

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(S) No. 3922 of 2008

Mukhtar Singh

....Petitioner

Versus

1. M/s. Bharat Coking Coal Limited through its Chairman-cum-Chief Managing Director, at Koyla Bhawan, Dhanbad.
2. Director Personnel of M/s. Bharat Coking Coal Limited, at Koyla Bhawan, Dhanbad.
3. Chief General Manager, Kustaur Area of M/s Bharat Coking Coal Limited, Dhanbad.
4. Personnel Manager (PIO) Kustaur Area of M/s Bharat Coking Coal Limited, Dhanbad.
5. Project Officer, Simlabahal Colliery, Kustaur Area of M/s Bharat Coking Coal Limited, Dhanbad.
6. Regional Commissioner, Coal Mines Provident Fund, Dhanbad.
7. Public Information Officer, Head Quarter of M/s Bharat Coking Coal Limited, at Koyla Bhawan, Dhanbad.

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. P.K. Mukhopadhyay, Advocate
For Respondents-State : Mr. Anoop Kumar Mehta, Advocate
Mr. Manish Kumar, Advocate

14/14.06.2024

This matter is assigned to this Bench and that is why it is listed before this Bench.

2. Heard the learned counsel for the petitioner and for respondents-BCCL.
3. The prayer in the writ petition is for direction upon the respondent nos. 3 to 5 to record correct date of birth of the petitioner as recorded in the service excerpt at the time of the initial appointment of the petitioner.
4. Learned counsel for the petitioner submits that the petitioner has been initially appointed by the Authority of Bharat Coking Coal Limited (for the sake of brevity hereinafter referred as BCCL) on 1.10.1971 in the post of Security Guard. He was working under the respondents with full satisfaction of the authorities. According to them the date of birth of the petitioner is 04.04.1952 and in the record it has been wrongly recorded as 30.03.1949. He further submits that the petitioner has been superannuated on 31.03.2009. He submits that the Identity Card issued by the BCCL the date of birth shown as 30.03.1949. He submits that the claim of the petitioner has been rejected by the BCCL by the order dated 17.04.1997 contained in Annexure-4. On these grounds, he submits that the

appropriate direction may kindly be issued on the BCCL to correct the date of birth of the petitioner.

5. On the other hand, Mr. Anoop Kr. Mehta, learned counsel assisted by Mr. Manish Kumar, learned counsels for the BCCL submits that there are disputed question of fact which cannot be a subject matter of writ jurisdiction and the petitioner is having an alternative remedy to raise the dispute before the Industrial Disputes Tribunal under the provisions made under the Industrial Disputes Act. He draws the attention of the Court to Form-B register which has brought on the record by way of filing of the counter Affidavit and submits that the date of the birth of the petitioner is recorded as 30.03.1949. He submits that this Form-B is a statutory form in the light of Rules 48, 51, 77 and 77 A of the Mines Rules framed under the Mines Act, 1952. He draws the attention of the Court to the Form-B and further submits that the petitioner has also signed upon that. He further submits that at the fag end of his career he raised this issue which is disputed one and the petitioner has earlier moved before this Court in C.W.J.C. No. 1168 of 1996 (R) which was disposed by directing the authority to take decision on the representation of the petitioner. Pursuant to that the BCCL has taken the decision on 17.04.1997 and this order is not under challenge. On these grounds, he submits that this writ petition may kindly be dismissed.

6. Looking to the prayer made in the writ petition, it is clear that this petitioner has not challenged the order dated 17.04.1997 by which the claim of the petitioner has been rejected and that was passed pursuant to the order passed by the Patna High Court, Ranchi Bench Ranchi in C.W.J.C. No. 1168 of 1996 (R) and for identical prayer the petitioner has moved before this Court in C.W.J.C. No. 1168 of 1996 (R) which was disposed of with the direction to the BCCL to take a decision. Further the Form-B has been brought on the record in which the date of birth of the petitioner is recorded as 30.03.1949 this document is signed by the petitioner and this Form-B is a statutory form. The petitioner has not brought on record either his matriculation certificate or any certificate issued by the educational institutions. The disputed question of fact is involved in the present writ petition. Further the petitioner having an

alternative remedy by approaching the Industrial Dispute Tribunal. However, it cannot be a ground of dismissing the writ petition as this writ petition was admitted for hearing. The petitioner has not brought on record any concrete document to suggest that there is any illegality in recording the date of birth of the petitioner as 30.03.1949 and further at the fag end of his career he has raised this dispute. The reference may be made to the case of ***Bharat Coking Coal Limited and other versus Shyam Kishore Singh*** reported in **(2020) 3 SCC 411** in which the Hon'ble Supreme Court has held as follows:

"7. 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.

8. 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 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.

9. *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 v. Gorakhnath Sitaram Kamble (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 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 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.”

10 *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. v. Premalal 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. 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. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh*).

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 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.”

11. The learned Additional Solicitor General has also relied upon the decision of this Court in the case of *Factory Manager Kirloskar Brothers Ltd. v. 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 *Eastern Coalfields Ltd. v. Ram Samugh Yadav* in C.A. No. 7724 of 2011 dated 27.05.2019 wherein this Court has held as hereunder:

“6. 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.

7. 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.”

12. 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. v. 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 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.

13. *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. 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.*

14. *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.*

7. In view of the above judgment the case of the BCCL is further strengthen. In view of the above discussion, reasons and analysis no case of interference is made out.

8. Accordingly, this petition is dismissed.

9. Pending interlocutory application, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

MM/AFR