



HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on :14/12/2023

Judgment delivered on :14/03/2024

WA No. 480 of 2023

1. Jai Prakash Singh S/o Shri Nand Ji Singh, Aged About 64 Years, Senior Overman, Duman Hill Colliery, North Chirmiri, R/o B Type Staff Quarter, Dumanhill, North Chirmiri Colliery, P.O.- Sonawani, P.S.- Chirmiri, District- Korea (C.G.)

---- Appellant

Versus

1. South Eastern Coal Fields Ltd. Through Chairman-Cum Managing Director, South Eastern Coal Fields Ltd., Seepat Road, Bilaspur (C.G.) (Respondent No. 1)
2. General Manager (P And A) South Eastern Coal Fields Ltd., Seepat Road, District- Bilaspur (C.G.) (Respondent No. 2)
3. Chief General Manager South Eastern Coal Fields Ltd., Chirmiri Area, P.O.- West Chirmiri, District- Korea (C.G.) (Respondent No. 3)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant : Mr. Chandresh Shrivastava, Advocate.

For Respondents SECL : Mr. K.K. Shrivastava, Advocate.

Mr. Raj Kumar Gupta, Advocate on behalf of the Regional Commissioner, CMPF (Coal Mines Provident Fund), Bilaspur

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

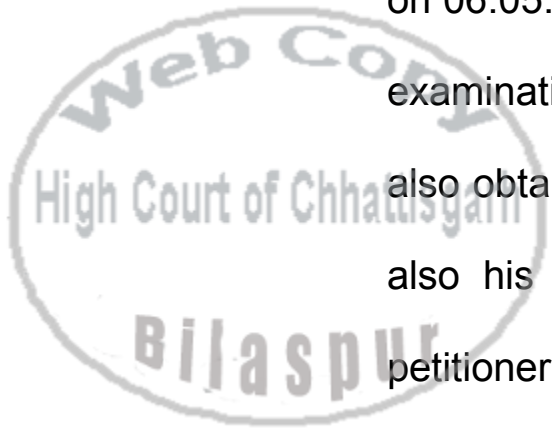
CAV Judgment

Per Ravindra Kumar Agrawal, J

1. Challenge in the present writ appeal is the order dated 09.10.2023 passed by the learned Single Judge in Writ Petition (S) No.2156 of 2018 whereby the writ petition filed by the petitioner/writ appellant for correction of his date of birth in the service record, has been dismissed.



2. Facts of the case in nutshell are that the petitioner was appointed as General Mazdoor with the respondent employer on 28.02.1976 and at the time of his appointment, his date of birth was recorded as 01.07.1959. At the time of his appointment on the post of General Mazdoor he mentioned his date of birth as 01.07.1959 in Form B, Form PS3 and Form PS4 and other relevant documents maintained by the respondent as per rules. The petitioner/appellant was awarded Mining Sardar Certificate on 06.05.1987 after successfully clearing the Mining Sardar examination under the Mines Act, 1952. Thereafter, he has also obtained Overman's certificate on 24.09.1989 in which also his date of birth is mentioned as 01.07.1959. The petitioner has also passed his High School Examination from Madhyamik Shiksha Parishad, Uttar Pradesh on 28.09.1975 in which also the date of birth of the petitioner has been mentioned as 01.07.1959. In Form PS3 and Form PS4 which are relating to the members of the family and nomination form maintained by the respondent authorities, even in the electoral roll, PAN card etc. date of birth of the petitioner is recorded as 01.07.1959. However, on the recommendation of the Age Determination Committee the respondent had unilaterally corrected the date of birth of the petitioner as 28.02.1958 vide order dated 12.05.2000





after considering required minimum age of 18 years on the date of coming into service.

