Supreme Court of India
Burn Standard Co. Ltd. & Ors vs Shri Dinabandhu Majumdar & Anr on 21 April, 1995
Equivalent citations: 1995 AIR 1499, 1995 SCC (4) 172
Author: V N.
Bench: Venkatachala N. (J)

PETITIONER:
BURN STANDARD CO. LTD. & ORS.

Vs.

RESPONDENT:
SHRI DINABANDHU MAJUMDAR & ANR.

DATE OF JUDGMENT21/04/1995

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
AHMADI A.M. (CJ)

CITATION:
1995 AIR 1499 1995 SCC (4) 172
JT 1995 (4) 23 1995 SCALE (3)37

ACT:

HEADNOTE:

JUDGMENT:

VENKATACHALA, J.

1. Special leave sought for, is granted.

2. This appeal by special leave arises from the judgment dated 14.1.1993 of a Division Bench of the High Court of Calcutta dismissing Appeal No. 149/91 directed against the order dated 18.4.1991 of a learned Single Judge of the same Court made in Matter No. 2317/90, requiring respondent-1 therein -- appellant-1 herein, by issuance of a writ in the nature of mandamus, to correct the date of birth of peti- tioner-1 therein -- respondent-1 heron, in his 'Service and Leave Record' and allow him to continue in its service beyond his superannuation age commutable according to his date of birth entered in that 'Service and Leave Record' at the time of his appointment. A question of general importance which is raised for our decision in this appeal is: When the High Court's extra- ordinary writ jurisdiction under Article 226 of the Constitution is sought to' be availed of by an employee of

the Government or its instrumentality, to prevent either of them, as the case may be, from retiring him on superannuation according to the date of his birth declared at the time of his appointment and entered in his 'Service and Leave Record', by its acceptance by the Government or its instrumentality, as correct, can such jurisdiction be exercised in favour of such employee, as a matter of course?

3. In the year 1981, when appellant-1, the Burn Standard Company Limited was formed by the Government of India, it took over the Indian Standard Wagon Company Limited along with its employees, subject to their existing service conditions Consequently, respon-

dent-1, who had been appointed by Indian Standard Wagon Company Ltd. as its employee long ago on 25.4.1953 became the employee of appellant- 1. 'Service and Leave Record' of respondents with the Indian Standard Wagon Company Ltd., which had been opened at the time of his appointment, became his 'Service and Leave Record' with the appellant. That 'Service and Leave Record' of respondent1, where his age had been entered on the basis of his declaration, voluntarily made at the time of his appointment also contained his authentication made therefore by affixture of his left thumb mark. That declared age, which indicated the date of birth of respondent- 1 as 25.4.193 1, was to be the basis for his retirement from service, on attaining the age of superan- nuation at 60 years. However, respondent-1 who had continued in employment with the appellant for over 36 years, without any demur as to his age entered in his 'Service and Leave Record', made an application to the appellant on 1.2.1989, at a time close to the date of his retirement, seeking correction of his date of birth as 7.7.1934 in his 'Service and Leave Record'. But, appellant- 1, which considered that application, by its letter dated 10.3.1989, informed respondent 1 that his age recorded in his 'Service and Leave Record' as per his own declaration and duly authenticated by him at the time of his appointment, since constituted the sole evidence of his age in all matters relating to his service, according to its Standing Orders, the same could not be corrected as sought for. But, respondent-1 again wrote a letter dated 26.7.1989 to appellant-1, stating that he had to seek correction of his date of birth in his 'Service and Leave Record' since it did not reflect his date of birth as found in his Admit Card of Matriculation Examination issued by the Calcutta University and was also not in consonance with the declaration of his age made at the time of his appointment before his erstwhile employer. When the claim in that letter was not acceptable to appellant-1, respondent-1 was duly intimated of the same by means of a Memo dated 8.9.1989. Further, on 5.6.1990 the appellant also issued to respondent-1 the Superannuation Notice which read thus:

> "You are well aware that your retirement date is 24.4.91 (a.n.) as recorded. We would like to take this opportunity to communicate that you will be released from the services of Bum Standard Co. Ltd. w.e.f. 25.4.91 (fn.). By this time, we may request you to vacate the quarter, if allotted, for enabling us to settle your dues towards final settlement."

