove how it was wrongly made. Obviously the age mentioned was not a figment of imagination by the Respondent evident from the order of appointment which states that it was based on his own statement (6) The service book of the Appellant was opened in the year 1975. There was no challenge to entry in the same also. According to the DPE guidelines any request for correction in the date of birth in the service book was required to be made within 5 years. If there was a prescription of time limit, the question of raising any controversy much after that period and acceptance of VRS 2002 simply does not arise. (7) The Appellant accepted the benefits of the VRS and then raised the dispute. The Respondents in all fairness referred his case to a Medical Board which again opined in confirmation of the entries made in the Form ‘B’ register and the service book. The contention of the

Appellant with regard to his date of birth being 21.09.1947 becomes a disputed question of fact which cannot be inquired in the writ jurisdiction quite apart from the fact of it having been raised very belatedly.” (quoted verbatim from the paperbook)

12. The stand of the employer, thus, is that in his service book there was error in recording the age of the appellant as 26 years in 1975 and we ought not to give any credence to such recordal. The respondents had only corrected an error and such recordal in service book cannot be treated to be acceptance of the appellant’s date of birth as 21 st September 1949. We, however, find that the authorities proceeded in this matter in a rather mechanical manner and embarked on a unilateral exercise of correcting the age entry in the service book on their perception that an error was being corrected. This exercise was conducted without giving any opportunity of hearing to the appellant and at the fag end of his service tenure. Otherwise, various documents including the L.I.C. policy consistently reflect 21st September 1949 to be the appellant’s birthdate.

13. Clause 5 of the Standing Order on which reliance has been placed by the employer does not treat the entry in the Form ‘B’ recording date of birth of a miner to be the conclusive proof of his or her age. Any doubt on a workman’s age at the time of joining service also could be verified by a medical board. We accept that an entry in the Form “B” possesses high probative value, but they are not conclusive proof of what is contained therein. The competent authority proceeded on the basis that since the appellant did not question the entry in Form “B”, he ought not to be permitted to question the same at the time of his voluntary retirement.

14. The committee report prepared by three deputy general managers of the respondent no.1 has raised doubt of the correctness of the medical report as the same was not a report of a medical board set up specifically for age determination. It appears to have been a general observation in course of health checkup. There does not appear to have had been any other medical board constituted for that purpose. The Division Bench, in the judgment under appeal, has held that the respondents had referred the appellant’s case to a medical board which had again confirmed the entries made in the Form “B” register. We do not find from the counter affidavit that any further medical board was constituted. Moreover, the finding of the Division Bench that opinion of the medical board confirmed the entries made in the Form “B” register and service book is erroneous as in the service book prepared in the year 1975, the year of birth of the appellant has been treated to be 1949. Moreover, the rejection order does not deal with the committee’s observation that the medical opinion on the appellant’s age was a routine medical report and not the opinion of a medical board constituted to determine the age of an employee. Subsequent pay slips, the sample copies of which have already been referred to in a preceding part of this judgment also repeated 1949 to be the appellant’s year of birth. The L.I.C. policy subscribed to by the appellant also carries the same date of birth.

15. One of the factors that weighed with the Division Bench was that there was no challenge to entry in the service book, which should have been done within five years as per the DPE guidelines. We are unable to accept this reasoning as the service book contained 21st September 1949 as his date of birth and this was prepared in 1975. Thus, no occasion arose for approaching the employer for making any correction in the service book till 2002.

16. This is not a case where a workman is seeking to change his date of birth to his benefit at the end of his career. This is a case where the employer is altering the records at the end of the career of the workman to his detriment on taking unilateral decision that the date of birth specified in the appellant's service book was erroneous, relying on a date disclosed in a statutory form. Turning to Clause 5 of the Standing Order, we have already expressed our view on the evidentiary value of the entries in Form "B" as regards date of birth of a workman. In the committee report, the DPE's guidelines dated 9th February, 2001 has been referred to, which deals with alteration of the date of birth of an employee. The report records: □"1. As per the DPE's guidelines dated 9.2.2001, an alteration of date of birth of an employee may be considered with the sanction of the Board of Directors, if

(a) request in this regard is made within 5 years of his entry into the service of the Public Sector Undertaking

(b) It is clear established that a genuine bonafide mistake had occurred.

