

(2013) 06 CAL CK 0068
In the Calcutta High Court
Case No : W.P. No. 636 of 2012

Akhtari Bibi

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2014) LabIC 1070

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—By this writ application the petitioner has inter alia prayed for a writ in the nature of Mandamus directing the respondents to set aside and cancel the superannuation notice dated January 25, 2012 issued to the petitioner and to send the petitioner before the Apex Medical Board for assessment of her age as per the relevant rules. The case of the petitioner inter alia is that her husband was an employee of the Eastern Coal Fields Limited and he died on September 30, 1994 while still in service. After his death the petitioner got employment as a Security Guard on compassionate ground and she had disclosed her date of birth as February 14, 1962. According to her the dealing clerk had not recorded her date of birth correctly and the Identity Card that was issued by the authorities to the petitioner wrongly recorded the date of birth as February 14, 1953.

2. On January 25, 2012 a notice of superannuation was issued to the petitioner intimating that her service shall stand terminated on superannuation with effect from March 1, 2013. The petitioner made a representation to the authorities and requested them to correct the date of birth. But no action has been taken by the respondents.

3. The further case of the petitioner is that on September 19, 2011 she got a certificate from her school where the date of birth was recorded as February 14,

1962 in the admission register. The petitioner has relied on the rule requiring the appropriate authorities to refer the case to the Apex Medical Board if they are satisfied there is glaring disparity in the date of birth of the employee.

4. The respondent Nos. 1 to 5 have contested this writ petition by filing an affidavit-in-opposition. It has been contended by the respondents that after verification of personal details the date of birth of the petitioner was recorded as February 14, 1953. The petitioner had confirmed and signed the same. They have totally denied that the petitioner had at the time of her employment disclosed her date of birth as February 14, 1962. On the contrary the date of birth which was recorded in her Service Book as well as in the bio-data duly signed by the petitioner was February 14, 1953 and the said recorded date of birth was mentioned in the Identity Card. The representation of the petitioner after she was served with a notice of superannuation was not considered as it was without any valid ground and the respondents did not find any discrepancy in the date of birth of the petitioner as recorded in the service record. The certificate of the school authority cannot be accepted as a valid proof of date of birth of the petitioner. According to the respondents since there was no glaring disparity about the date of birth of the petitioner her case was not considered fit for reference to either the Age Assessment Committee or the Apex Medical Board and the concerned rule relied upon by the petitioner has no application to the present case. The respondents have prayed for dismissal of the writ petition.

5. The petitioner in her affidavit-in-reply has largely reiterated the stand taken by her in the writ petition. She has questioned the authenticity of the B Form Register and the Service Book attached to the affidavit-in-opposition as a manufactured one as it was prepared behind the back of the petitioner. She has taken a further point that before her signature it was nowhere written that the bio-data filled up by the respondents was explained to the petitioner in Hindi or in any other language and the same was not signed with her understanding. According to the petitioner she could not understand the figures that was mentioned in the Service Book and other relevant documents. She has also relied on the transfer certificate from the concerned Madarsa of which she was a student. She has persistently taken the stand that the Service Book was filled up by the respondents which had resulted in the discrepancy in the date of birth between the service register and her school certificate.

6. On a perusal of the petition and the affidavits and after hearing the learned advocates for the respective parties I do not find any merit in the claim of the petitioner. The petitioner was issued an Identity Card long ago. There the date of birth was mentioned as February 14, 1953. The service registers and all documents also mentioned the said date of birth. It is not clear why the petitioner during her entire service tenure did not raise this issue about the wrong writing of the date of birth. The allegation that it was not explained to her cannot bear a moment's scrutiny. Even if it is not recorded that the contents of those documents have been explained to the petitioner it is not clear why the

petitioner herself did not insist on the contents being explained to her in a language she can understand. The law is now very well-settled that the Court frowns on any attempt to alter the date of birth at the fag end of ones career.

7. In the case of State of U.P. and Another Vs. Shiv Narain Upadhyaya, the Supreme Court had observed that many public servants on the eve of their retirement raise a dispute about their service records. In many cases it is a part of the strategy on the part of such public servant. The Supreme Court had held that if no rule or order has been framed or made prescribing the period within which the application for correction of date of birth is to be filed then such application must be within at least a reasonable time. The applicant has to produce evidence in support of his claim which may amount to irrefutable proof relating to his date of birth.

8. Whenever any such question arises the onus is on the applicant to prove about the wrong recording of his date of birth in the Service Book. In the case of State of Assam and Another Vs. Daksha Prasad Deka and Others, the Supreme Court had said that in the controversy related to date of birth it is the service record which has primacy and superannuation etc. will be determined on the basis of the service record and not on what the employee claims to be his date of birth unless of course service record is first corrected in conformity with the appropriate procedure. And in the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, the Supreme Court fixed the onus of proving that there is a mistake which needs to be corrected on the employee itself who asserts the wrong recording.

9. In the case of State of Punjab and Others Vs. S.C. Chadha, the Supreme Court had laid down that unexplained delay in making an application coupled with absence of any contemporaneous documentary evidence to show the recorded date to be wrong, will disentitle the employee to correct the recorded date of birth.

10. In the present case the petitioner does not satisfy any of the conditions as mentioned in these judgments to be entitled to seek any correction of date of birth or a reference to the Apex Medical Board. The service register and all other relevant documents clearly mentioned 14th February, 1953 as the date of birth of the petitioner. All these documents further mentioned the age of superannuation of the petitioner. As such there is hardly any scope for the petitioner to maintain that these documents were false or they wrongly quoted her date of birth. On the other hand the Identity Card that was issued to her clearly mentioned that her date of birth was February 14, 1953.

11. There is no explanation why the petitioner did not raise any objection before she was served with a notice of termination of service on superannuation. That it was not explained to her was absolutely no ground for her not to object to the said Identity Card before. If the petitioner has raised her objection only after the notice of superannuation was served upon her she clearly comes under the

category of cases about which the Apex Court has cautioned all Courts and tribunals. Even if there is a school certificate the same cannot be given any supremacy over the service documents inasmuch as it was obtained as late as September 19, 2001. According to the said certificate the admission register showed that her date of birth was February 14, 1962. What was the immediate occasion for her obtaining the said certificate also remains unexplained. She had obtained it only a few months before the notice of termination of service was served. It can be safely presumed that she had obtained the said certificate only to delay her superannuation.

12. Thus, I find no merit in this case. The writ petition is accordingly dismissed.

13. However, in the facts and circumstances of the case, there shall be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.