4. Respondent-1, who did not accept the said Superannuation Notice, in its stride, invoked the writ jurisdiction of the Calcutta High Court by filing a writ application under Article 226 of the Constitution, being Matter No.2317/90 against appellant-1, by praying therein for issue of a writ of mandamus to appellant-1 not to superannuate and retire him from service till he attained the

superannuation age on the basis of his date of birth found in his Matriculation Admit Card i.e. 7.7.1934. Although the grant of that writ application of respondent-1 was opposed by appellant1, a learned Single Judge of the High Court who heard that application, by his Order dated 18.4.1991 allowed it by issuing a writ in the nature of mandamus to appellant-1, as had been sought for therein. When that order of the learned Single Judge was impugned in appeal No. 149/ 91, the Division Bench of the High Court which heard that appeal, by its order dated 14.1.1993 dismissed the same, affirming the order of the learned single Judge.

5. Appellant- 1, who felt aggrieved by the said order of dismissal of appeal made by the Division Bench of the High Court, has filed the present appeal by special leave, in which the question indicated at the outset, is raised for our consideration and decision.

6. As is pointed out by us, while narrating the facts of the case, respondent-1 made an application to appellant-1, seeking correction of his date of birth, which was entered in his 'Service and Leave Record', after he had completed, as many as 36 years of his service and when his retirement was due. When appellant-1 received that application, it issued a letter to respondent-1 making it clear that when his age had been recorded in his 'Service and Leave Record' on the basis of his own declaration, which had been duly authenticated by him at the time of his appointment, question of correcting such date of birth did not arise. Later, when respondent-1, wrote another letter to appellant- 1 asserting that at the time of his initial appointment, he had declared his date of birth to be 7.7.1934 and that date of birth was duly recorded by the then management and that very date of birth was mentioned in his Admit Card to Matriculation examination, that letter also did not find favour with appellant-1 Hence, appellant-1 issued Superannuation Notice dated 5.6.1990 to respondent-1 indicating that he will be superannuated w.e.f. 25.4.1991and retired on the forenoon of that day on the basis of his date of birth entered in his 'Service and Leave Record'. However, that Superannuation Notice was sought to be got over by respondent-1 by filing a writ application in the High Court. What was stated in his writ application as regards the declaration made by him before the predecessor of the appellant, was not that at the time of his appointment he had made a declaration and the same was duly recorded by the management, as had been stated and asserted earlier before appellant-1. Instead, it had been stated in the writ application that after his appointment, he was asked to file a declaration form and a nomination form and they having been duly filled up, were deposited with the authority concerned and in that declaration form he had given his date of birth as 7.7.1934. Further, it had been stated that when he came to know in the year 1989 that his date of birth was wrongly recorded by appellant-1, he made a representation to the appellant for correction but it was of no avail. However, when he was issued the Superannuation Notice he had challenged it before the High Court. What all had been stated with regard to the declaration of the date of birth by respondent-1 in his writ application was totally denied on behalf of the appellant by filing an affidavit in opposition. It was stated in that affidavit that it was not open to respondent- 1 to dispute the correctness of his date of birth entered in his 'Service and Leave Record' when he had on his own, made a declaration of that date of his birth at the time of his appointment and when that declaration was duly authenticated by him by affixture of his left thumb impression. The learned Single Judge of the High Court who heard the writ application did not go into the question whether the date of birth declared by respondent-1 as cor- rect and accepted by appellant-1 and acted upon by it, warranted correction as sought for by respondent-1, merely

because a dif-

ferent date of birth of respondent-1 was found in his supposed Admit Card to Matriculation examination. All that is found in the order of the learned Single Judge is, that the High Court had in its earlier Division Bench decision held that the date of birth of a Government servant in his service record requires correction according to the date of birth found in its Matriculation certificate and, therefore, the date of birth of respondent-1 in his 'Service and Leave Record' should be corrected on the basis of the date of birth found in the Matriculation certificate even ignoring the fact that what had been produced by respondent-1 in the court was not a Matriculation certificate, but a photocopy of a duplicate Admit Card of Matriculation examination. It is the said view of the matter which made the learned single Judge, as seen from his order, to direct appellant-1 to correct the date of birth of respondent-1 in his 'Service and Leave Record' and allow him to continue in service of appellant-1 on the basis of such corrected date of birth, by issuing a writ in the nature of mandamus. When the order of the learned single Judge was taken up in appeal before the Division Bench of the High Court, the Division Bench did not feel inclined to interfere with the order of the learned single Judge and dismissed the appeal.

7. Having gone through the order of the learned single Judge, we arc unable to think that the discretionary extraordinary jurisdiction vested in the High Court under Article 226 of the Constitution has been property exercised by him in issuing a writ in the nature of mandamus directing appellant-1 to correct the date of birth of respondent-1 in his 'Service and Leave Record' and allow him to continue in service beyond the date when he should have retired having regard to his age as entered in his 'Service and Leave Record'. The Division Bench of the High Court also, we are inclined to think, has failed to see that the learned single Judge had not properly exercised his writ jurisdiction in granting relief to respondent-1, if regard is had to the nature of relief which he had sought for.

