(2005) 04 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3509 of 2004

Ram Deo Singh APPELLANT

Vs

Steel Authority of India Ltd. and Others RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5, 5(1), 5A

Citation : (2005) 3 JCR 107 : (2005) 3 LLJ 467 : (2005) 106 FLR 598

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : P.K. Verma, for the Appellant; Rajiv Ranjan and Abhay Kumar Mishra and P.P.N. Roy, for the respondent No. 7, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ application, the petitioner who is an employee of Bokaro Steel Plant, Bokaro, has prayed for a direction to the respondents to release his pensionary benefits which is payable to him from 17.7.2003.

2. The petitioner''s case is that he had joined the service of the respondents as Grade III worker. At the time of entry in the service, his date of birth was recorded as 18.7.1945 in the Personal Data Form, on the basis of the educational certificate. According to the petitioner, he is covered by the pensionary scheme of the respondents and for that purpose statutory deductions were made from the salary of the petitioner. In the said scheme, the age of superannuation was 58 years and the deductions were to be made accordingly. Subsequently the age of superannuation of the employees of the public sector undertakings was extended to 60 years. Thus, the petitioner continued in service till 2005. However, as per the pensionary scheme, on attaining the age of 58 years on 11.7.2003, the petitioner applied for release of his pensionary benefits and for that purpose he submitted, all the necessary documents. The Regional Provident Fund

Commissioner, Ranchi (respondent No. 7) returned the documents by his letter No. R.O./Pension/B.R./0316/10D/2004/7116, dated 18.3.2004 on the ground that the petitioner will attain the age of 58 years on 17.7.2005. The said letter is annexure 2 to the writ application. According to the petitioner, in the Personal Data and the certificate issued by the Bihar School Examination Board his date of Birth is clearly mentioned as 18.7.1945 and from that date the petitioner attains the age of 58 years on 17.7.2003. The petitioner has claimed that according to the provisions of the pensionary scheme, he is entitled to the pensionary benefits from 17.7.2003 and subsequent revision of the age of retirement of the employees as 60 years would not in any way affect his right. The petitioner has also annexed copy of an order of this Court passed in a writ application, WP(S) No. 711/2003 and claimed that his case is squarely covered by the decision of the said case.

3. The employers of the petitioner has supported his claim. Counter-affidavit has been filed on behalf of the respondent Nos. 1-6. It has been clearly stated that according to the service records the petitioner attained the age of 58 years on 11.7.2003 and in accordance with the provision of law the petitioner''s papers were forwarded to the respondent No. 7 requesting him to release the pensionary benefits which are payable to the petitioner under the Employees Provident Fund Pension Scheme. In spite of the submission of the requisite forms with details of the petitioner and supporting documents, such as P.D. Form (service book) and Nomination Form duly certified by the authority concerned, the petitioner''s claim was not entertained and documents were returned with the endorsement that "it is not possible to correct the date of birth......" The respondent No. 7 further communicated that the petitioner has not attained the age of 58 years. According to the employer-respondents although there was no dispute regarding the petitioner''s date of birth and the same has been clearly mentioned in the service records, yet the respondent No. 7 has been unnecessarily disputing the same and refused to accept the date of birth of the petitioner recorded in his service records.

4. A lengthy counter affidavit has been filed on behalf of the respondent No. 7 stating, inter alia, that the petitioner''s name appears at A/C No. BR/2316/41601 and his date of birth is mentioned as 18.7.1947 and as such he is liable to contribute in the scheme up to 18.7.2005 and the liability of pension would accrue with effect from 19.7.2005. If the date of birth of the petitioner is accepted as 17.7.1945, he would superannuate on 18.7.2003 and the department has to pay pension from that date i.e. from 19.7.2003 without receiving contribution for the period from 8/2003 to 7/2005 and has to suffer financial setback. According to the respondent No. 7, the petitioner has opted for reduced pension claiming the benefit w.e.f. 19.7.2003 i.e. 2 years prior to the date of his superannuation whereas date of birth of the petitioner is recorded as 18.7.1945 and accordingly on completion of 58 years of age, he is entitled to get his pension after 18.7.2005.

