

HIGH COURT OF CHHATTISGARH, BILASPURWRIT PETITION (S) NO. 484 OF 2014

1. Arjun Lal S/o Shri Charan Aged About 54 Years R/o Shanti Nagar, Rajgmar Colliery, Village Rajgamar Shantinagar, P.O. Ompur, P.S. Rajgamar, Tahsil And Distt. Korba Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coalfields Ltd., Through Chairman-Cum-Managing Director, South Eastern Coalfields Ltd., Seepat Road Bilaspur, Chhattisgarh
2. General Manager (Personnel & Administration), South Eastern Coalfields Ltd., Seepat Road, Bilaspur, Chhattisgarh
3. General Manager, South Eastern Coalfields Ltd., Korba Area, Korba, Distt. Korba, Chhattisgarh
4. Area Personnel Manager, South Eastern Coalfields Ltd., Korba Area, Korba, Distt. Korba, Chhattisgarh
5. Sub Area Manager, Rajgamar Sub Area, South Eastern Coalfields Limited, P.O. Rajgamar Colliery, District : Korba, Chhattisgarh

---- Respondents

For Petitioner	Mr. Chandresh Shrivastava, Advocate
For Respondent/SECL	Mr. Pankaj Agrawal, Advocate

Order on BoardByHon'ble Shri Justice Goutam Bhaduri28-3-2024

1. The present writ petition is to quash the order dated 3-1-2014 and the corrigendum dated 10-1-2014 (Annexure-P/1) wherein the date of birth of the petitioner has been considered as 21-1-1954.



2. According to the petitioner, the order dated 3-1-2014 and the corrigendum dated 10-1-2014 (Annexure-P/1) is not in accordance with the Implementation Instruction No.76 (henceforth 'the II No.76') wherein the date of birth of the petitioner should have been considered as 21-1-1959, which is as per the matriculation certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal (Annexure - P/5).
3. (i) The facts of this case, in brief, are that the petitioner was appointed by the respondent SECL against the post of General Mazdoor in the year 1984 in the Western Coalfields Limited under the provisions of the dependant employment when his father namely; Charan was declared medically unfit. The petitioner contended that in the service record his date of birth was entered as 21-1-1954 instead of 21-1-1959. Pursuant thereto he sought for correction of date of birth in the year 1995 i.e. after a decade from the date of entry of his service. According to the petitioner, he was given an assurance to get the same corrected. Thereafter, the same was corrected in PS-3 (particulars of family) & PS-4 (nomination form), but eventually the date of birth in the original service record was not corrected.
- (ii) Since it did not help the petitioner, in the year 2013 he preferred WPS No.2070 of 2013 before this Court, which has been disposed of by order dated 17-7-2023 with a direction to the SECL to examine the petitioner's grievance in the light of II No.76. Subsequent thereto, the





petitioner approached the Age Determination Committee (henceforth 'the ADC') and the ADC determines the age/ date of birth of the petitioner as 21-1-1954. Pursuant to the said report of the ADC, by order dated 3-1-2014 and the corrigendum dated 10-1-2014 (Annexure-P/1) the respondent SECL dismissed the application of the petitioner. Hence, this petition.

4. Learned counsel appearing for the petitioner would submit that review determination of date of birth in respect of existing employees is provided in clause (B) of II No.76. Learned counsel would submit that despite the fact that the petitioner produced the matriculation certificate, which contains the date of birth as 21-1-1959, the same was not accepted, however, on the basis of testimonials the petitioner was promoted upto the post of Electrical Fitter. According to him, the order of the ADC is completely arbitrary and without application of mind. In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Bharat Coking Coal Limited and Others v Chhota Birsa Uranw***¹.
5. Learned counsel appearing for the SECL, *per contra*, would submit that the date of birth of the petitioner in the service book, in Form 'B', etc. is shown as 21-1-1954, which is duly accepted by the petitioner. The petitioner having accepted the same and had gone to the ADC he cannot turn back and challenge the same. The order of the ADC would be final. In support of his contention, learned counsel would place his

¹ (2014) 12 SCC 570



reliance upon the decisions rendered by the Supreme Court in the matters of *Union of India v Harnam Singh*² and *Union of India and Others v Kantilal Hemantram Pandya*³.

