

(2009) 02 JH CK 0049
In the Jharkhand High Court

Ram Chandra Chaudhary

APPELLANT

Vs

SAIL, Bokaro Steel Plant and Others

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Citation : (2009) 02 JH CK 0049

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for quashing the letters dated 18.07.2006 and 31.08.2006 (Annexures- 6 and 6/1) issued by the Respondent No. 3 whereby the petitioner was intimated about the date of his superannuation as on 31.12.2006. Further prayer has been made for an order to restrain the respondents from implementing the aforesaid impugned letters and also for a direction to the respondents to rectify the date of superannuation as per his date of birth recorded in his Matriculation Certificate and other documents.

2. Relying basically on the work standing orders of the respondent Company and the Rules regarding determining the date of birth of the employees under it, as also relying upon the date of birth as recorded in his Matriculation Certificate, the petitioner has challenged the impugned letters as totally illegal, arbitrary and discriminatory.

3. The petitioner's case in brief is that he had joined the service under the respondent Company on 18.12.1971 on the post of Rigger. Prior to his joining service, he had already passed the Matriculation Board Examination in the year 1968. His contention is that at the time of his appointment, he had faced an interview and he had stated his date of birth as entered in his Matriculation Certificate. Since the Matriculation Certificate was not demanded from him, he did not submit any copy thereof. Later, by a general circular, the respondent Company had given an opportunity to all its employees for submitting their

respective applications for making entries in respect of their educational qualifications in their service records. In response, the petitioner had also submitted his application seeking entry of his qualification of Matriculation in his service records. The certificate was duly accepted though with a warning given to him to be cautious in future and a letter in this regard was issued to him on 15.01.1980 (Annexure-2) in confirmation of the fact that his qualification of Matriculation has been duly entered in his service records.

The petitioner's further contention is that after accepting the Matriculation Certificate and making necessary entries in his service records, the concerned authorities of the respondent Company had also made the correction in the entry regarding his date of birth in his service records. This was confirmed to the petitioner by a statement of account (Annexure-3) served upon the petitioner in which not only his date of birth, as appearing in his Matriculation Certificate, was recorded but the date of superannuation on his attaining the age of 58 years as on 03.05.2008, was communicated to him. Subsequently, by a general decision, the age of retirement was enhanced from 58 years to 60 years in respect of the employees of the respondent Company. Accordingly the petitioner was to superannuate on 03.05.2010.

The petitioner's further contention is that in his medical book, which was renewed from time to time, up to 31.12.2006, his date of birth has been correctly recorded as 03.05.1950 as per his Matriculation Certificate.

It was much later that he had received reliable information that some interpolations and manipulations were carried out in his service records regarding his actual date of birth. He filed a representation on 18.05.2005 (Annexure-5) before the concerned authorities of the respondents for maintaining his correct date of birth in his service records.

The grievance of the petitioner is that instead of correcting the date of birth in his service records, the respondent authorities had issued the impugned letters by which he was forced to superannuate on 31.12.2006 although, according to his date of birth as per his Matriculation Certificate, he would superannuate on 31.12.2010.

4. A counter affidavit has been filed on behalf of the respondents.

5. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

6. Shri Ajit Kumar, learned Counsel for the petitioner while assailing the impugned letters, has invited attention to Annexure-2 which is a letter served on the petitioner by the concerned authorities of the respondents in response to his application dated 13.07.1976, confirming the fact that his qualification of being a Matriculate as well as I.T.I.(Elec'n) has been incorporated in his service records. Learned Counsel invites attention also to Annexure-3 which is statement of account and also to Annexure-4 which is a copy of the medical book. Learned

Counsel explains that vide Annexure-4 the medical book has been accepted by the respondents as correct and genuine and after accepting the same, the statement relating to the Employees' Superannuation Benefit Fund records the date of superannuation of the petitioner as 03.05.2008 on the basis of the earlier age of superannuation of 58 years. Likewise, the date of birth in the medical book has also been recorded as 03.05.1950 in accordance with the date of birth recorded in the Matriculation Certificate. These documents, according to learned Counsel, are ample proof to confirm that the petitioner's date of birth was duly corrected and rectified in his service records as per the date of birth mentioned in his Matriculation Certificate and therefore, the respondents cannot now turn back and refuse to accept the date of birth which they had earlier acknowledged to be correct. Learned Counsel submits further that in the case of several other employees under exactly identical situation as the petitioner, their date of birth, which was originally entered in the service records, was duly corrected and they were given the benefit of date of superannuation according to the corrected date of birth. Learned Counsel argues further that the petitioner's service records certainly contains interpolations and since the service records are exclusively maintained in the custody of the respondent Company, it is apparent that the interpolations have been made by the employer behind the back of the petitioner only to cause prejudice to him. Learned Counsel argues further that in the case of *Raj Bhuwan Singh Vs. Steel Authority of India and Others*, , this Court had occasion to consider a similar situation where the facts revealed that interpolations were made in the service records behind the back of the employees. This Court had accordingly given the benefit of the date of superannuation as per the age recorded in the Matriculation Certificate. Learned Counsel argues further that it is a settled law that in case of dispute regarding the date of birth, the entry in the Matriculation Certificate shall prevail and should be accepted by the employer.