5. Mr. P.K. Verma, learned counsel appearing on behalf of the petitioner, submitted that the pensionary benefit is payable to an employee in accordance with the service records kept and maintained by his employer. If there is any mistake or error in the records of the custodian of the fund, the same is liable to be corrected in accordance with the service record of the employee. According to the learned counsel, there is clear entry of the petitioner''s date of birth as 18.7.1947 in all the service records maintained by his employer which is supported by the Matriculation certificate. The petitioner attained the age of 58 years on 17.7.2003, is entitled for his pension on and from that date and the respondent No. 7 has absolutely no authority in law to dispute the same. Learned counsel submitted that the refusal of pensionary benefits by the respondent No. 7 with effect from the said date is wholly arbitrary, illegal and unjust and without any cogent basis.

6. Mr. Rajiv Ranjan, learned counsel appearing on behalf of the employers respondent Nos. 1-6, duly supported the stand of the petitioner and submitted that the respondent No. 7 has got no business to dispute the petitioner''s date of birth which has been duly recorded and maintained throughout his service period in the statutory service records which is based on the certificate issued by the Bihar School Examination Board. According to the learned counsel, the respondent No. 7 can not shift the date of superannuation at his sweet-will and can not take any contrary decision in the matter in face of the clear and undisputed entries in the service records and that too without giving any notice and opportunity of hearing to the petitioner.

7. Mr. P.P.N.Roy, learned senior counsel appearing on behalf of the respondent No. 7, opposed the said stand taken y the petitioner as well as his employer and submitted that since the date of birth of the petitioner has been shown as 18.7.1947 in the record of the respondent No. 7, the petitioner is not entitled to get any pension before 17.7.2005. Learned counsel submitted that the respondent No. 7 can not be forced to pay pensionary benefits two years earlier as it would cause financial loss to the fund. Learned counsel submitted that if the respondent No. 7 pays the pension with effect from 17.7.2003, he will be deprived of the contribution payable by the petitioner for further two years. The admitted fact in this case is that the petitioner is an employee of the respondent No. 1. In the service record i.e. in Personal Data Form maintained by the employer, the petitioner''s date of birth is recorded as 18.7.1945. In the Matriculation certificate issued by the Bihar School Examination Board, which is generally accepted as a valid proof of the date of birth, the date is 18.7.1945. The respondent No. 7 has not disputed the said facts. However, it has been stated that in the record of the respondent No. 7 the petitioner''s date of birth is shown as 18.7.1947. The respondent No. 7 is silent regarding the basis of the said entry which is different from the service record and the Board''s Matriculation certificate. Nothing has been brought before this Court to show that the Regional Provident Fund Commissioner has got any authority to independently record the date of birth of its own even different from the record

of the employer/the service book of the petitioner.

8. The Employee''s Provident Fund Scheme has been framed under the provision of Section 5 of the Employer''s Provident Funds and Miscellaneous Provisions Act, 1952 under which the Provident Fund Scheme of the petitioner is covered. Section 5 of the said Act runs thus :

"5. Employee''s Provident Fund Scheme.-(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employee''s Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees* and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(1A) The Fund shall vest in, and be administered by, the Central Board constituted u/s 5-A.

(1B) Subject to the provisions of this Act, a scheme framed under Sub-section (1) may provide for all or any of the matters specified in Schedule II.

(2) A Scheme framed under Sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf, in the Scheme.

From reading of the said section, it is clear that the scheme has to be framed by the Central Government to be called as Employee''s Provident Fund Scheme for the establishment of Provident Funds under this Act for employees or for any class of employees and specify the establishments or class of the establishments to which the said scheme shall apply. The expression that the scheme for the establishment for employees or for any class of employees clearly means that the scheme is applicable to the employees in accordance with their own records or on the basis of the records maintained by the establishment of the said employees and the Regional Provident Fund Commissioner or any authority under the Employees'' Provident Fund Act has to Act according to the service records of the employees. In view of the above provision and also in view of the facts that there is no legal basis for recording the date of birth in the record of the ''Scheme'' different from the service records maintained by the employers, in my view, the respondent No. 7 has no authority to withhold the petitioner''s pension after attaining the age of 58 years on 17.7.2003 on the alleged basis of variation of entry of the date of birth in his record different from the service records, which has absolutely no legal basis.

9. The respondent No. 7 is liable to pay the pensionary benefits to the petitioner and is thus directed to release the admissible amount of pension and the arrears thereof to the petitioner, treating him to have attained the age of 58 years on 17.7.2003 as per his service record, with statutory interest from the date of his superannuation i.e. from 17.7.2003 till the date of actual payment within a

period of two months from the date of receipt/ production of a copy of this order, failing which the petitioner shall be entitled to get compensatory interest @ 10% per annum, additionally till the date of payment of the amount of arrears.

10. This writ application is accordingly allowed. However, there shall be no order as to cost.

