
(2009) 02 AP CK 0046
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27580 of 2009

Kore Gattaiah

APPELLANT

Vs

Singareni Collieries Company Ltd. and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 ALD 157

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : A.K. Jayaprakash Rao, for the Appellant; Nandigam Krishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Petitioner Kore Gattaiah joined in service of the respondents Company as worker trainee on 24.01.1977. He claims that he was aged 25 years as on the date of his joining in service. He was promoted as Coal Filler and further promoted as General Mazdoor, Charger of Safety Lamps and Lamp Room Assistant. He was sent for medical examination by the respondents Company in January, 2008. According to him, the Apex Medical Board unilaterally determined his age as 59 years as on 24.01.2008 and notified his date of retirement as 31.01.2009. He made representation 08.11.2008 raising objections for determination of his age as 59 years as on 24.01.2008. The General Manager, Singareni Collieries Company Limited, Kalyani Khani Post-2nd respondent by proceedings dated 26.11.2008 rejected the objections. It is his contention that he was aged 25 years as on the date of his joining service and therefore, he was entitled to be continued in service upto 2012. He filed the writ petition challenging the proceedings No. MMR/PER/S/171/08/5965, dated 26.11.2008, issued by the 2nd respondent as illegal and arbitrary.

2. Rule Nisi came to be issued on 28.12.2008.

3. The respondents filed counter-affidavit stating that the petitioner was examined by the doctor on the date of his initial appointment and assessed his age as 25 years and the same was entered in B-Register, Service Record and Coal Mines Provident Fund records. In view of the discrepancy with regard to the date of entry into service, his case was referred to the Area Age Determination Committee, which considered the material placed on record and recommended to refer the case of the petitioner to the Apex Medical Board for assessment of correct age. The petitioner affixed his signature on the proceedings of the Area Age Determination Committee in token of acceptance of the proceedings. The Apex Medical Board had reviewed the case of the petitioner on 24.01.2008 at Main Hospital, Kothagudem. The petitioner appeared before the Apex Medical Board and informed of not having any evidence as proof of his date of birth. Thereupon, the Apex Medical Board conducted required medical examinations and arrived at a conclusion that the petitioner was aged 59 years as on 24.01.2008. As per the guidelines formulated by the JBCCI, the decision of the Apex Medical Board is binding on the respondents Company and the petitioner. The contention of the petitioner that the Apex Medical Board did not examine him medically has been denied. Paras.8 and 9 of the counter-affidavit need to be noted and they are thus:

8. In reply to averments in para. 9, it is submitted that every coal miner will be a member of Coal Mines Provident Fund and the details relating to date of birth/age, date of appointment, nominee, dependents of every employee will be sent to the Regional Commissioner, Coal Mines Provident Fund, while submitting the nomination forms executed by every employee for the record of the office of Regional Commissioner, CMPF. Further, the JBCCI Implementation Instructions No. 76 with regard to resolving disputes relating to age; clearly indicate the fact that the age as entered in CMPF records should be taken as final. Hence, it becomes obligatory on the part of the respondents to ascertain the entries with regard to date of appointment and date of birth of the petitioner as per the records maintained in the office of Regional Commissioner, CMPF, Godavari Khani and hence, a request was made to this effect. In response to this the Asst. Commissioner, Coal Mines Provident Fund, Godavari Khani clarified that "... as per our records, the date of appointment of Sri Kora Gattaiah, s/o. Iylaiah, I.R.A, KK-1 Incline, bearing CMPF No. H48/652 is 24.01.1977. Hence, the contribution particulars prior to his appointment does not arise whereas date of birth is concerned, nomination is not available to mention date of birth." The contention of the petitioner that the respondent had alleged that the petitioner had worked prior to his date of appointment is incorrect and as such it is denied. The petitioner is misrepresenting the facts.

9. In reply to averments in Para.10, the averment of the petitioner that the date of birth entered in "B" Register, Service Records, Coal Mines Provident Fund Records and in initial medical examination Form "O" as 25 years in 1977 is legal and valid and do not call for any alteration of date of birth is not correct and as such it is denied. It is to submit that in the Service Book and B-Register the date

of appointment of the petitioner was wrongly recorded as 23.01.1973 and his age as 25 years as on 23.01.1973. If the date of birth of the petitioner is considered as 25 years as on 23.01.1973 his date of birth will be 23.01.1948 and the petitioner would have retired from services by 23.01.2008 itself. Since there is variation in the records about the date of birth/age of the petitioner when compared to his date of appointment as per the appointment order dt. 23.01.1977, in line with the JBCCI guidelines, the respondents have taken action for placing his case before the Area Age Determination Committee and then before the Apex Medical Board and accordingly, the Apex Medical Board assessed his age as 59 years as on 24.01.2008. Hence, the contention of the petitioner that his age was altered by the respondents is incorrect.

4. Heard Sri A.K. Jayaprakash, learned Counsel appearing for the petitioner and Sri Nandigam Krishna Rao, learned Standing Counsel appearing for the respondents Company.