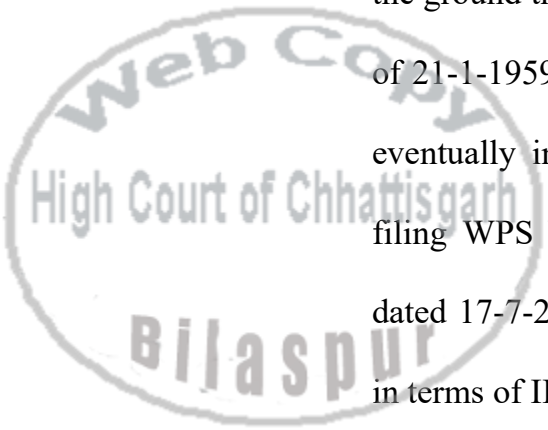
6. I have heard learned counsel appearing for the parties at length and the perused the documents.
7. Admittedly, the facts of the case show that the petitioner was taken into service in the year 1984 and as per Annexure-P/7, which was given on 3-8-1995 the petitioner requested for correction of his date of birth on the ground that inadvertently the same is recorded as 21-1-1954 instead of 21-1-1959. However, it appears that it did not yield any result and eventually in the year 2013 the petitioner approached this Court by filing WPS No.2070 of 2013, which has been disposed of by order dated 17-7-2013 with a direction to examine the case of the petitioner in terms of II No.76. The same is quoted below for ready reference :

Grievance of the petitioner is that though the correct date of birth of the petitioner is 21/01/1959 as recorded in the mark sheet (Annexure P/1), respondents have incorrectly recorded petitioner's date of birth as 21/01/1954.

It is submitted by learned counsel for the petitioner that ever since 2000, the petitioner has been agitating this grievance before the respondent authorities but till date, no action has been taken and now the petitioner is at the fag end of his service, going to retire in the month of January 2014. Therefore, the respondents be directed to determine the correct date of birth of the petitioner.

2 AIR 1993 SC 1367

3 AIR 1995 SC 1349





From the pleadings and documents which have been placed on record, it is reflected that right from the beginning of the service career of the petitioner, his date of birth is recorded as 21/01/1954 (Annexure P/4). A communication made to the petitioner in the year 1987 also shows the date of birth as 21/01/1954. The petitioner, however, has been representing the authorities on strength of certain documents particularly, birth certificate that the correct date of birth is 21/01/1959 and not 21/1/1954. This Court, in number of cases, having examined implementation instruction No. 76 issued by the respondents, has directed the respondents to examine the claim of correction of date of birth. In the case of Chauthi Vs. South Eastern Coal Fields Ltd. and others [WP(S) No. 1997/2013], decided on 11/07/2013, this court considered the provisions contained in implementation instruction No. 76 and issued direction for determination of correct date of birth. According to the procedure prescribed in the implementation circular, subject to fulfillment of pre-conditions, subject to which the enquiry is to be made by referring the matter to the Age Determination Committee.

Without commenting on petitioner's claim of date of birth, this petition can be disposed off with a direction to respondents to examine petitioner's grievance in the light of its implementation instruction No. 76 and if present case falls in any of the categories which warrant determination of age by Age Determination Committee, respondents shall refer the case of the petitioner to the Age Determination Committee. Looking to the fact that the petitioner is going to retire on 21/01/2014, it is directed that the exercise of determination, if any, shall be completed well before the retirement of the petitioner.

This petition is accordingly disposed off.

8. At this juncture, it would be apt to refer the relevant provision of clauses (B) and (C) of II No.76. The said clause is outcome of the National Coal Wage Agreement and is called as NCWA and is a





settlement as per Section 2(p) of the Industrial Disputes Act, 1947.

The relevant settlement as per II No.76 is quoted below :

B) 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 recognised 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.

(i)(b) Similarly, Mining Sirdarship, 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

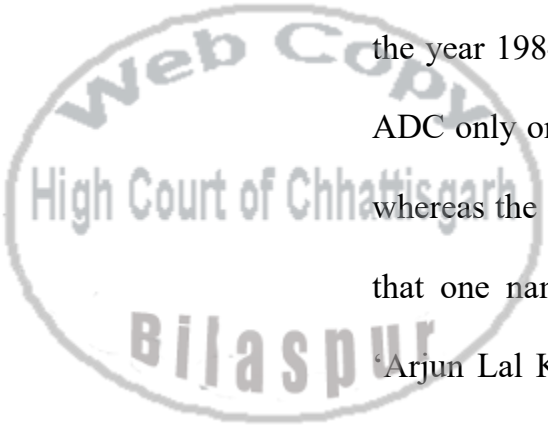
(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/ Medical board.

