
(2002) 11 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3802 of 2001

Sheo Lal Mahto

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 516

Hon'ble Judges : Tapan Sen, J

Bench : Single Bench

Advocate : A.N. Deo, for the Appellant; S.K. Ugghal, for the Respondent

Final Decision : Allowed

Judgement

Tapan Sen, J.—Heard Mr. A.N. Deo, learned counsel for the petitioner and Mr. S.K. Ugghal, learned counsel for the respondents.

2. The petitioner, a petty peon working in the Bermo Mines of Damodar Valley Corporation was veritably shocked when he learnt through a "Retirement Forecast" as contained at Annexure 2 that he would be superannuated on and from 31st December, 1997 contrary to his own record and contrary to his own date of birth which according to the petitioner was actually 21.7.1942 which logically would have taken him to 21.7.2002 before he actually would have superannuated. Being aggrieved by the aforementioned retirement forecast, the petitioner protested whereafter a medical board was constituted by the Management themselves and the petitioner was asked to appear. Subsequently the medical board examined the petitioner and found him to be actually less in age and therefore an office order was subsequently issued on 27.7.1998 (Annexure 4) by reason whereof the date of birth of the petitioner was accepted as 21.7.1942. He was allowed to join but during the period when this petitioner was kept out of job, i.e. January 1998 to August, 1998, his status was recorded as "dies non" meaning thereby, no days at all. By reason of the aforementioned office order dated 27.7.1998, the Deputy Chief Engineer-cum-Agent while

treating the aforementioned period as "dies non" however declared that his service would continue but the intervening period shall not be counted for any legal purpose but it will be counted only for pensionary benefits. It appears that thereafter the salary of the petitioner for the aforementioned period, i.e. January 1998 to August, 1998 was withheld. The petitioner moved this Court vide CWJC No. 783 of 2001 and by an order dated 26.2.2001 (Annexure 1), this Court gave liberty to the petitioner to move a representation and the same was directed to be disposed off with a speaking order within three weeks from the date of its filing. After the aforementioned order was passed, the petitioner filed a representation vide Annexure 6 and that has now been disposed off by Annexure 7 i.e., the impugned order passed by the Coal Superintendent-cum-Agent, DVC Bermo Mines of the Damodar Valley Corporation. The order was communicated to the petitioner vide confidential letter dated 16.7.2001.

3. A counter affidavit in this case has been filed. In the counter affidavit the respondents have stated that according to the age recorded in the service book, the petitioner was made to superannuate, but the petitioner filed a representation and taking a sympathetic view, they constituted a medical board and it was found that his date of birth was 21.7.1942 and as such, the date of birth recorded in the service book was incorrect and therefore he was allowed to continue in service with effect from 28.7.1998. They have also stated that according to the date of birth so rectified after the examination made by the medical board, the petitioner would now retire on and from 1.8.2002. They have further stated that the petitioner did not discharge his duties since January 1998 to July 1998. He was paid salary for four days after he joined on 21.7.1998 being salary for the month of July 1998 and similarly, he was also paid from August, 1998 till the date he actually superannuated, i.e. 1.8.2002.

4. From a perusal of the pleadings made, it is, therefore, evident that from the own admission made by the respondents, i.e., in their counter affidavit at paragraph 9, the date of birth recorded in his service book was incorrect and the actual date of birth as has been admitted by the respondents is 21.7.1942 and therefore, as per paragraph 10 of the counter affidavit, the petitioner has the right to continue till 1.8.2002.

5. Whose fault was this ? Who created the situation for which petitioner was rendered "jobless" from January 1998 to August 1998 thereby enforcing a virtual break in the service and why has the management suddenly taken a somersault at paragraph 13 of the counter affidavit that this is a "dispute" regarding age after superannuation ? Where is the "dispute" when in the counter affidavit they have themselves specifically admitted in paragraphs 9 and 10 the date of birth was 27.1.1942 and the petitioner was entitled to continue up to 1.8.2002 ?

6. The answer to all the aforesaid questions point to a glaring apathy on the part of the management which did not even bother to take "hardship" into consideration. They glibly issued a so called "retirement forecast" and then with nonchalance they say that his date of birth was wrongly recorded in the Service

Book and that he is entitled to continue for a longer period. They also admit in so many words in the counter affidavit that the date of birth is 21.7.1942. Once the Medical Board gave its report and the management accepted the same, it beats all understanding as to how a responsible officer of the Damodar Valley Corporation could say that the period would be treated as "dies non".

It appears that the respondents are not even fully conversant with the term that they use. "dies non", in the Black's Law Dictionary has been defined to mean "dies non juridicus" which means a day not juridical. In other words, it means a day which is not a Court day and a day on which the courts are not open for business, such as Sundays and some holidays. That is what "dies non" means but by having used such a word are the respondents entitled to take away the salary for the aforementioned period and that too for no fault of the petitioner ? No! Certainly not. Respondents in this case have acted in a most mechanical manner. They are therefore directed to forthwith release the entire salary to this poor Class-IV Peon together with interest quantified at 10%.

7. The writ petition is allowed. However, there shall be no order as to costs.