5. Learned Counsel appearing for the petitioner submits that the respondents committed error in recording the date of entry of the petitioner into service in the service records as 23.01.973 and his age as 25 years as on that date and indeed the petitioner entered in service on 23.01.1977 and in which case, the petitioner's age as on the date of entry into service had to be taken as 21 years and his age of superannuation was to be decided accordingly. He would further submit that the respondents cannot alter the date of birth of the petitioner at the fag end of service. In support of his submissions, reliance has been placed on the judgment of this Court in Kotte Rajam Vs. Singareni Collieries Company Ltd. and Others, .

6. In Kotte Rajam's case (supra), there was consistency with regard to age of the petitioner therein as on the date of entry into service as mentioned in the service book, B Register and Identity Card as 25 years and nearly 32 years later the respondents therein sought to doubt the correctness of the age of the petitioner therein and that too when he submitted an application for voluntary retirement. Coming to the facts of the case on hand, there is discrepancy with regard to the date of entry into service. Therefore, the cited case has no application to the facts of the case on hand.

7. Learned Standing Counsel appearing for the respondents Company submits that since there is no consistency with regard to the date of entry of the petitioner in service and his age as on that date, his case came to be referred to the Area Age Determination Committee as per guidelines formulated by JBCCI and thereupon, the Area Age Determination Committee recommended the case of the petitioner to be examined by the Apex Medical Board, which indeed examined the petitioner and assessed his age as 59 years as on 24.01.2008 and as the determination of age of the petitioner was in accordance with the guidelines formulated by the JBCCI, the assessment of Apex Medical Board cannot be called in question by the petitioner and in which case the proceedings issued by the 2nd respondent notifying the date of superannuation of the

petitioner as 24.01.2009 does not suffer from any legal or factual infirmities warranting interference of this Court in exercise of powers under Article 226 of the Constitution of India. In support of his submissions, reliance has been placed on following decisions of the Supreme Court:

- 1) State of Punjab and Others Vs. S.C. Chadha,
- 2) State of Orissa and others Vs. Ramanath Patnaik,
- 3) State of T.N. Vs. T.V. Venugopalan,
- 4) State of Assam and Another Vs. Daksha Prasad Deka and Others, ,
- 5) Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, and
- 6) G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, .

8. In G.M. Bharat Coking Coal Ltd.'s case (supra), the Supreme Court held as hereunder:

From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to Medical Board. The Medical Board as laid down in the Instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of Mandamus that the date as claimed by the employee (the respondent herein) should be accepted. It is well settled that an application for correction of date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever.

9. The respondents have in-house mechanism to resolve the disputes with regard to determination of age. The Joint Bipartite Committee for Coal Industries

(JBCCI) has passed Implementation Instructions No. 76 to resolve the age disputes. The relevant Clauses of JBCCI with regard to resolving age disputes read as hereunder:

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.

(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 merits of the case will take appropriate action for correction through Age 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.

In the same guidelines (Implementation Instructions No. 76), the JBCCI envisaged procedure for determination/verification of age of new entrants also. The relevant part reads as hereunder:

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

(i) Matriculates: In the case of appointees who have passed Matriculation or equivalent examinations, 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.

(ii) Non-matriculates but educated: In the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.

(iii) Ex-Servicemen: In the case of Ex-servicemen who are not matriculates, the

date of birth recorded in the Army Discharge Certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. In the case of Ex-servicemen who have passed Matriculation examination, the date of birth recorded in the Matriculation Certificate will be treated as correct date of birth, provided they have passed the Matriculation examination before entering the Defence Services; otherwise the date of birth recorded in Army Discharge Certificate will be taken as correct date of birth.

(iv) Illiterate: In the case of appointees not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances. The age of the petitioner as on the date of entry into service was recorded as 25 years. The petitioner disputes his entry into service. There being no consistency with regard to date of entry into service, his case came to be referred to the Area Age Determination Committee, which examined the case and recommended for determination of age by the Apex Medical Board. The Apex Medical Board examined the petitioner and assessed his age as 59 years as on 24.01.2008. As per the guidelines formulated by JBCCI, the decision of the Apex Medical Board is binding on the respondents Company and the petitioner. The respondents placed on record the age assessment report of the petitioner by the Apex Medical Board. It is a matter of record that the petitioner informed the Apex Medical Board that he has no evidence to substantiate his age. The Apex Medical Board proceeded to assess the age of the petitioner in accordance with the guidelines and issued assessment report, relevant portion of which reads as hereunder:

After considering his own statement and evidence produced by him and as per the assessment of the Board, the age of Sri Kore Gattaih, E.C. No. 2226416, L.R.A. KK-1 Incline, MM Area is assessed as 59 years as on 24.01.2008. (Fifty Nine years as on twenty-fourth January, two thousand eight)

Basing on the assessment made by the Apex Medical Board, the 2nd respondent issued the proceedings notifying the date of superannuation of the petitioner as 24.01.2009. I do not see any flaw in the procedure adopted by the respondents in getting the age of the petitioner determined by the Apex Medical Board.

10. Accordingly, the writ petition is devoid of merits and the same is hereby dismissed. No costs.