
(2010) 10 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11454 of 2009 (S)

Sukalu Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) 10 MP CK 0032

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging the action of the Respondents in retiring the Petitioner with effect from 30.09.2009 treating his date of birth to be 1.10.1949, on the basis of the entry made in the service records showing his age to be 28 years as on 1.10.1977, Petitioner has filed this writ petition and prays for quashing of the order-dated 13.3.2009 issued in this regard.

2. Facts in nutshell, relevant for deciding the present dispute, are that Petitioner was appointed as a Welder Group C, in the Kotma Colliery of South Eastern Coal Fields Limited (hereinafter referred to as "SECL"), in the year 1977. At the relevant time he was appointed on the basis of the ITI Certificate issued to him. According to the Petitioner he has produced this certificate showing his date of birth as 6.8.1955. In spite thereof, his age was not correctly recorded. Placing reliance on the Middle School Certificate - Annexure P/1 and the ITI Certificate issued to the Petitioner vide Annexure P/2, it is the case of the Petitioner that even though his age was shown in these documents as 6.8.1955, the Respondents recorded his age as 28 years on the date of his appointment i.e. 1.10.1977. According to the Petitioner, he had never disclosed his age as 28 years, instead had disclosed his age as 22 years at the time of appointment. It was only in the year 1988 when the Petitioner was informed about his date of birth that he submitted a representation on 6.2.1988 vide Annexure P/3. His representation was considered and his claim was referred to the Age

Determination Committee, constituted by the Respondents in accordance to the agreement entered into by the employer and the union, i.e... the National Coal Wage Agreement. The Age Determination Committee determined the date of birth of the Petitioner as 6.8.1955 and accordingly the competent authority namely the Sub Area Manager, Jamuna Sub Area passed an order on 28.3.1989 - Annexure P/4, directing for correcting the date of birth of the Petitioner as 6.8.1955. Accordingly, in the records pertaining to payment of salary to the Petitioner - Annexure P/5, the identity card issued to him vide Annexure P/6, and in all other documents the date of birth of the Petitioner was corrected and it was shown as 6.8.1955. In spite thereof, all of a sudden when order-Annexure P/7 was issued showing his date of birth as 1.10.1949 and when he was proposed to be retired on 30.9.2009, he objected personally and through the Union, matter was taken up by the Union and finally when the claim is rejected, Petitioner has filed this writ petition.

3. Shri K.C. Ghildiyal, learned Counsel for the Petitioner, taking me through the documents available on record, the findings recorded by the earlier Age Determination Committee on the basis of which order - Annexure P/4 was issued and by placing reliance on Implementation Instruction No. 76, issued under the National Coal Wage Agreement - Annexure P/5 and the stipulations contained in Clause (b) with regard to review/determination of the age of existing employee, argued that in the present case as the identity card, middle school passed certificate and the ITI Certificate of the Petitioner clearly shows his date of birth as 6.8.1955, Respondents cannot refuse correction of the date of birth and the action of the Respondents is illegal and arbitrary.

4. On notice being issued, Respondents have filed reply and it is the case of the Respondents that in the Form B Register maintained under the Mines Rules - Annexure R/1, the service excerpts of the Petitioner - Annexure R/2, the service register of the Petitioner - Annexure R/3, his age is shown as 28 years as on 1.10.1977. Accordingly, his date of birth would be 1.10.1949. It is stated that when Petitioner raised objection before his retirement, his case was again referred to the Age Determination Committee, which met on 14.9.199, in the Headquarters of the Company, at Bilaspur and the Committee having determined his date of birth as 1.10.1949 in accordance to Implementation Instruction No. 76 - Annexure R/5, it is stated by the Respondents that now no case is made out for interference into the matter. Smt. Kanak Gaharwar, learned Counsel for the Respondents, taking me through the documents as are indicated hereinabove and the decision of the Age Determination Committee dated 14.9.99, submitted that now no interference into the matter is warranted. Accordingly Smt. Gaharwar prays for dismissal of this writ petition.

5. Shri K.C. Ghildiyal, learned Counsel for the Petitioner, refuted the aforesaid contention and submitted that once the age of the Petitioner was determined as 6.8.1955 and when in the case of other employees, whose names are shown in Annexure P/4 dated 28.3.1989, the decision is implemented, there is no reason

for not granting similar benefit to the Petitioner. That apart, contending that his claim is not properly considered and placing reliance on the following judgments rendered by various Division Benches of this Court, in Writ Appeal No. 584/2009 [Sheikh Mumtaz v. South Eastern Coalfields Limited] decided on 7.8.2009; Writ Appeal No. 270/2009 [Rajendra Kumar Mehta v. South Eastern Coalfields Limited and Ors.] decided on 3.9.2009; and, Writ Appeal No. 1183/2008 [South Eastern Coalfields Limited and Ors. v. Nijamuddin and Anr.] decided on 8.9.2009, Shri Ghildiyal prays for interference into the matter.

