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**(2011) 09 JH CK 0099**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 7608 of 2006**

Sheolal Harizan

APPELLANT

Vs

Bharat Coking Coal Limited and Another

RESPONDENT

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**Date of Decision : 05-09-2011**

**Acts Referred:**

**Citation : (2011) 09 JH CK 0099**

**Hon'ble Judges : Rakesh Ranjan Prasad, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

R.R. Prasad, J.—The Petitioner joined the service in the Respondents-company on 6.5.1971 and was working as Provident Fund Clerk. At the time of joining, his date of birth was recorded as 1.7.1944 in Form-B Register, which was acknowledged by the Petitioner by putting signature over it. In the year 1987, form containing service excerpt was issued to all the workmen so that necessary information's, which had earlier not been given, be furnished.

2. According to the case of the Petitioner, date of birth was recorded in the service except as 1.8.1949 on the basis of a certificate. Therefore, the Petitioner was under belief that he on attaining the age of 60 years would be retiring on 30.8.2009, but a notice was given to him in the year 2003 intimating therein that he is going to retire on 30.6.2004 on the date on which he would be attaining the age of 60 years. Immediately thereafter, the Petitioner made a representation before the Authority requesting therein to correct the date of birth, as he could come to know that his date of birth has been put in as 1.7.1944 in the service excerpt. On such representation, the Petitioner was asked to submit relevant documents in this regard but without taking any final decision, the Petitioner was made to retire on 30.6.2004. After the Petitioner got retired, the Respondent issued a letter on 15.12.2005 (Annexure-4) asking the Petitioner to move to the civil court for redressal of his grievances.

3. Being aggrieved with that, the Petitioner has moved to this Court.

4. Mr. Kalyan Banerjee, learned Counsel appearing for the Petitioner, submits that as per Instruction No. 76(A) of N.C.W.A.-III, age of the employee is to be recorded as per the date of birth mentioned in the matriculation certificate, but the Authority by giving complete go-bye to the said Instruction made the Petitioner to retire prematurely, which is not only against the said instruction but is also under the teeth of a judgment rendered by the Full Bench of this Court in the case of Kamta Pandey v. M/s Bharat Coking Coal Limited and others 2007 (3) JLR 726 holding therein that the date of birth recorded in the matriculation certificate would prevail over any other document showing age of the Petitioner. Therefore, the order, as contained in Annexure-3, under which the Petitioner was made to retire on 30.6.2004, is fit to be quashed and, thereby, the Petitioner would be entitled to the consequential benefits.

5. A counter affidavit has been filed, wherein it has been stated that the date of birth, which was recorded in Form-B Register, is 1.7.1944 but during employment, the date of birth, recorded in the service excerpt on the basis of the entry made in Form-B Register, was changed to 1.8.1949 fraudulently and in the Column of Educational Qualification of the format containing service excerpt it was filled up as matriculate without furnishing matriculation certificate.

6. Mr. Rajan Raj, learned Counsel for the Respondents, submits that on the basis of the entry made in Form-B Register relating to date of birth, the Petitioner has been made to retire on 30.6.2004, as his date of birth was recorded in Form-B Register as 1.7.1944 and, therefore, no wrong has been committed by the Authority, but the Petitioner is making out a case of premature retirement, as according to the Petitioner, date of birth was recorded in the matriculation certificate as 1.8.1949 which date of birth has even been put in the service excerpt but that was put in fraudulently and, therefore, the Petitioner cannot take any advantage of it, particularly when the matriculation certificate had never been produced by the Petitioner either at the time of entry of the date of birth being made in Form-B Register or subsequently at any point of time during service tenure of the Petitioner. Under these circumstances, the ratio laid down by the Full Bench of this Court in Kamta Pandey (supra) is not applicable in the case of the Petitioner.

7. There has been no dispute that as per Instruction No. 76(A) (I) and the ratio laid down by this Court in the case of Kamta Pandey (supra), age of the appointee is to be determined on the basis of the date of birth recorded under matriculation certificate. In the instant case, the Petitioner though does claim the age on the basis of the date of birth recorded in the matriculation certificate, but such certificate never seems to have been produced before the Authority either at the time when the entry was made in Form-B Register or at any point of time later. However, I do find that against Column No. 6 of the service excerpt, which relates to date of birth, it has been recorded as "1.8.1949 as per the certificate attached (Photostat copy)" but that certificate never appears to be related with

the matriculation certificate rather it pertains to a certificate granted by Tahsildar on the basis of which, the Petitioner may have claimed his date of birth as 1.8.1949 which fact would be evident from Annexure-4 whereby the Petitioner was advised to have a decree of the civil court on the basis of certificate granted by Tahsildar. Moreover, it has never been claimed in the writ application or even in the supplementary affidavit that the matriculation certificate had been produced at the time of filling up of the form relating to service excerpt. Under this situation, the ratio laid down by the Full Bench of this Court will not be helpful to the Petitioner, as in that case Identity-Card issued to the Petitioner was bearing the same date of birth as it was there in the matriculation certificate and even Seva Abhilekh contains the same date of birth though it was different from statutory Form-B Register and under these situations, it has been held that the date of birth as recorded in the matriculation certificate would prevail over any other documents showing the age of the person, but in the instant case as I recorded earlier that the matriculation certificate never appears to have been produced at any point of time and, therefore, the Petitioner cannot now be allowed to raise the controversy relating to the age when he has already got retired on 30.6.2006.

8. Accordingly, I do not find any merit in this writ application. Hence this writ application stands dismissed.