

(2009) 07 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4181 of 2008

Ram Das Rajak

APPELLANT

Vs

Steel Authority of India Limited and Others

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0021

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

Bench : Single Bench

Advocate : Sanjeev Kr. Mishra and Vikas Pandey, for the Appellant; Ananda Sen and Nag Mani Tiwari, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Sri Sanjeev Kumar Mishra, learned Counsel for the petitioner and Sri Ananda Sen, learned Counsel for the respondents.

2. The petitioner in this writ application has prayed for an order quashing the letter dated 30.06.2008 (Annexure-5) whereby the petitioner was intimated about his date of superannuation from service of the company as 30.09.2008 and to correct the entry regarding the petitioner's date of birth in accordance with the age as certified in his Matriculation Certificate.

3. The facts of the petitioner's case in brief are as follows:

The petitioner was appointed as a Mazdoor at the Chasnala Colliery in the year 1970.

At the time of his appointment, he was a non-matriculate. He had therefore produced his Middle School Certificate issued to him by the Bihar School Examination Board in the year 1965 affirming his date of birth as 01.01.1953.

Subsequent to his appointment, on his passing the Board of Mining Examination in the year 1988-89, the Winding Engineman-Class-II and Class-I certificates as issued to him also recorded his date of birth as 01.01.1953, after obtaining

satisfactory evidence of his age, medical fitness, character, literacy and experience in driving engine.

Under such circumstances, the petitioner had no occasion for raising any dispute regarding the entries of his date of birth made in his service records. It was only upon being served with the impugned notice that he could understand that his date of birth was incorrectly entered in his service records.

He filed his representations lodging his protest before the competent authorities on 29.05.2007 and again on 31.07.2007 seeking necessary verification and correction of the entries in respect of his date of birth, on the basis of the provisions contained in the N.C.W.A.-3.

The petitioner's grievance is that inspite of his repeated protests and inspite of his claim made on the basis of his Middle School Certificate, his prayer for correction of the entry of his date of birth in his service records was not carried out and he was made to retire prematurely on 30.06.2008 although he would have attained the age of retirement of 60 years in June, 2013.

4. Learned Counsel for the petitioner, while inviting attention to the provisions contained in the N.C.W. Agreement-3 and also the provisions of Administrative Implementation Instruction No. 76, submits that the date of birth recorded in the Board Certificate shall have to be treated as the correct date of birth of the employee and in the event of a dispute regarding the correctness of the entry made in the service records, the date of birth recorded in the Middle School Certificate shall have to be treated as correct and final. Referring to Clause (B)(i) (a) of the Implementation Instruction No. 76, learned Counsel would submit that this Rule applies in the case of existing employees and the correction in the entries relating to the date of birth in the service records of the employee has to be carried out according to the provisions of the Instruction.

Learned Counsel argues further that the respondents cannot be allowed to take a plea that the entry in the statutory Form-B Register, even if it bears the signature of the employee, should be treated as final and that the date of birth recorded in the Middle School Certificate cannot be accepted.

To buttress his argument, learned Counsel would refer to and rely upon the judgment of a Bench of this Court in the case of Subhash Chandra Jha v. The General Manager, Chasnala Colliery and Ors. passed in W.P.(S) No. 5445 of 2007 and also upon the Full Bench Judgment of this Court in the case of Kamta Pandey v. B.C.C.L. reported in 2007 (3) JLJR 726.

5. The respondents have denied and disputed the petitioner's entire claim basically on the ground that the petitioner's age has been determined on the basis of the entries available in the service records which was opened on the date of the petitioner's appointment in service and that the petitioner cannot be allowed to raise a dispute in respect of the date of birth at the fag end of his service career.

6. Sri Ananda Sen, learned Counsel for the respondents would argue that at the time of his appointment, the petitioner did not produce his Matriculation Certificate. The non-production of the Matriculation Certificate by the petitioner at the time of his appointment was apparently on account of the fact that on the date of his appointment, he was a non-matriculate and even on the basis of his Middle School Certificate, his age on the date of his appointment, was below 18 years and therefore, he could not possibly have been appointed. Learned Counsel explains further that the petitioner is not covered under the Implementation Instruction No. 76 of the N.C.W.A. Rather, he is covered under the terms of N.J.C.S. applicable to the employees under the SAIL.

