

(2022) 06 TEL CK 0043
In the Telangana High Court
Case No : Writ Appeal No. 819 Of 2017

D.Satyanarayana

APPELLANT

Vs

Singareni Collieries Company Limited

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 06 TEL CK 0043

Hon'ble Judges : Satish Chandra Sharma, CJ;Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : A K Jayaprakash Rao, J Sreenivasa Rao

Final Decision : Dismissed

Judgement

1. This Writ Appeal is filed aggrieved by the orders passed by the learned Single Judge in W.P.No.17098 of 2014 dt.07-04-2017.
2. Heard Sri A.K. Jaya Prakash Rao, learned Counsel for the appellant and Sri J.Srinivasa Rao, learned Standing Counsel for the respondents.
3. It has been contended by the appellant that he was initially appointed as Badli Filler with the respondents on 19-03-1981 and after rendering considerable length of service, he was promoted as Coal Filler and further promoted as Short Firer, C-Grade Short Firer, Mining Sirdar and Senior Mining Sirdar. The grievance of the appellant is that his date of birth was entered in the Service Register as 01-03-1960 and even in the B-Register, maintained by the respondents, his date of birth was rightly mentioned as 01-03-1960. However, while he was discharging his duties, the respondents have referred his case to the Age Determination Committee (for brevity 'the Committee') and the Committee has assessed his date of birth as 26-02-1957 instead of 01-03-1960.
4. Learned counsel for the appellant has contended that based upon the Committee's report, the date of birth of the appellant was changed in the Service Register as 26-02-1957 on 07-02-2004. Learned counsel for the appellant had

further contended that the respondents have issued retirement notice on 14-12-2012. The appellant has submitted a representation to the respondents to treat his date of birth as 01-03-1960 and continue him in service based upon such entry in the Service Register. The respondents have issued retirement notice to retire the appellant in 2017 instead of continuing him up to the age of retirement as per his actual correct date of birth 01-03-1960. Learned counsel for the appellant had further contended that the learned Single Judge without appreciating any of the contentions raised by the appellant had mechanically dismissed the Writ Petition. The original Service Register of the appellant discloses that the actual date of birth of the appellant was 01-03-1960 and the employer has modified the date of birth without giving any opportunity to the appellant. Therefore, appropriate orders be passed in the Writ Appeal setting aside the orders of the learned Single Judge in W.P.No.17098 of 2014 dt.07-04-2017 and further direct the respondents to pay the monetary benefit till the actual retirement age of the appellant by duly taking into account the date of birth of the appellant as 01-03-1960.

5. Learned counsel for the respondents had contended that the appellant's case was referred to the Committee and the Committee had come to a conclusion that the date of birth of the appellant was 26-02-1957 and at the time of his initial appointment, the appellant was subjected to medical examination. On medical examination, it has been assessed that the age of the appellant was 24 years as on 26-02-1981 and the appellant has not raised any dispute about the date of birth when the Committee which assessed the date of birth of the appellant as 26-02-1957 and the date of birth of the appellant was rectified based upon the recommendation of the Committee way back in 03-02-2004 and for almost ten years, the appellant has not raised any dispute in respect of date of birth and it is only in 2014, at the fag end of his career, the appellant has come up with this Writ Petition and the learned Single Judge has rightly dismissed the Writ Petition. Therefore, there are no merits in the Writ Appeal and the same is liable to be dismissed.

6. This Court having considered the rival submissions of the parties is of the considered view that the learned Single Judge has rightly dismissed the Writ Petition with the following observation:

"18. The determination of age by the respondent company in the year 2004 was also based on the Implementation Instruction No.76 of JBCCI. The instructions hold that once such assessment is made by the Apex Medical Board, the same is binding on the employee and employer. Be that as it may, petitioner did not protest on the said entry when it was communicated to him and till notice of retirement was issued on 14.12.2012.

19. The facts in W.A.No.886 of 2012 are identical to the facts of this case. The writ petition was dismissed by the learned single Judge on the ground of delay in approaching the Court.