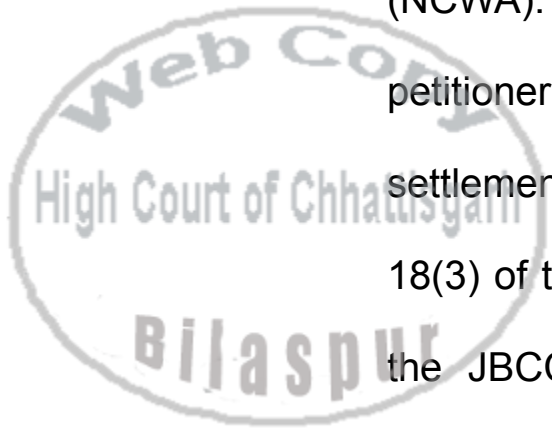
3. The petitioner made a representation before the respondent authorities for correction of date of birth in his service record, but the same has not been considered, despite his continuous efforts and requests and vide order dated 14.09.2014 it was informed by the respondent authorities that the case of the petitioner for correction of his date of birth cannot be reopened and his date of birth will remain as 28.02.1958. Being aggrieved by the order dated 14.09.2014 the petitioner had filed a WPS No.6642/2014 before this Court which was allowed vide order dated 23.11.2017 setting aside the order dated 14.09.2014 and directed the respondent authorities to hold an enquiry about the age of the petitioner and to take decision after affording opportunity of hearing to the petitioner. Thereafter, the matter was referred to the Age Determination Committee of the department of SECL and vide order dated 23.02.2018 the Age Determination Committee has held that the date of birth 28.02.1958 is correct and accordingly he is due for retirement on 28.02.2018. Therefore, he again file the present writ petition challenging the order dated 23.02.2018 passed by the said Age Determination Committee and prayed for a direction to allow him to continue in service





with all consequential benefits treating the date of birth of the petitioner as 01.07.1959.

4. It was pleaded in the writ petition that in the year 1973 the Govt. of India constituted a committee in the name of Joint Bipartite Committee for Coal India (hereinafter referred as 'JBCCI'). The JBCCI held several negotiations in the field of service conditions of the non-executive cadre employees of coal industry. Various agreements were signed from time to time which are called as National Coal Wages Agreement (NCWA). The terms and conditions of the services of the petitioner in coal mines are governed by NCWA. This settlement is binding upon the parties in terms of Section 18(3) of the Industrial Disputes Act. It was also decided by the JBCCI that in cases of wrong entry in respect of age/date of birth of the employee and the management, in such cases the correctness of the same will be decided through the Age Determination Committee. The implementation Instruction No.76 (hereinafter referred as 'I.I. No.76') of NCWA (iii) gives guidelines/procedure for determination of age of the employees. The I.I. No.76 of the NCWA (iii) has given a detailed procedure for determination of the age of the employees. Clause 3 of I.I. No.76 provides for review/determination of the date of birth in respect of existing employees. As per Clause B of I.I. No.76, in the





case of existing employees matriculation certificate or higher secondary certificate issued by the recognized universities or Board or middle pass certificate issued by the Board of Education and/or Department of Public Instruction and Admit card 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.

5. The petitioner was initially appointed on 28.02.1976 and after periodic promotion he was working on the post of Senior Overman. In the year 2011 it comes to the knowledge of the petitioner that his date of birth in the service record has been unilaterally changed as 28.02.1958 in place of 01.07.1959. When the petitioner enquired about the matter then he came to know that vide order dated 12.05.2000 on the recommendation of the Age Determination Committee the date of birth of the petitioner was changed to 28.02.1958 considering the required minimum age of 18 years on the date of coming into service. The change in the date of birth of the petitioner is without notice and without giving any opportunity of hearing to him that too against his educational regards.
6. It was also the case of the petitioner that before the Age Determination Committee all the documents relating to his





educational qualification were produced in terms of I.I. No.76 by the petitioner, but the same has not been considered by the Age Determination Committee while passing the impugned order dated 23.02.2018 and therefore, the writ petition was filed by the petitioner/writ appellant.