Learned Counsel explains further that the date of birth, as entered in the petitioner's service records, was on the basis of the report of his medical examination and also on the basis of the petitioner's declarations as contained in Form-A of the C.M.P.F. records. The petitioner, having appended his signatures both in Form-B Register as also in Form-A declaration, is bound by the entries regarding his date of birth as contained in both the aforesaid statutory documents. To buttress his arguments, learned Counsel for the respondents would refer to and rely upon a Division Bench Judgment of this Court in the case of Nand Kishore Singh v. The Indian Iron & Steel Co. Ltd. and Ors. passed in L.P.A. No. 550 of 2006. Learned Counsel adds that the Full Bench judgment in the case of Kamta Pandey (Supra) would not be applicable to the facts of the present case.

7. The controversy, as it appears, is on the refusal of the respondents to accede to the petitioner's claim for correction of the entry of his date of birth in his service records, on three fold objections:

(a) At the time of his appointment, the petitioner did not produce his Matriculation Certificate and as such, the entry of his date of birth in the service records was made on the basis of his medical examination and also on the basis of his own declaration in Form A of the C.M.P.F. records.

(b) The terms and conditions of the N.C.W.A. -3 is not applicable to the petitioner and it is infact the terms of N.J.C.S. Agreement which would be applicable to the petitioner, who is an employee of the respondent SAIL.

(c) The petitioner had never raised any objection for correction of the entries of his service records in respect of his date of birth and such objection, if any, was raised at the fag end of his service.

8. The Full Bench Judgment in the case of Kamta Pandey (Supra) was based primarily on the admitted premise that the terms of the N.C.W.A.-3 including the Implementation Instruction No. 76, was applicable to and binding upon both the employer and the employee and no dispute was raised on this issue. In the instant case, on the other hand, the applicability of the terms of N.J.C.S and the corresponding Implementation Instruction No. 76 to the petitioner, has been denied and disputed by the respondents.

9. Admittedly, the petitioner was initially absorbed under the IISCO when it was under a private management and later on, the company was taken over by the Steel Authority of India Limited. The terms and conditions of service of the employees of IISCO were originally governed by the National Coal Wage Agreement including the N.C.W.A.-3 and the Implementation Instruction No. 76 as contained therein.

10. From the perusal of the N.J.C.S. Agreement (a copy of which has been furnished by the learned Counsel for the respondents), it appears that it was entered into on 23rd July, 2001 between the Trade Unions representing the employees of various steel plants and the Management of the steel plants. The employees of IISCO, who were left out from the benefits of the previous N.J.C.S. Agreement, have also been included. The terms of the N.J.C.S. Agreement basically and essentially cover the wages, allowances and benefits, safety, health and environment management, revised wage structures concerning the employees of the various steel plants. However, Clause 1.2 under Chapter-1 of the Agreement indicates that the benefit of the agreement relating to the revised wage structures only was made applicable to the employees of the IISCO.

Clause 1.3 declares categorically that other benefits enjoyed by the IISCO employees before signing this Agreement, would continue. Apparently, the other benefits which had accrued to the employees of IISCO, were those which were secured for them under the earlier N.C.W. Agreement. The petitioner's claim in this writ application is for implementing the guidelines as contained in Implementation Instruction-76 of the previous N.C.W. Agreement which continues to remain in force and applicable to the employees of the IISCO since such benefits have not been covered under N.J.C.S. Agreement. The respondents cannot therefore claim that the petitioner cannot claim to be governed by the terms of the N.C.W.A.-3 and that the terms of the N.J.C.S. Agreement would apply to the petitioner.

11. Clause (B) of the Implementation Instruction No. 76 of the N.C.W.A.-3 provides for the review of determination of date of birth in respect of existing employees and is reproduced below:

(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 of Middle pass certificate issued by Board of Education and/or Department of Public Instruction and Admit Cards issued by the above Boards should be treated as correct provided they were issued by the said Universities/Board/Institutions prior to the date of employment.

12. From a bare reading of the provisions of Clause (B) of the Implementation Instruction No. 76, it is manifest that the review of determination of date of birth can be made in respect of existing employees which informs firstly, that such review can be made at any time during the employees' service and secondly,

that in the matter of determination of the age, the Matriculation Certificate or Middle School Certificate issued by the Board of Education and Admit Cards issued by such Boards, should be treated as correct if they were issued by the Boards, prior to the date of employment.

13. In the Full Bench Judgment of this Court in the case of Kamta Pandey (Supra), the above aspect was, considered and the Court had observed in the following terms:

When the instruction found in the agreement reflecting the scheme provided for implementation envisaging the specific procedure for determination of date of birth conclusively, it cannot be said that entries made in the service register alleged to have been acknowledged by the employee would nullify the effect of the object with which the instruction No. 76 has been introduced.

14. It may be noted that in the case of Kamta Pandey (Supra) the grounds advanced by the respondent employer was that in token of the entries in Form-B Register, the employee had put his signature thereby acknowledging the entry of his date of birth as correct and also the ground that the employee's claim for correction of date of birth was made at the fag end of service.

