

(2006) 11 JH CK 0079
In the Jharkhand High Court

Bharat Coking Coal Limited and Others	APPELLANT
Vs	
Jainandan Yadav @ Jainandan Singh	RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 JCR 254

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under clause 10 of the Letters . Patent is directed against the Judgment dated 3.5.2005 passed in W.P.(S) No. 469 of 2005 whereby the learned Single Judge has declared the date of birth of the respondent as 4.5.1952 and directed the appellant not to act upon the date of birth as recorded in Form-B register.

2. The case of the respondent/writ, petitioner in the writ petition was that he was appointed in 1971 as Bill Clerk and at the time of appointment he gave his date of birth as 4.5.1952 on the basis of Matriculation Certificate. In the service excerpts issued in the year 1981 his date of birth was recorded as 4.5.1952. But recently in the last pay certificate date of birth of the petitioner was shown as 1950. Petitioner/respondent's further case is that in Form-B register his date of birth has been mentioned as 1950 instead of 1952. The writ petitioner said to have made representation on 31.3.2004 to the effect that entry relating to his date of birth in Form-B register is incorrect and accordingly correction be made on the basis of Matriculation Certificate.

3. On the other hand, the case of the appellant/Management was that respondent was appointed in 1971 and at the time of appointment he has written his age as 20 years which was recorded in Form-B register. However, subsequently 20 years has been over written as 21 years. In Col. 9, respondent

put his signature acknowledging entries recorded in Form-B register. The specific case of the Management/Appellant is that Jainandan Yadav and Jainandan Singh are not one and the same person. The Matriculation Certificate relied upon by the respondent/petitioner is in the name of Jainandan Singh whereas the respondent's name is Jainandan Yadav.

4. Learned Single Judge entered into the disputed question of fact and held that date of birth of the petitioner has been mentioned in the service excerpts as 4.5.1952, which finds support from the Matriculation Certificate. On the basis of these findings, learned Single Judge directed the appellant/Management not to act upon any change in the service record and also not to dispute petitioner's date of birth recorded as 4.5.1952.

5. As noticed above, admittedly respondent was appointed in 1971. In the service excerpts there is interpolation with regard to the age of the respondent. From the Matriculation Certificate, it appears that it is in the name of Jainandan Singh whereas respondent's name is Jainandan Yadav. In Form-B register where the age of the respondent/petitioner was over-written as 21 years was acknowledged by him by putting his signature. In view of the above facts, it is evidently clear that there is dispute with regard to actual date of birth of the petitioner. Even assuming that the date of birth of the respondent is 4.5.1952, it does not get any support from the Matriculation Certificate. In our view, such a disputed question of fact cannot and shall not be decided in exercise of writ jurisdiction under Article 226 of the Constitution of India. Learned Single Judge has erred in law in directing the appellant/Management to act upon Form-B register and the Matriculation Certificate which stood in the name of another person and not in the name of the respondent.

6. For the aforesaid reason, this appeal is allowed and the impugned judgment passed by the learned Single Judge is set aside.