7. In the return filed by the respondent they have submitted that the petitioner was employed as General Mazdoor as illiterate person. He did not produce his matriculation certificate at the time of his appointment. After some years of his entering into service, he managed to get his date of birth recorded in the matriculation certificate and as per his date of birth recorded in the said certificate he was below 17 years of age at the time of joining of service, i.e., 28.02.1976 which is not permissible under the Mines Act, 1952. It is also submitted by the respondent that the petitioner has submitted his CMPF declaration form A wherein he has declared his date of birth as 10.01.1957 and in form B register his date of birth is shown as 28.02.1958. It is further submitted that at time of entering into service he mentioned his date of birth as 01.07.1957, whereas, in subsequents when he obtained the Mining Sardar certificate and Overman's certificate his date of birth is mentioned as 01.07.1959.





8. The respondent further submitted that after nationalization of the mines in the year 1973 a large number of manipulation in date of birth of the employees were observed and therefore, a circular dated 01.02.1999 was issued by the Govt. of India, Ministry of Coal clarifying that the persons working in Coal India Limited and its subsidiaries who have almost completed 45 years of service which is doubtful because as per the retirement age prescribed by the Coal India Limited and age of the entering in the service it is obvious that the persons cannot render their services of over 42 years and if any employee is working beyond this limitation, there is every likelihood that some wrong with the document relating to his entering into service of the coal mines. Pursuant to the circular dated 01.02.1999 direction was issued on 13.02.1999 for verification of the employees as to whether there is any employee who has worked for more than 42 years in the company and if yes, action be taken against the erring officers. In view of the above direction the records of the petitioner was examined and after verifying the records, medical test, statutory provisions of mines rules, standing orders, the date of birth of the petitioner was determined as 28.02.1958. It is further submitted that the change of date of birth of the petitioner in his service record was





communicated to the petitioner on 17.05.2000, but he raised the dispute at the fag end of his service career which is not tenable. He further relies to provision of Rule 40 of Mines Rules, 1956 which speaks that no person below the age of 18 years of age shall be allowed to work in the mines or part thereof.

9. On 24.07.2018 the respondent had filed additional return to the petition in which they have submitted that in the service expas issued in the year 1987 the petitioner had mentioned in qualification column as literate, but had not annexed his matriculation qualification certificate. The order dated 23.02.2018 is a well reasoned order which has been passed after affording the petitioner opportunity of hearing in compliance of the order dated 23.11.2017 passed in WPS No.6642/2014, which is strictly in accordance with law and need no interference.
10. After hearing the parties, learned Single Judge has dismissed the writ petition filed by the petitioner by saying that at the fag end of his career the petitioner has challenged the date of birth recorded in his service record which he cannot do in view of the judgment passed by the Hon'ble Supreme Court in the case of **Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja & others**, reported in (2021) 12 SCC 27. Hence, this appeal.





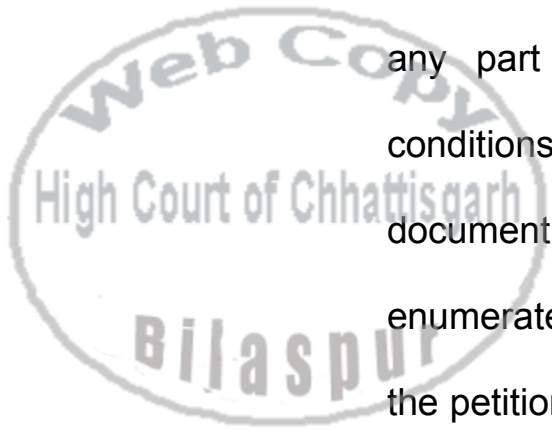
11. Learned counsel for the appellant would submit that the appellant has obtained high school certificate from recognized Board in which his date of birth is recorded as 01.07.1959, the same was recorded in his service record, in each and every document of his service record. All of sudden on 12.05.2000, his date of birth has been changed to 28.02.1958 on the basis of counting of his age from the date of his appointment and determined his date of birth as 28.02.1958, whereas his actual date of birth is 01.07.1959. The unilaterally change of his date of birth by the respondent department is unjustified which is on their own whims and without assigning any justifiable reason for change of his date of birth. He would further submit that the petitioner has not made any application for correction of his date of birth, but the employer on his own on the basis of the circular dated 01.02.1999 changed the date of birth of the petitioner on the presumption that the petitioner must have joined his service at the age of 18 years. Learned counsel for the petitioner would further rely on Section 45 of the Mines Act, 1952 wherein the employment of child was restricted in any mines either underground or opencast in which any mining operation is being carried on and the definition of child has been given in Section 2(e) of the Mines Act, 1952, according to which a person who has not





