
(2007) 07 JH CK 0031
In the Jharkhand High Court

Suresh Lal

APPELLANT

Vs

SAIL, Bokaro Steel Plant and Others

RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 4 JCR 619

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petitioner has prayed for a direction on the respondents to rectify his date of birth and consequently date of superannuation on the basis of the date of birth recorded in the original service record at the time of entering in service, supported by the matriculation certificate, as required under the provisions of Standing Order of Bokaro Steel Plant.

2. According to the petitioner, his date of birth is 28th June, 1952, which has been mentioned in the matriculation certificate, and the said date of birth was entered in the original service record, medical book issued to the petitioner and in other documents also, such as statement of account showing Employees Superannuation's Benefit Fund. As per the date of birth, the petitioner's date of superannuation was shown as 30th June, 2010, on attaining the age of 58 years, and now after enhancement of the age of superannuation to 60 years, his date of superannuation is 30th June, 2012.

3. However, the petitioner noticed that the date of birth was not correctly mentioned in the Co-operative Card. He filed representation requesting the authority for rectification of the date of birth and date of superannuation after proper verification. The Deputy Manager (Personnel and Works), Bokaro Steel Plant, Respondent No. 4, verified the date of birth from the personal file of the petitioner and found that his date of birth is 28th June, 1952 (An-nexure-4).

However, when the petitioner applied in the year 2006 for renewal of his Medical book, his date of retirement was wrongly mentioned as 30th June, 2007 in place of 30th June, 2012 and the Medical Book was renewed only up to 30th June, 2007. The petitioner, thereafter, filed representation to correct the said entry on the basis of his Matriculation Certificate and other service records, but the same has not been done by the respondents and the petitioner, being aggrieved by the same, has preferred the instant writ petition.

4. A counter affidavit has been filed on behalf of the respondents, raising preliminary objections, regarding maintainability of the writ petition, stating, inter alia, that the petitioner's case has been referred to the Labour Court by notification dated 19th September, 2006 for the decision as to whether the retirement of* Sri Suresh Lai, Co-operative Staff, by raising his age from 28th June, 1952 to 28th June, 1947 by the Management is justified and in view of the said effective and alternative remedy, the writ petition is not maintainable. It has further been stated that at the time of joining, the petitioner himself has entered his date of birth in Personal Data Form as 28th June, 1947 (24 years 5 months 23 days), which was signed by him. The petitioner had passed Matriculation Examination in the year 1968 and although the said certificate was available with him, he did not submit the same, as proof of his age. The petitioner was a regular student and he would not have got full time employment as Technical/Rigger, while he was pursuing his study as a regular student, and he had no required experience and for that reason, he concealed the Matriculation Certificate and declared his age as aforesaid in the Personal Data Form. As per the Standing Order of the Respondent-Company, in absence of the Matriculation Certificate, the date of birth declared by the person at the time of joining becomes final and in that view, the petitioner is not entitled for rectification of his date of birth i.e. 28th June, 1952, according to the Matriculation Certificate.

5. Learned Counsel appearing on behalf of the petitioner submitted that it is an admitted case that the petitioner is matriculate and in Matriculation Certificate, his date of birth is mentioned as 28th June, 1952. On the basis of the said Matriculation Certificate, entries were made in the service records, including Personal Data Form. Wrong entry of his date of birth as 28th June, 1947 was rectified, as per the decision of the Management, and his date of birth was recorded as 28th June, 1952 in the Personal Data Form as well, which is evident from Annexure-B to the counter affidavit. The respondents have not denied the said rectification. They have also not denied the entries of the petitioner's date of birth as 28th June, 1952 in the earlier Medical Book and other records (Annexures-2 & 3). The petitioner's Matriculation Certificate, issued from the Bihar School Examination Board, (Annexure-1) clearly goes to show that his date of birth is 28th June, 1952. When the date of birth/date of superannuation was incorrectly recorded in the register of Cooperative Credit Society, the petitioner represented before the Manager (Personnel and Works). On verification, the Deputy Manager (Personnel and works) found and communicated that the petitioner's date of birth is 28th June, 1952 (Annexure-4). The said entries in

the service records are, thus, not disputed. In such admitted position, the respondents cannot suddenly make any interpolation in the petitioner's date of birth without giving him any notice or opportunity of hearing and the said interpolation and shifting his date of birth is wholly arbitrary and violative of principle of natural justice.

