

(2005) 09 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3592 of 2005

Ramadhar Singh

APPELLANT

Vs

Management of Heavy Engineering Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2006) 2 JCR 62

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; Rajiv Ranjan and Abhay Kr. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In this writ petition, the petitioner has challenged the Award dated 28th January, 2005. passed by the Presiding Officer, Labour Court, Ranchi, in reference Case No. 09 of 2000, whereby and whereunder, the learned Court below has answered the reference in favour of the Management and against the petitioner and has upheld the date of birth, entered in the service book of the petitioner as 1st July, 1940.

2. The petitioner was appointed in the services of M/s. Heavy Engineering Corporation Ltd. (hereinafter to be referred as "HEC") on 1st November, 1966. After appointment, service book was opened. On the basis of date of birth i.e. 1st July, 1940, as entered in the service book, the petitioner was to superannuate in the year, 2000. It appears that a dispute was raised and the appropriate Government made reference u/s 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the following issues ;

Whether the entry of date of birth 1.7.1940 of Shri Ramadhar Singh (15957), Molder 2 shop FFP by the Management of HEC is justified? Whether the Management has retired them suppose the said date is correct?

3. Learned counsel for the petitioner submitted that the order, passed by the learned Presiding Officer, Labour Court, Ranchi, is perverse and against the decision of the Supreme Court, rendered in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . He also relied on a decision of this Court in the case of Karu Nonia v. Bharat Coking Coal Ltd. and Ors. reported in 2002 (1) JCR 418 (Jhr) : 2002 (1) JLJR 798, wherein, it has been held that the date of birth of an employee can not be changed without any notice and reasonable ground.

4. According to the petitioner, his date of birth is 18th September, 1947. as recorded in the School Leaving Certificate, issued on 31st March. 1972. At the time of appointment, his age was recorded as 20 years in the service book. But it was later on, changed sometime in the year, 1982 as is evident from letter dated 6th September, 1982 (Ext. 4), wherein , for the first time it was determined as 1st July, 1940 as the date of birth of the petitioner, without notice and without giving an opportunity to the petitioner with regard to such change. However, this submission has been disputed by the learned counsel for the HEC.

5. Counsel for the petitioner produced a photo stat copy of the service book (Volume I) of the petitioner, which was Ext. 4 before the learned Court below. From the said records, it appears that against serial No. 3 "Date of birth by Christian era as nearly as can be ascertained" the age has been shown to be 26 years. As the petitioner was appointed in the year, 1966 and his age having been asessed as 26 years, the authorities fixed the date of birth of the petitioner as 1st July, 1940 i.e. mid of the year, for the purposes of retirement. Counsel for the petitioner submitted that though the age written as 20 years, it has been changed to 26 years. However, such submission can not be accepted as from naked eyes it appears that the age was written as 26 years.

6. This apart, it being a question of fact, having been disputed by the parties, can not be determined under Article 226 of the Constitution of India. The Court can not sit in appeal over a finding of fact, given by the Labour Court.

7. There being no merit, this writ application is hereby dismissed.