completed his fifteen years is child, thereby as per the definition of Section 2(e) of the Mines Act, 1952 the petitioner was not come under the definition of child on the date of his appointment and there is no any restriction on his appointment with the Coal India Limited.

12. On the other hand, learned counsel for the SECL would submit that the impugned order has been passed as per the provisions of the Mines Act, 1952. He would further submit that even prior to amendment in the Mines Act in the year 1983 no person who has crossed the age of adolescent will be allowed to work in any part of mine which is below ground unless certain conditions are fulfilled. The petitioner has not filed any document to demonstrate that any conditions which have been enumerated in Section 40 of the Mines Act has been fulfilled by the petitioner to justify that his date of birth was 01/07/1959 and at the time of joining with the respondent on 28.02.1976 his age was less than 17 years, therefore, he will be allowed to work beyond 42 years. He would further submit that even if the petitioner has cleared the High School Examination at the time of entering in to service, he has not submitted any document to demonstrate the age, therefore, the subsequent submission of marksheet though it relates to period before joining cannot give any benefit to the petitioner and it is an afterthought story projected by the petitioner. At the time of employment he had mentioned his date of birth as 01.01.1957 in Declaration Form-





A (Annexure R/1). Subsequently, he has mischievously had produced the certificates claiming his age to be 01.07.1959 only for obtaining benefits. The respondents could have retired him on 31.12.2017 based on his date of birth as 01.01.1957, but the respondents have not done so and only to benefit him his date of birth was corrected as 28.02.1958. The petitioner has sought change in his date of birth at the fag end of his service career, therefore, this writ petition is not maintainable and would pray for dismissal of the writ petition.

13. For better appreciation of the dispute raised by the learned counsel for the respondent-employer, it will be relevant to go through the Mines Act, 1952, which governs the service of the appellant-employee. Section 2(a) defines the word “adolescent”, which is extracted below for ready reference:

“2(a) “adolescent” means a person who has completed his fifteenth year but has not completed his eighteenth year.”

14. Section 40 provides for employment of adolescents, which is extracted below :

40. Employment of adolescents

“(1) No adolescent shall be allowed to work in any part of a mine which is below ground unless-

(a) a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine.





(b) the adolescent carries, while at work, a token giving a reference to such certificate;

(c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work on any day.

(2) Notwithstanding anything contained in this Act, no adolescent who has been granted a certificate under sub-section (1) shall be employed in any mine except between the hours of 6 A.M. and 6 P.M.

Provided that the Central Government may, by notification in the Official Gazette, vary the hours of employment of such adolescent in respect of any mine or class of mines so however that no employment of any such adolescent between the hours of 10 P.M. and 5 A.M. is permitted thereby.”

15. Section 45 provides for employment of children, which is extracted below :

“45. Employment of children

(1) No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any open excavation in which any mining operation is being carried on.