6. He submitted that this Court in several cases has interfered with the similar issue in exercise of writ jurisdiction. Learned Counsel referred to and relied on a decision rendered in the case of Raj Bhuwan Singh Vs. Steel Authority of India and Others, . It has been submitted that since the respondents have admitted the said entries in the service records, there is no factual dispute, which is to be decided by the Labour Court, as contended by the respondents in their counter affidavit.

7. Mr. G.M. Mishra, learned Counsel, appearing on behalf of the respondents, on the other hand, submitted that the respondents have already entered the date of superannuation as 30th June, 2007, meaning thereby the management has denied the petitioner's date of birth as 28th June, 1952, and in that view, there is a dispute which comes within the ambit of Industrial Disputes Act and the Labour Court has got jurisdiction to decide the dispute and that the dispute has rightly been referred to the Labour Court.

8. After hearing learned Counsel for the parties and considering the materials on record as well as their submissions, I find that the Personal Data Form of the petitioner, which was under the custody of the management, clearly goes to show the entry of 28th June, 1952, encircling the entry of 28th June, 1947 with marks of cutting over the same. The petitioner's date of birth is mentioned as 28th June, 1952 with endorsement of the competent authority "as per the decision of the Management" and the said entry has not been denied.

9. Learned Counsel appearing on behalf of the respondents has accepted that the said record was under the custody of the management and the said entry of petitioner's date of birth has been mentioned in his Personal Data Form.

10. The respondents have also not denied the entries of petitioner's date of birth in the Matriculation Certificate (Annexure-1). In earlier Medical Book (Annexure-2) also, date of superannuation is mentioned as 29th June, 2010. The same date is mentioned in statement of account of Employees Superannuation's Benefit Fund (Annexure-3) and the endorsement was made by the Deputy Manager (Personnel and Works), Bokaro Steel Plant, asserting that the petitioner's date of birth is 28th June, 1952, as verified from his personal life.

In view of the said admitted position/the petitioner's date of birth cannot be suddenly altered by making another entry and that date cannot be allowed to be interpolated by the employer behind the back of the petitioner and without giving him any notice or opportunity of representation/ hearing.

11. In the case of Raj Bhuwan Singh. (supra), it has been held that the Court can

undo the illegality done by the employer, if any interpolation is made behind the back of the employee.

In the said case, the petitioner had challenged the alteration in his date of birth, which was allowed in favour of the said writ petitioner, holding that writ Court is competent to undo the illegality, if such illegality prima facie appears on record.

12. I respectfully subscribe to the said view and hold that any alteration or interpolation made in the date of birth behind the back of the employee and without giving him notice or opportunity of representation/hearing is violative of principles of natural justice as also Article 14 of the Constitution of India and the same is null and void. This Court in exercise of writ jurisdiction can interfere with such order/interpolation and redress the grievance of the suffering employee.

13. In view of the clear entries of the date of birth in the said records as well as undisputed facts regarding the earlier entries, there is no need of any further adjudication in the instant case which is a simple case of interpolation in the date of birth of the petitioner behind his back and without giving any notice or opportunity of representation/hearing.

14. The allegation that the petitioner had concealed his certificate and that he could not have experience in view of the certificate for his appointment to the post, if proved, could have constituted a misconduct, but the said conduct of the petitioner is not at all relevant for changing his date of birth or his date of superannuation.

15. For the reasons aforesaid, it is held that the petitioner cannot be forced to retire before attaining the age of superannuation counted from the date of birth recorded before the alleged alteration/interpolation.

16. Petitioner's date of retirement shall be determined on the basis of his date of birth i.e. 28th June, 1952, as mentioned in the relevant service records, and he is held to be entitled to remain in service till attaining the age of superannuation counted from the said date.

This writ petition is allowed with the said declaration direction. There is no order as to cost.