(c) and date of birth so altered should not make him ineligible to appear in any school/University in which he had appeared or for entry in Public Sector Service on the date on which he first appeared at such examination or on the date on which he entered the Public Sector Services." (quoted verbatim from the paperbook)

17. Though in the Form "B", the appellant's age in 1971 was given as 26 years (the date of birth shown as 21 st September 1945), in the subsequent documents the date appearing in service book had been reflected and it was the date reflected in the service book which formed the basis of the pay slips as also the estimate statement of the appellant's voluntary retirement benefits. In such circumstances, the appellant's failure to seek correction in the Form "B" register could be condoned.

18. The employer has taken a stand that the date of birth recorded of the appellant in the service book was an act by mistake. This is a weak explanation in our opinion. Several subsequent steps were taken by the employer in relation to the appellant's employment on the basis of the entry in his service book. The employer are the custodian of these records. They acted all along on the basis of the service entries till the appellant took VRS. It has been pleaded by the appellant that at the time of his appointment, the office of the respondent company entered in all their records his date of birth as 21st September 1949. In the light of these facts, we are not inclined to accept the version of the employer that service book recordal was a mistake. The employer, a public sector unit in this case, was expected to act with a certain element of responsibility in maintaining the service records of their workmen and ensure that there is uniformity in particulars concerning individual employees. There is no explanation as to how this mistake occurred and how pay slips continued to be issued carrying the mistaken date of birth for such a long time. The High Court in our view ought not to have had accepted "mistake" as the cause for different entries in different documents.

19. The other point on which argument has been advanced on behalf of the employer is on the aspect of delay on the appellant's part in questioning the mistake in the Form "B". It has been urged by the respondents' counsel that they had extended the sum as per the VRS package computed on the basis

of 21st September 1945 as his date of birth and complaint on that count was raised by the appellant after receiving such benefits. It is their case that the anomaly was discovered sometime in July/August 2002 and the appellant was asked to appear before a higher authority, which he did on 16th October 2002. The note sheet of the appellant's meeting with the Assistant General Manager on 16th October 2002 has been annexed to the respondent's counter-affidavit marked as "R1". The note sheet records that the appellant had refused to put his signature thereon. Such refusal is not of much significance so far as adjudication of the subject-dispute is concerned. Fact remains that this note-sheet appears to be the first document by which the employer had alerted the appellant of their decision to rely on Form "B" entry for computing his age.

20. The said document came into existence after the appellant was released from his service on 3rd October 2002. No document of earlier origin in this regard has been brought to our notice in course of hearing of this appeal. The appellant complained against such decision on 26th October 2002. Thus, the process of fixing of the appellant's date of birth had continued beyond the date on which he was released from his service.

21. We do not think the appellant's complaint over the dispute was belated so as to non-suit him on this count alone. VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under Article 300A of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birthdate of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form "B" which would curtail the VRS benefit of the appellant.

22. The principle of estoppel cannot be invoked in this case against the appellant to debar him from claiming the benefit properly computed as per his age reflected in the official documents. Occasion did not arise for the appellant to advert to the age correcting process so far as entry in the Form "B" is concerned as the employer themselves had treated his date of birth to be 21st September 1949 in the service book.

23. In these circumstances, we are of the opinion that the Division Bench as also the Single Judge of the High Court did not appreciate the materials available in their proper perspective. We do not think that the view taken by the Division Bench was a possible view. Sustaining such view would result in depriving the appellant of his legitimate benefits under the applicable Voluntary Retirement Scheme. The materials relied upon by the appellant were ignored altogether. We thus set aside the judgment of the Division Bench. As a consequence, the judgment of the Single Judge also would stand set aside. The rejection order dated 13 th October 2008 of the competent authority shall stand quashed. The respondent no.1 proceeded in the case of the appellant in an erroneous manner in treating the appellant's date of birth to be 21st September 1945. We accordingly direct the respondents to extend the benefits of VRS to the appellant treating his date of birth as 21 st September 1949. Such benefits shall be extended to him within a period of four months, upon deducting therefrom the sum already paid to him. The differential amount shall carry simple interest at the rate of seven percent (7%) per annum to be computed from 3rd October 2002, being the date on which he was released from service, till the date of actual payment to him in terms of this judgment.

24. The appeal is allowed accordingly.

25. Pending application(s), if any, shall stand disposed of.

26. There shall be no order as to costs.

.....J. (Dr. Dhananjaya Y. Chandrachud)J.
(Aniruddha Bose) NEW DELHI;

20th April, 2022.