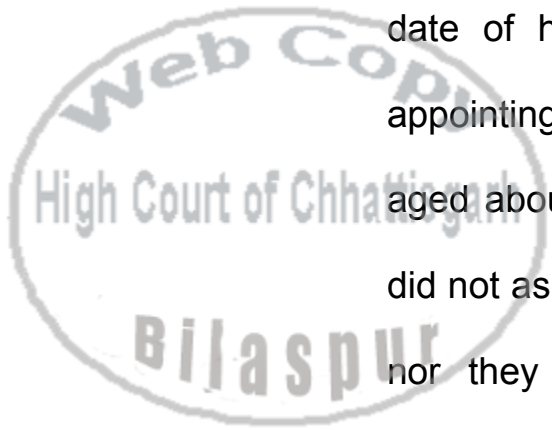
(2) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground whereby any operation connected





with or incidental to any mining operation is being carried on.”

16. From perusal of aforementioned provisions of the Mines Act, 1952, it is clear that adolescent means a person who completed age of 15 years but less than 18 years. There is no bar for employment 10 of adolescent in part of mine and for engagement in work in any part of mine, which is below ground. There is a requirement of a medical certificate by a certifying surgeon that he is fit for work as an adult.
17. The appellant-employee has mentioned his date of birth on the date of his employment as 01.07.1959 and the authorities appointing him was well aware that the appellant-employee was aged about 17 years on the date of his employment, but they did not ask for submission of any certificate to be kept in record nor they referred to the Surgeon for certifying appellant-employee is fit for work. It is not a case of the respondent-employer that the date of birth of the appellant-employee is recorded as 28.02.1958 and he wants to be corrected it as 01.07.1959, but it is other way found that it is the respondent-employer only on the basis of the order dated 01.02.1999 issued by the Ministry of Coal, Government of India issued a letter dated 12.05.2000 for changing the date of birth of the appellant-employee as 28.02.1958 considering the required minimum age of 18 years on the date of coming into service. This office order has been issued when the appellant-employee had already completed his service of 24 years. Till then, there





was no dispute with regard to date of birth as entered in service record of the appellant-employee.

18. The Implementation Instruction No.76 provides for method/procedure for determination of the age at the time of appointment under Clause A(i). It provides that the employee who passed matriculates and the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. Clause A(i) of Implementation Instruction No.76 is extracted below for ready reference:-

“(A) Determination of the age at the time of appointment

1) Matriculations.

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

19. The appellant-employee is a matriculate. His date of birth has been mentioned on the date of initial appointment in service record of respondent-employer as 01.07.1959 which is same as recorded in High School Certificate Examination 1975 issued by Madhyamik Shiiksha Parishad, Uttar Pradesh, therefore, merely on the ground that appellant-employee will work for more than 42 years of age his date of birth cannot be corrected unless and until, some acceptable evidence is brought to the knowledge of





the respondent-employer showing some mischief was committed by the appellant-employee in recording his date of birth in service record, and the document to prescribed documents in Implementation Instruction No.76 for verification of age of the employee.

20. Even otherwise, the respondent-employer is stressing upon the opinion given by the Age Determination Committee (in short 'ADC'). Earlier when the order passed in WPS No.6642/2014 dated 23.11.2017 by which the order of altering the date of birth of the petitioner/appellant was quashed, however, liberty was given to the respondent-employer to afford opportunity of hearing to the petitioner and take afresh decision. In compliance of that when the petitioner/appellant communicated the order passed by this Court in WPS No.6642/2014, the appellant-employee has received a memo dated 23.01.2018 directing him to appear before the ADC on 29.01.2018. On the date fixed the petitioner/appellant appeared and submitted his all relevant documents as per I.I. No.76, but the respondent-employer had asked to appear in medical examination and turned down the representation of the petitioner/appellant. On 01.02.2018 the appellant-employee had appeared before the ADC and submitted again all the documents, despite that the ADC recorded his statement and was subjected to cross-examination but copy of the same was not supplied to him. Despite submission of the documents in terms of I.I. No.76 by the petitioner/appellant the respondent authorities kept the