8. The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be neces- sarily regulated according to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the cer- tificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employer the only way in which the employer, Gov- ernment or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold inquiry into the matter by affording an op- portunity to the employee concerned to have his say in the matter. But when once the employer, the Government or the instrumentality concerned accepts the date of birth of an employee as declared by him and supported by certificates or documents produced by him and allows him to enter into its service and

continue on such basis, is it open to such employee to claim that the date of birth declared and authenticated by him was incorrect and, there- fore, the employer, be it the Government or its instrumentality, should correct his date of birth in his 'Service and Leave Record' according to what he claims to be true and if the Government or its instrumentality concerned refuses to accept such claim, can the High Court in exercise of its discretionary extraordinary writ jurisdiction entertain a writ application, to consider the merit of such claim?

9. No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee if forbids correction of such date of birth of employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes imper- missible. However, in the absence of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Gov- ernment or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extra- ordinary writ jurisdiction to entertain a writ application of an employee of the Government or its instrumentality, as the case may be, for correction of his date of birth entered in his 'Service and Leave Record' at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his 'Service and Leave Record' and continue him in service beyond the date of his normal retirement, is the question. It is true that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution can even enter upon disputed questions of fact, if the case in which the extraordinary jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned party. But, the question is that if an employee of the Government or its instrumentality, who is at the fag end of his service and due for retirement from his service shortly, according to his date of birth found in his 'Service and Leave Record' files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?

10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement

according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his `Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end-of his service, seeking correction of his date of birth entered in his `Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following: When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and

belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief

12. When we turn to the case of respondent-1, he did not object to his date of birth or age entered in his 'Service and Leave Record' with appellant- 1 during 36 years of his service. When the writ application filed by respondent-1 was entertained by the High Court, it is difficult to find that it has used its discretion in the matter either judiciously or reasonably, and for that reason alone the judgment of the Division Bench of the High Court under appeal by which the order of the learned Single Judge has been affirmed calls to he interfered with and set aside.

13. Even, on merits, both judgment of the Division Bench of the High Court and the order of a Single Judge of the High Court, cannot be sustained. For correction of respondent- 1's date of birth found in his 'Service and Leave Record' ,with appellant-1, the Calcutta University's copy of the duplicate Admit Card to Matric examination, which purported to show his date of birth as 7th day of July, 1934, could not have been relied upon by the High Court for it was not a Matriculation certificate of respondent-1 where his date of birth had been found for being acted upon as correct date of birth, as had been held in a previous Division Bench decision of the High Court vide Pramatha Nath Choudhury v. the State of West Bengal and Ors. [1981 (1) SLR 570].

14. Undoubtedly, the claim of appellant Pramatha Nath Choudhary in the appeal before the Division Bench of the High Court was exactly similar to the claim of respondent- 1 in the present appeal. All that the Division Bench has said in its decision is that date of birth of the appellant which was accepted by his employer should be corrected to accord with date of birth found in his Matriculation certificate. No reason is given as to why towards the fag end of the service career of the appellant before it, such correction should have been permitted. Moreover, even though the Matriculation certificate produced by the appellant before the Division Bench for the first time was seriously doubted, no opportunity had been given to the Government to make good the doubt. Having gone through the said judgment of the Division Bench in appeal, we have no hesitation in reaching the conclusion that the Division Bench was wholly unjusti- fied in interfering with the order of the learned Single Judge of the same court whereby it was held, in our view, rightly that the appellant's writ application filed for correction of his date of birth at the fag end of his service career for avoiding his superannuation which was due, cannot be entertained.

15. Hence, the order of the learned Single Judge of the High Court whereby he allowed the writ application of respondent- 1 here and the judgment of the Division Bench of the High Court whereby the order of the learned Single Judge is affirmed, cannot be sustained and call to be interfered with.

16. In the result, we allow this appeal and set aside the judgment of the Division Bench of the High Court in appeal and reject the writ application of respondent-1 filed in the High Court. Since respondent-1 had continued in service of appellant-1 beyond 5.6.1990, the date of his superannuation on the basis of his declared age entered in his 'Service and Leave Record' because of the judgment and order of the High Court, now set aside, he shall not be entitled to any service benefits other than the salary drawn by him for the period beyond 5.6.1990. No costs.