7. Sri Rajiv Ranjan, learned Counsel for the respondent, on the other hand, while denying and disputing the entire claim and grounds of the petitioner submits that the petitioner's grounds are totally misconceived in the facts and circumstances of the present case. Learned Counsel explains that at the time of his appointment, the petitioner had voluntarily made declaration of his age. He did not mention at that time that he was a Matriculate. The date of birth as declared by the petitioner was entered in his Personal Data Form and duly signed by him. He had not raised any dispute on the same. Referring to Annexure-2 corresponding to Annexure-1 on which the petitioner places reliance, learned Counsel submits that it is a letter sent in response to the petitioner's application dated 13.07.1976 wherein he had approached the Management only for including his educational qualifications in his service book and not for any correction of the entry regarding his date of birth. Accordingly, by Annexure-A, the Management had informed him that the entries regarding his educational qualification has been duly entered in his service book. At no point of time did the respondent Management ever acknowledge any other date of birth of the petitioner, other

than what was originally recorded in his Personal Data Form. Learned Counsel explains that at the time of obtaining employment, the petitioner appears to have deliberately suppressed the fact that he had not gained the requisite experience in accordance with the eligibility criteria and had therefore, omitted to produce his Matriculation Certificate.

As regards the entries of the petitioner's date of birth in the Medical Book and the Statement of G.P.F. account, learned Counsel explains that the date of birth as recorded in these records were only on the basis of the petitioner's own declaration and not with reference to the entries mentioned in the petitioner's original Personal Data Form.

Learned Counsel refers in this context to the judgement of the Division Bench of this Court passed in the case of Sudarshan Singh v. Bokaro Steel Plant vide L.P.A. No. 884 of 2003 and submits that an identical issue was considered by the Court and with the observation that the writ petitioner had intentionally suppressed the Matriculation Certificate as otherwise he would not have been appointed on the basis of the date of birth shown in the Matriculation Certificate, the Division Bench had dismissed the writ application filed by the writ petitioner for correction of entries regarding his date of birth.

8. From the rival submissions, the facts which emerge are that at the time of petitioner's initial appointment on 18.12.1971, his date of birth was recorded as 25 years. The service book however, also contains an additional entry of the date of birth as 03.05.1950 as per the petitioner's Matriculation Certificate. It cannot be denied therefore that the correction of the date of birth has been made in the Personal Data Form of the petitioner. The Personal Data Form being a document which is supposed to be in the exclusive custody of the respondent Management, in absence of any stand taken by the respondents that the petitioner did have access to this document, it cannot be said that the petitioner could possibly make interpolations in the same, at his own level.

A similar issue came for consideration before a Division Bench of this Court in the case of Kamta Pandey v. B.C.C.L. and Ors. 2007 (3) J.L.J.R. 726 (jhr). On the basis of the facts stated in the aforesaid case, the Division Bench had observed that the Matriculation Certificate of the writ petitioner was issued to him much prior to the date of his appointment in service. The Bench had also observed that under the Rules prescribed by the management, a provision was made to enable the employees of the respondent Company to get correction of the entries regarding their respective date of births. Giving importance to the entry of date of birth in the Matriculation Certificate, the Court had observed that the date as mentioned in the Matriculation Certificate should be reckoned for the purposes of the writ petitioner's service records and date of superannuation. While allowing the writ petition, the Division Bench had relied upon an earlier Division Bench judgement of this Court in the case of Awadh Singh Vs. The Bharat Coking Coal Ltd. and Others, .

9. In the present case it is not disputed that in the Personal Data Form of the petitioner, a correction in the date of birth has been recorded, corresponding to the date of birth as entered in his Matriculation Certificate. It is also not disputed that in the medical book as also in the statement relating to the Provident Fund contributions, the same date of birth as mentioned in the Matriculation Certificate has been recorded. It is also not disputed that way back in the year 1976 the petitioner had produced his Matriculation Certificate which had indicated his date of birth as recorded therein.

Furthermore, it is not disputed that in identical circumstances where the employees had initially not produced their respective Matriculation Certificates, such certificates were received subsequently from them and thereafter the entries relating to their respective date of births were corrected corresponding with the date of birth in their respective Matriculation Certificates and such employees, whose specific instances have been highlighted by the petitioner, were given benefit of the corrected entry of their respective date of births and their respective dates of superannuation.

10. Even if the petitioner had initially suppressed his Matriculation Certificate and had thereby obtained his employment and if this was an act of misconduct on the part of the petitioner, the respondent authorities could have initiated action against him for any purported alleged misconduct but no such action has been initiated against the petitioner.

Learned Counsel for the respondents would submit that the benefit of correction of age on the basis of their respective Matriculation Certificates and corresponding date of superannuation was though given to the other employees referred to by the petitioner but such benefit was given only pursuant to the orders passed by this Court in the writ applications filed by the said employees. This argument does not appeal to reason. The directions if any, in the writ petitions are presumed to have been made only after evaluating the merits of the case laying down the principles of law and procedure which have to be applied equally to all employees under similar circumstances.

It also appears that way back in the year 2005 the petitioner had submitted his representation for correction of his date of birth in accordance with his Matriculation Certificate but no order was passed by the concerned authorities of the respondents on such representation. The respondents therefore, cannot argue that the petitioner had sought for rectification of his age at the fag end of his service, particularly in view of the fact that he was all along given a bonafide impression by the entries of his date of birth in the medical book and the statement of account relating to his Provident Fund contribution, that his date of birth was duly corrected as per his Matriculation Certificate.

11. For the reasons stated above, I find merit in this application and accordingly, the same is allowed. The impugned letters Annexure-6 and Annexure-6/1 are hereby quashed. The date of birth as recorded in the petitioner's Matriculation

Certification shall be treated by the respondents as his correct date of birth for all practical purposes.