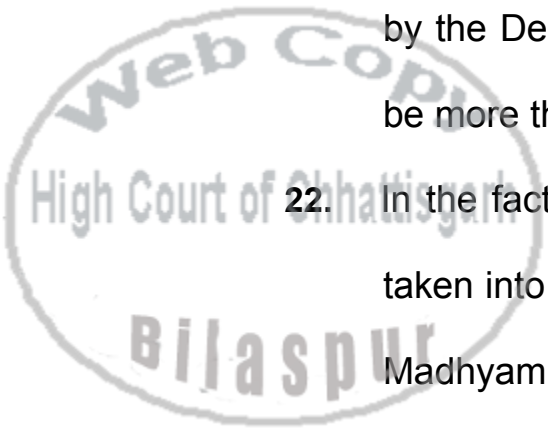


decision pending for about 2 months and on 23.02.2018 the order has been served upon him directing that the petitioner/appellant to retire from 28.02.2018.

21. In the case in hand during entry of service of appellant-employee in the year 1976, the date of birth is recorded as 01.07.1959 in all service records till the year 2000. The reason for starting proceedings of age determination of the appellant-employee by the respondent employer was not on the ground of receiving any impeachable evidence of date of birth of the appellant-employee, but only on the ground of the letter issued by the Department to verify the date of birth whose service will be more than 42 years as per service record.

22. In the facts of the case, the respondent-employer should have taken into consideration matriculation certificate issued from the Madhyamik Shiksha Parishad, Uttar Pradesh of the year 1975. As per Implementation Instruction No.76 (in short 'I.I. No.76'), the matriculation certificate is one of the authentic documents for ascertaining the date of birth of an employee. Subsequent presentation of the certificate cannot be doubted unless it is proved to be forged when at the time of entry into service as Mazdoor, no document is required to be submitted of an employee including the document of date birth.

23. When the date of birth mentioned in the office record as of the year 1976 and the date of birth in matriculation certificate of year 1975 are same, then reliance placed upon the report of the ADC and the radiological test was not proper. As per the





medical jurisprudence, the determination of age on the basis of Radiological test, there is variation of age \pm (plus/minus) two years and hence, it cannot be said to be conclusive. The respondent-employer has not placed on record any impeachable evidence to show that the date of birth of appellant-employee recorded in service record was not correct.

24. Similar issue has already been decided by this Court in W.P. No.2157/2002 vide order dated 18.08.2008 (Mithilesh Sharma v. SECL and another) and the order passed by the Division Bench of this Court in W.A. No.246/2008 (SECL and another v. Mithilesh Sharma) was put to challenge by the Employer before the Hon'ble Supreme Court, which came to be dismissed in the matter of SECL and another v. Mithilesh Sharma vide order dated 20.08.2010. The contents of letter dated 01.02.1999 on the pretext that the age of employee entering into service to be 18 years whereas as per Mines Act, 1952 prevailing at that relevant time, persons with 15 years or more can be appointed to work with mine.

25. The Hon'ble Supreme Court in the matter of **Union of India v. Harnam Singh** reported in (1993) 2 SCC 162 has held as under :

"7.A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in





possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay....."

26. Further, the Hon'ble Supreme Court in the matter of **State of Punjab and Others v. S.C. Chadha** reported in (2004) 3 SCC 394 had held as under :

"8. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and it is necessary to maintain the date of birth in the service records.

14. In the instant case the Higher Secondary Examination Certificate was issued on 3.6.1962 which contained information that the date of birth of the respondent was only 19.6.1944. If the said certificate disclosed a wrong date, it is not explained by the respondent as to why he did not make any move to get it corrected at that point or on any one of the occasions when he sought and obtained employment in 7/8 public institutions. Merely because in 1994 an opportunity was granted to the Government