The Division Bench held as under:

"It is to be noticed that the variation in the date of birth of the writ petitioner was noticed by the company way back in the year 2003 when it was found that there were certain alterations in his Identity and service book and Form-B register. Accordingly, as provided under Singareni Collieries Company Limited Age Retirement Rules, the dispute was referred to the Area Age Determination Committee. The said Committee after making the necessary enquiry, by proceedings dated 20.10.2003 determined the age of the writ petitioner as 23 years as on 06.06.1975. It is not in dispute that the said report of the Committee was communicated to the writ petitioner. It is also relevant to note that as per Clause-5 of para-B of the above said Rules, the decision of the Committee shall be binding on both and it shall be final. Though the writ petitioner is very well aware of the said fact, he has not chosen to take any steps to question the decision of the Committee before the competent forum and the present writ petition came to be filed only in the year 2012 after receiving the proceedings dated 02.06.2011 informing him that he would attain the age of superannuation on 06.06.2012.

.....

In view of the undisputed fact that the decision of the Committee dated 20.10.2003 was communicated to the petitioner immediately after the said decision was taken, the learned single Judge was justified in concluding that the writ petitioner being guilty of delay and laches on all accounts was not entitled to any relief. The said order being in accordance with law, we do not find any justifiable reason to interfere with the same."

(emphasis supplied)

20. Sundilla Lingaiah was also a belated claim and writ petition was filed one year after the notice of retirement was issued and just about the time of retirement. This Court considered the precedent decisions on the subject of correction of entry of date of birth in service record, more particularly several decisions concerning same employer, and rejected the claim for correction of date of birth. This Court held that petitioner could not have waited for one year after notice of retirement was served to file writ petition.

21. This writ petition is filed 10 years after the intimation of affirmation of age as originally assessed. No explanation is furnished for invoking the jurisdiction of this Court after 10 years. Those proceedings are not under challenge. In the case on hand, writ petition is filed on 23.6.2014 i.e., after 18 months of notice of retirement. Learned counsel for petitioner sought to shift the blame on the employer for not correcting the date of birth, to cover up the laches on the part of the petitioner in filing instant writ petition. In the facts of this, I am in agreement with the view taken by learned single Judge of this Court in Sundilla Lingaiah on delayed claim.

22. It is settled principle of law that even if an employee has a valid service grievance and employer has denied the service benefit to which employee is legally entitled, he cannot sleep over such right and make a belated claim. The delay and laches, more particularly in service disputes, are fatal to a claim.

23. In *State of Madhya Pradesh Vs. Premlal Shrivastava* (2011) 9 SCC 664, Supreme Court found upon entertaining belated claims to correction of entry of date of birth in service record. Supreme Court held:

"10. In *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

11. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990 i.e. 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1-6-1942 and not 30-6-1945. It had come on record of the Tribunal that at the time of the respondent's medical examination, his age as on 27-9-1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1-6-1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting the respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated.

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."

24. In *Eastern Coalfields Limited Vs. Bajrangi Rabidas* (2014) 13 SCC 681 Supreme Court held as under:

".....It is well settled in law that jurisdiction of the High Court under Article 226

of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised "to reach injustice wherever it is found". In *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425 : (1955) 2 SCR 1], it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play..... (paragraph 19)."

(emphasis supplied)

25. In the above analysis of facts and law, no case is made out to issue direction to correct the date of birth entry in the service record of petitioner. The writ petition is also hit by delay and laches. I see no merit in the writ petition. For all the aforesaid reasons, writ petition fails. It is accordingly dismissed."

7. A perusal of the record discloses that the appellant was informed that the date of birth of the appellant was altered based upon the Committee on 07-02-2004 and the date of birth of the appellant was periodically assessed based on the implementation of the Instruction No.76 of the Joint Bipartite Committee for Coal Industry (for short 'JBCCI') guidelines and for almost ten years, the petitioner has not raised any objection to the date of birth as assessed by the Committee. It is only in 2014, after ten years, the appellant has approached this Court seeking to correct his date of birth which may not be permissible. An employee cannot approach the Courts at the fag end of his career seeking correction of date of birth. Therefore, learned Single Judge has rightly dismissed the Writ petition. This Court is not inclined to interfere with the orders of the learned Single Judge.

8. The Writ Appeal fails and is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.