Both the above grounds as advanced by the respondent employer, was rejected by the Full Bench in its judgment. While rejecting the ground that the claim for rectification was made at the fag end of the service career, the Full Bench upon reference to the several judgments of the Supreme Court, had recorded its observations in the following manner:

26. One other point, incidentally, raised by the respondents is that the dispute over date of birth cannot be raised at the fag end of service. The counsel for the respondents cited the following authorities of the Supreme Court -

(i) Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran,

(ii) Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another,

(iii) Bharat Coking Coal Ltd. Vs. Presiding Officer and Another,

(iv) Hindustan Lever Ltd. Vs. S.M. Jadhav and Another,

(v) AIR 2001 SC 72 [G.M., Bharat Coking Coal Ltd., West Bangal v. Shib Kumar Dushad and Ors.]

(vi) State of U.P. and Others Vs. Smt. Gulaichi,

(vii) (2005) 12 SCC 201 [Coal India Ltd. v. Ardhendu Bikas Bhattacharjee and Ors.]

(viii) State of U.P. and Another Vs. Shiv Narain Upadhyaya,

27. In these decisions, though it is observed that the employee will not normally

be permitted to apply for change of his date of birth at the fag end of his service career, the Supreme Court clearly held that if the Court is fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and when a clear case, relating to the date of birth, is made out on the basis of clinching materials, then necessary direction to make a declaration of the said date of birth can be given.

15. In the case of Balbhadra Mishra v. SAIL W.P.(S) 5600 of 2007 in which identical issue was raised by the employee, a Single Bench of this Court, while placing reliance on the judgment in the case of Kamta Pandey and a Division Bench judgment of this Court in the case of Rama Nand Tiwari L.P.A. No. 493 of 2006 has held that the date of birth recorded in the Matriculation Certificate, duly authenticated by the Education Board, shall determine the petitioners date of retirement and the petitioner shall accordingly retire on attaining the age of superannuation in accordance with the date of birth recorded in the Matriculation Certificate.

16. The respondents have relied upon the Division Bench judgment of this Court in the case of Nand Kishore Singh v. Indian Iron and Steel Company Ltd. L.P.A. No. 550 of 2006. In this case, the main ground of contest, as offered by the employer against the claim of the employee for correction of the date of birth, was that at the time of his appointment, the employee did not produce his Matriculation Certificate/Secondary School Certificate. The said stand of the employer was not denied or disputed by the employee and it was in this context that the Division Bench of this Court had rejected the claim of the employee by recording its observation in the following terms:

4. The instant matter is not a case where the petitioner's matriculation certificate as a mark of proof of his age was disbelieved but is a case where the petitioner-appellant although was matriculate at the time of entry into the service, the appellant failed to produce his matriculation certificate in support of the proof of age and if the same had been produced and had been disbelieved by the respondents, the plea perhaps could have been adjudicated. As already stated, the appellant did not produce the matriculation certificate when he entered into the service in the year 1972 but at a much later stage, he cam up with the certificate of matriculation, contending that his date of birth mentioned therein ought to be treated as correct and valid.

5. We fail to understand as to why the petitioner-appellant had not produced his matriculation certificate at the time of entry into the service and only at the fag end of his service, produced the matriculation certificate containing a different date of birth than what was recorded in the service book, in support of which he had also affixed his signature.

17. In the present case, on the other hand, it is the petitioner's consistent claim that he had passed the Middle School Examination much prior to the date of his

appointment and had infact produced the Middle School Certificate issued by the Bihar School Examination Board along with the Admit Card which was issued by the Board, but the same was ignored by the employer, who, at the time of the petitioner's induction in service, was under a private management.

Under the aforesaid circumstances, the Division Bench judgment of this Court in the case of Nand Kishore Singh (Supra) would not apply to the facts of the present case. Rather, the facts in the case of Kamta Pandey (Supra) would squarely apply.

18. The contention of the respondent employer that had the petitioner produced his Middle School Certificate, he could not possibly have been appointed on account of his being below the age of 18 years, cannot be accepted since it is only a presumption. At the time of the petitioner's appointment, the employer was under a private management and the respondents cannot emphatically assert that the ex-employer had strictly followed the Rule of 18 years as the minimum age of appointment. In any case, the respondents cannot take any such benefit of the petitioner's actual age on the date of his appointment, at this stage.

19. In the light of the above discussions, I find merit in this writ application. Accordingly, the same is allowed. The respondents are directed to make necessary correction regarding the petitioner's date of birth in his service records as per the date mentioned in his Middle School Certificate and pass consequential orders accordingly.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent SAIL.