6. I have heard learned Counsel for the parties at length and perused the records.

7. From the records, it is clear that Petitioner was initially appointed on 1.10.1977 and at the time of appointment in the records maintained by the Respondents, the age of the Petitioner was recorded as 28 years as on 1.10.1977 and accordingly his date of birth was determined as 1.10.1949. However, from the records it is seen that in the year 1987 vide Annexure R/2, when the service particulars were supplied to the Petitioner and his age was indicated as 28 years as on 1.10.1977, Petitioner raised objection and according to the order - Annexure P/4, an Age Determination Committee was constituted, which met on 29.8.1988, at 4.00 PM, in the office of Superintendent/Manager, Jamuna Open Cast Mine and on the basis of the decision of the said Committee - order Annexure P/4 was passed on 28.3.1989. Even though in the order - Annexure P/4 dated 28.3.1989, correction with regard to date of birth of five employees are indicated, Respondents contend that the records of this Age Determination Committee and the proceedings are not available and, therefore, they have again taken the decision to refer the case of the Petitioner to a fresh Age Determination Committee, which having determined the case of the Petitioner in its meeting held on 14.9.09, Respondents contend that Petitioner cannot be granted any benefit.

8. Even though learned Counsel for the parties by taking me through Implementation Instruction No. 76 - Annexure R/5, tried to emphasize with regard to their rival contentions, but before adverting to consider these questions, it is thought appropriate to take note of the order passed vide Annexure P/4, on 28.3.1999, the decision of the Age Determination Committee and the action taken in the case of similarly situated employees. Even though Respondents do not deny issuance of the order-dated 28.3.1989 - Annexure P/4, they contend that the proceedings of the ADC are not available. On 20.9.2010, when the matter was being heard this Court directed the Respondents to file an affidavit indicating as to what action was taken in the case of other employees whose names are referred to in the order - Annexure P/4 dated 28.3.1989. In pursuance to this direction, Respondents have filed an affidavit of Shri P.K. Jain, Personnel Manager, South Eastern Coalfields Limited, Jamuna & Kotma Area, and in the affidavit filed, Respondents have brought on record the order-dated 28.3.1989 - Annexure R/1, which is already filed by the Petitioner as Annexure P/4. Thereafter, with regard to each of the employees whose name is mentioned

in the said order, the following statement of facts are made in the affidavit. It is stated that with regard to Shri Harjeet Singh Kainth, the date of birth was corrected in pursuance to this order-dated 28.3.1989 - Annexure R/1 or P/4. In the case of Shri Jagdish Prasad Sharma, it is stated that the date of birth was not correct in pursuance to the order-dated 28.3.1989 - Annexure R/1 or P/4. However, in the case of another employee Shri Rajdhari, it is stated that his case was also referred to another ADC held on 22.6.2009 and 30.6.2009, which recommended for correction of his date of birth. In his case the order passed on 28.3.1989 is said to have been implemented and his date of birth was corrected to 1.10.1951. In the case of another employee Shri Brijendra Prasad Mishra, it is stated that his date of birth was not corrected in view of the subsequent decision of the ADC. According to the Respondents, in pursuance to the order - Annexure P/4 dated 28.3.1989, it is only the date of birth of Shri Harjeet Singh Kainth which was corrected and the case of other employees except Shri Rajdhari, to whom the benefit was granted by virtue of some other decision of the ADC, it is stated that no other employee was granted the benefit.

9. From the affidavit filed by the Respondents, it is clear that they admit issuance of the order-dated 28.3.1989 - Annexure P/4, but only refuse to implement it on the ground that in the case of the Petitioner the proceedings are not available. However, when it has been implemented in the case of Shri Harjeet Singh Kainth, there is no reason why it should not be implemented in the case of the Petitioner. If even a single employee is granted the benefit of the proceedings of the ADC that was held on 29.5.1988 and the recommendations implemented in the case of one employee, there is no reason as to why the same benefit should not be extended to the Petitioner. Merely because in the case of other employees the benefit was not implemented that cannot be a ground for refusing benefit to the Petitioner. If the Respondents can implement the recommendations of the ADC, which was held on 29.5.1988, in the case of one employee namely Shri Harjeet Singh Kainth, similar benefit has to be extended to the Petitioner also, who is sailing in the same boat. Accordingly, in the light of the affidavit filed by the Respondents and finding Respondents to have extended the benefit of Annexure P/4 to Shri Harjeet Singh Kainth and further finding that the Respondents admit issuance of this order - Annexure P/4 dated 28.3.1989, there is no reason for not accepting the contention of the Petitioner that his age was corrected after the order - Annexure P/4 was passed on 28.3.1989. This fact is evident from the documents - Annexure P/5 filed by the Petitioner, wherein his date of birth is shown as 6.8.1955, so also in the identity card - Annexure P/6 issued to the Petitioner in the year 1992, where his date of birth is shown as 6.8.1955. Even under the Implementation Instruction No. 76 - Annexure R/5, the untampered identity card issued by the competent authority is admissible in evidence, for recording the date of birth of the Petitioner.

10. Considering the totality of the circumstances and for the grounds and reasons indicated hereinabove, this Court does not find any ground to reject the claim made by the Petitioner. Respondents having constituted an Age

Determination Committee in the year 1988 and the competent authority having passed the order - Annexure P/4 on 28.3.1989, in pursuance to the same Respondents cannot refuse enforcing the order in the case of the Petitioner, when it has been enforced in the case of one of the employees, similarly situated namely Shri Harjeet Singh Kainth.

11. Accordingly, the impugned action of the Respondents is quashed and the petition is allowed. Impugned order-dated 13.3.2009 - Annexure P/7 is quashed. Respondents are directed to treat the date of birth of the Petitioner as 6.8.1955 and permit him to work till he attains the age of superannuation treating his date of birth as 6.8.1955. As the Petitioner has already retired on the basis of an incorrect date of birth recorded by the Respondents and as the impugned order of retirement is quashed, Respondents are directed to reinstate the Petitioner and grant him all consequential benefits treating him to be in service.

12. Petition stands allowed and disposed of.