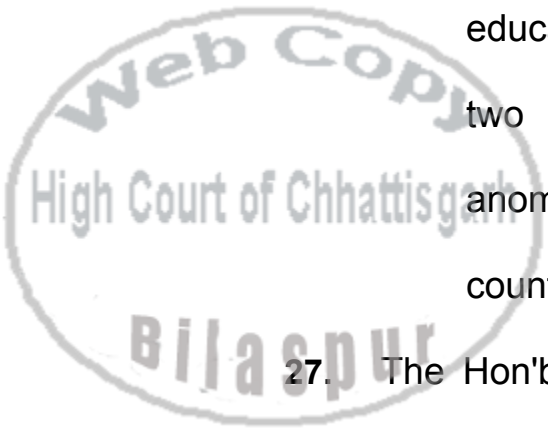




employees to get their date of birth corrected, that does not take away the affect of inaction and continued silence for more than three decades, which dehors laches on his part would seriously reflect on the bona fide nature of the claim itself. Even in the application made for employment in the year 1992-93 the date of birth was indicated, as noted above to be 19.6.1944. No contemporaneous document was produced to show that recording of the date of birth to be 19.6.1944 was wrong. Accepting the plea of the respondent would result in two public records, educational on one side and service on the other reflecting two different and conflicting dates of birth. Such anomalous situations are to be averted and not be countenanced.”

27. The Hon'ble Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Chhota Birsa Uranw** reported in (2014) 12 SCC 570 has held as under :-

“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





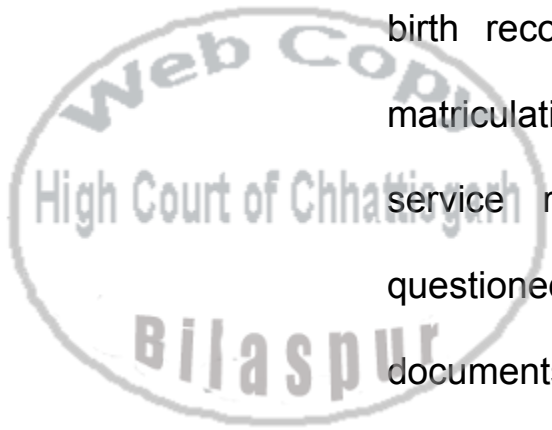
has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction No.76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned 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.”

28. There is no doubt that the Employer can take recourse of correction of date of birth of any of its Employees, but he should be in possession of satisfactorily, admissible and irrefutable piece of evidence with him, particularly, when the Employer wants to correct date of birth recorded by one of its Employees, in service record of any other Employee at the time of entering into the service of that particular Employee.
29. In the instant case, it is the employer who suspected the date of birth recorded in service record. The employee is having matriculation certificate with same date of birth as recorded in service record, i.e., 01.07.1959. The certificate is not questioned by the respondent-employer which is one of the documents as mentioned in Implementation Instruction No.76 to be authentic document for ascertaining the age.
30. The learned Single Judge has dismissed the writ petition filed by the appellant-employee relying on the judgment passed by the Hon'ble Supreme Court in the case of **Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja & others** (supra) by holding that at the fag end of his career the petitioner/appellant has challenged the date of birth and considering the nature of dispute the writ petition has been dismissed. Facts of **Karnataka Rural Infrastructure** case (supra) are on different footing than the facts of the present case. In the present case from the year 1976 till 2000, the date





of birth of the appellant-employee was mentioned in his service record as 01.07.1959 and only on the basis of a letter issued by the Ministry of Coal, Government of India dated 01.02.1999, they have altered the date of birth of the appellant-employee unilaterally as 28.02.1958 vide order dated 12.05.2000. It is not a case that the appellant-employee has challenged his date of birth in the fag end of his service career. But it is a case where the Respondent/employer has unilaterally altered his date of birth after 24 years of his service and the petitioner/employee wants to correct in its original position for which he is having matriculation certificate.

31. In the result, the writ appeal is allowed. The order dated 09.10.2023 passed by the learned Single Judge is set aside. Writ Petition (S) No.2156 of 2018 filed by the petitioner/appellant is allowed. The order dated 23.02.2018 (Annexure-P/1) is quashed and the petitioner is entitled for all consequential benefits.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice