
(2018) 03 JH CK 0111
In the Jharkhand High Court
Case No : W.P. (S) No. 4513 of 2015

HARADHAN MODAK, SON OF SRI BHIM MODAK	APPELLANT
Vs	
THE BHARAT COKING COAL LIMITED THROUGH ITS CHAIRMAN-CUM-MANAGING DIRECTOR HAVING ITS OFFICE AT KOYLA BHAVAN, P.O. KOYLA NAGAR, P.S. SARIDHELLA, DISTRICT DHANBAD	RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 JH CK 0111

Hon'ble Judges : PRAMATH PATNAIK, J

Bench : Single Bench

Advocate : Shailesh, Arpan Mishra

Final Decision : Disposed Of

Judgement

Pramath Patnaik, J

1. In the accompanied writ application, the petitioner has inter alia prayed for direction upon the respondents for making necessary corrections in all

the relevant records especially NEIS as maintained by respondents wherein the date of birth of the petitioner has been wrongly entered as 18.03.1958

instead of 03.03.1961 as per the matriculation certificate and further prayer has been made for direction upon the respondent to act as per the

policy/guidelines and practice of settlement entered into for resolving the dispute in terms of Implementation Instruction No.76.Â Â

2. The factual matrix as has been depicted in the writ application, in a nutshell is that as per the matriculation certificate date of birth of the petitioner

has been recorded as 03.03.1961 and the petitioner passed matriculation in the year 1981 as per Annexure-1 to the writ application and on the basis of

the said certificate the petitioner got employment in the BCCL at Dhanbad in the year 1982 as Minor Loader at Amlabad Project and now the

petitioner is serving as Electric Helper. Though, the petitioner at the time of his services submitted the matriculation certificate before the authorities

but the same was not taken into consideration. The petitioner raised his objection by filing representations regarding the wrong entry made in the

service records as would be evident from the representations dated 14.04.2003 vide Annexure-2 to the writ application. It has been averred in the writ

application that the matriculation certificate is the most authentic document for determination of date of birth of any person including the petitioner and

as per the Implementation Instruction No.76 which envisages with the procedure for determination/verification of the age of employees in specific

clause B-i(a) i.e. "In the case of the 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" the copy of which is annexed as Annexure-3 to the writ application. In spite of the relevant provisions since the authorities did not pay

any heed for correction of the date of birth of the petitioner, the petitioner has been constrained to approach this Court under Article 226 of the

Constitution of India for redressal of his grievances.Â Â

3. During course of hearing, learned counsel for the petitioner in support of the contention raised in the writ application has strenuously urged that the

action/inaction on the part of the respondents in not considering the matriculation certificate of the petitioner for determination of the date of birth is in

the teeth of Implementation of Instruction No.76 which deals with procedure for determination/verification of age of employees in specific Clause B-

i(a). Learned counsel for the petitioner has vehemently submitted that the respondent authorities are duty bound to ascertain the genuineness of the

matriculation certificate since the petitioner passed the matriculation prior to entering into the services. In support of his contention, learned counsel for

the petitioner has referred to decision reported in W.P.(S) No.5022 of 2009 in the case of Nirmal Kumar Singh Vs. The Bharat Coking Coal Limited,

through its Chairman-cum-Managing Director, Dhanbad & Others which has been affirmed in L.P.A. No.67 of 2015 including payment of salary.

Learned counsel for the petitioner has also referred to W.P.(S) No.454 of 2015 in the case of Sukullah Mian @ Sukrullah Mian Vs. The Bharat

Coking Coal Limited, through its Chairman-cum-Managing Director, Dhanbad & Others. Learned counsel for the petitioner further referred to

decision reported in (2014) 12 SCC 570 in the case of Bharat Coking Coal Limited & Others Vs. Chhota Birs Uranw and also referred to decision as

reported in 2007 (3) JCR 681 (Kamta Pandey Vs. B.C.C.L. Through Chairman-Cum-Managing Director).

4. Repudiating the contentions raised in the writ application, a counteraffidavit has been filed on behalf of the respondents wherein it has been

submitted that during the period 1989 to 1992, a form commonly known as service excerpts was circulated directing the employees including the

petitioner to fill up the same and submit it before the department. Accordingly, the petitioner filled up the said form mentioning his date of birth as

18.03.1958 and submitted the same before the department and on the basis of the said entry made in the statutory form i.e. Form-B by the petitioner,

his date of birth was recorded as 18.03.1958 in all service excerpts. On the basis of aforesaid entry made in the statutory record, further entry was

made in all records such as NEIS. It has further been specifically submitted that the petitioner has never made representation before the concerned

authority for correction of his date of birth and for the first time, the petitioner has raised this dispute before the Hon'ble Court by filing of the instant

writ application and at the fag end of services, the petitioner cannot be allowed to raise dispute regarding correction of date of birth recorded in the

service excerpt. Further, it has been submitted that the petitioner comes under the purview of the workman and there is alternative remedy available

to the petitioner to raise his dispute before appropriate forum.

5. Learned counsel for the respondents apart from reiterating the submissions made in the counter-affidavit has vociferously submitted that if the

petitioner was having the matriculation certificate, the same should have been submitted before the respondent authorities at the first available

opportunity. But the reason best known to the petitioner, the petitioner kept mum for nearly 22 years to raise the dispute regarding wrong entry in the

service book which at this distance of time cannot be accepted, in view of series of the decision of the Hon'ble Apex Court that the date of birth

dispute cannot be entertained at the fag end of service career.

6. Before adverting to the contentious issues it would be apposite to refer to Implementation Instruction No.76 which being a Bilateral Agreement, is

binding on the respondent-M/s BCCL and the relevant portion is extracted below:-

â??(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 recognized 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.Â

(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 merit 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 determination of age.

(D) For determinant of the age, the Committee/Medical Board referred to above may consider the evidences, available with the Colliery Management

and/or adduced before the employee concerned. (E) Medical Board constituted for determination of age will be required to assess the age in

accordance with the requirement of Medical Jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed

and not approximately.

7. Now the question remains decided as to whether the date of birth mentioned in the Matriculation Certificate will be taken as conclusive proof or the

date of birth mentioned in Form-B Register or the service excerpts be taken as genuine date of birth.

8. In Kamta Pandey, reported in 2007 (3) JCR 681, the Full Bench of this Court held that date of birth of the employee recorded as

Matriculation Certificate is a conclusive proof of the date of birth of an employee. It was further held that Implementation Instruction No.76 which is a

Bilateral Agreement, is binding on the respondent-M/s BCCL.

9. Clause (i)(a) of the Implementation instruction fortifies the stand of the employee and the said provision has been considered by the Hon'ble Apex

Court in Chhota Birsa Uranw, reported in (2014) 12 SCC 570 , wherein the Hon'ble Apex Court has inter alia held that the date of birth in the

Certificate issued prior to the date of appointment is arbitrary or genuine. It has further been held that the Hon'ble Apex Court in paragraph-14 of the

said judgment has been pleased to hold that:-

14. 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.

10. After hearing the learned counsel for the respective parties and having bestowed my anxious consideration to the rivalized submissions and on

perusal of the documents on records, I am of the considered view that the case of the petitioner needs for reconsideration by the respondents in view

of the Implementation Instruction No.76 as discussed (supra).

11. As a logical sequitur to the aforesaid reasons and to meet the ends of justice

it would be apposite to dispose of the writ application with a direction to the respondents to consider the certificate issued by the Board prior to date of employment in view of Implementation Instruction No.76 B(i)(a) and the respondents authorities are further directed to pass appropriate reasoned order in accordance with law taking into consideration the aforesaid instruction and if the case of the petitioner after due consideration comes within the purview of correction of date of birth, the same shall be done and date of birth be corrected and thereafter, appropriate order shall be passed for reinstatement in services of the petitioner in accordance with law hence, the aforesaid exercise shall be completed within a period of eight weeks from the date of receipt/communication of copy of this order.

12. With the aforesaid direction, the writ petition stands allowed.

In view of the disposal of the writ application, I.A. No.8779 of 2017 also stands disposed of.