(C) Age Determination Committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B) (i)(b) above, the date of birth recorded in the records of the company, namely, Form 'B' register, CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/ Medical Board constituted by the Management for the determination of age.





9. Reading of clause (B)(i)(a) of II No.76 it is manifest that review of determination of date of birth in respect of existing employee shall be considered on the basis of matriculation certificate or higher secondary certificate issued by the recognised Universities or Board provided it is issued prior to the date of employment.
10. Before the ADC the petitioner filed the Higher Secondary School Certificate Examination, 1978 issued by the Board of Secondary Education, Madhya Pradesh, Bhopal dated 24-6-1978. The said marksheet was issued prior to the petitioner's appointment in SECL in the year 1984. However, the said certificate has been sidelined by the ADC only on the ground that it appears the name of 'Arjun Lal Kurre' whereas the official record shows only 'Arjun Lal'. Further it is stated that one name is shown as 'Arjun Lal Suryavanshi' and another is 'Arjun Lal Kurre'. According to the ADC, the certificate cannot be relied upon unless the competent authority certifies that the same belongs to him. The petitioner also produced the copy of *dakhil kharij register*.
11. Relevant portion of the observations of the ADC, as is evident from the order dated 3-1-2014, is quoted below :
- a) As per Praman Patra issued in the name of Arjun Lal Suryavanshi by Pracharya, Purv Madhyamik Pareeksha Mandal, Bilaspur Division year 1974 of Shiksha Vibhag, MP, his date of birth is 21.01.1959. Praman Patra contains the name of Arjunlal Suryavanshi whereas his name in all official records is Arjun Lal. The discrepancy in the name was





explained by Sri. Arjun Lal that his title was omitted in the official records.

b) As per duplicate copy of mark sheet having book No. 134 issued in the name of Arjun Lal Kurre on 27.08.2012 by Secy. Board of Secondary Education, MP, Bhopal, his date of birth is 21.01.1959. The name in the mark sheet i.e. Arjun Lal Kurre differs with his name in official records i.e. Arjun Lal. The certificates produced by Sri. Arjun Lal, one in the name of Arjun Lal Suryavanshi and the other in the name of Arjun Lal Kurre do not go with his name in official records i.e. Arjun Lal. As such these certificates can not be relied upon unless competent authority certifies that the above documents belong to him.

c) Sri. Arjun Lal submitted birth certificate having Sl. No.6148 issued on 18.05.2007. The birth certificate contains the name of Arjun Lal Satnami. Due to variation in the name this can not be relied upon.

d) Sri. Arjun Lal submitted Dhakhila Praman Patra according to which his date of birth is 21.01.1959. However, the certificate of 1971 was issued on 23.08.2013 by Pracharya, Sashkiya Uchh Madhyamik Vidhyalaya, Navgaon; Dist Janjgir.

e) As per Form 'B' Register having Sl. No.289 of Rajgamar colliery, his date of birth is 21.01.1954. Sri. Arjun Lal signed in the Form 'B' Register authenticating the entries made therein.

f) As per Service Register of Rajgamar colliery his date of birth is 21.01.1954. Sri. Arjun Lal affixed his thumb impression authenticating the entries made therein.

g) As per Service Excerpts dt. 17.07.1987 issued by Rajgamar colliery his date of birth is 21.01.1954. Sri. Arjun Lal accepted all entries made in Service Excerpts without raising any objection in spite of provision for raising objection existed.

h) As per PS-3 & PS-4 under CMPS he declared his date of birth as 21.01.1959 in the year 1998.

i) Sub Area Manager, Rajgamar Sub Area vide his letter No. 202 dt. 17.07.2009 communicated to Sri. Arjun Lal that the date of birth recorded in all official

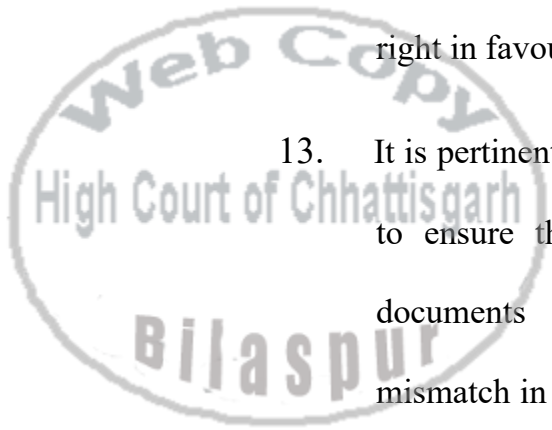




records i.e. 21.01.1954 is correct which he accepted in Service Excerpts and all other official records.

12. Close reading of clause (B)(i)(a) of II No.76 shows that that if higher secondary certificate containing the date of birth is issued prior to the date of employment it shall hold the field. When the identity of the petitioner was not in challenge then only on the ground that the certificate of examination wherein it is shown as 'Arjun Lal Suryavanshi' and the another certificate wherein it is shown as 'Arjun Lal Kurre, S/o Charan Das'. The ADC was under an obligation to enquire into the same and cursorily they could not avoid as it creates a right in favour of the employee.

13. It is pertinent to note that for the purpose of document verification, it is to ensure that there is no impersonation, misleading or incorrect documents furnished to seek enlistment. The aforesaid alleged mismatch in surname of name of petitioner cannot be, by any stretch of imagination, labeled as discrepancy or furnishing of any false information. Mere inadvertent mentioning or non-mentioning of surname in certificate issued by the competent authority would not mean and indicate that it is a case of impersonation or furnishing of false information. Moreover, the alleged mismatch is not such an error which could have led to rejection of the candidature of the petitioner, particularly, in view of the fact that there is nothing which may even remotely indicate that these are forged or procured documents. The certificate ought to have been read in conjunction with other





documents. A holistic view of the matter would not suggest that the petitioner is not a *bona fide* candidate, therefore the approach taken by the respondent authority is arbitrary.

14. The Supreme Court in catena of decisions held that primary duty of constitutional Courts remains the control of power, including setting aside of administrative actions that may be arbitrary or abuse of power.

15. Recently in a situation like this where the appointing authority has arbitrarily refused to give additional mark to the candidate arbitrarily, the Supreme Court in the matter of *Manoj Kumar v. Union of India*⁴, highlighted the duty of constitutional Court to curb the arbitrary administrative actions. Para 19 is relevant and quoted below :

19. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to retribute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice.

16. In *Harnam Singh* (supra) and *Kantilal Hemantram Pandya* (supra), relied upon by the SECL, it would show that the application for correction of date of birth was made at the fag end of service career.

4 2024 SCC OnLine SC 163



However, in the case at hand, the petitioner joined the service in the year 1984 and the dispute about correction of date of birth was raised in the year 1995, therefore, it cannot be said that it was grossly delayed and was made at the fag end of service career.

17. In *Bharat Coking Coal Limited* (supra) the Supreme Court laid down that by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. The submission of the SECL that the petitioner accepted his date of birth in his service record to 21-1-1954 would act as an estoppel would be misplaced otherwise will render II No.76 of the NCWA as porous and completely ineffective. It would otherwise suppress the terms of settlement. It is obvious that if certain date of birth is registered in the service record the employee should be given the chance if he has adhered to the procedure laid down. The petitioner has applied for correction of date of birth in the service record within a decade from the date of employment.

18. The Supreme Court in the matter of *Bharat Coking Coal Limited* (supra) held thus at paras 14 & 15 :

14) We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in R. Kirubakaran case. However, with an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public



Corporations/Departments, should not benefit from their own omission of duty. In the present case, the appellant-company failed to follow the procedure as laid down in the Implementation Instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such corporations wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.

15) As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the appellant Company on 6-9-2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction No.76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words 'were issued' was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot





change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school."

19. When the matriculation certificate was available then the ADC could not shelve the same on the trivial ground as the identity of the petitioner was not in question.
20. Accordingly, the impugned order dated 3-1-2014 and the corrigendum dated 10-1-2014 (Annexure-P/1) are liable to be and are hereby set aside. Since the petitioner retired from service, he will be entitled to all pre-retirement benefits treating his date of birth as 21-1-1959.

21. In the result, the writ petition is allowed, leaving the parties to bear their own cost(s).

Sd/-

(Goutam Bhaduri)
Judge

Gowri

