

(2019) 07 JH CK 0115
In the Jharkhand High Court
Case No : Writ Petition (L) No. 1683 Of 2016

Workman Krishndeo Prasad Yadav

APPELLANT

Vs

Employer In relation to the Management Of East Basuria
Colliery, M/s. Bharat Coking Coal Limited, Dhanbad

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Industrial Disputes Act, 1972 — Section 10

Citation : (2019) 07 JH CK 0115

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : P.K. Mukhopadhyay, Amit Kumar Das

Final Decision : Dismissed

Judgement

Heard counsels for the parties.

The present writ petition has been filed for quashing the award dated 23.10.2015 passed by the learned Central Government Industrial Tribunal No. 1, Dhanbad in Reference Case No. 17 of 2012, whereby the superannuation of petitioner from service considering his date of birth as 07.07.1949 instead of 07.07.1953 by the management held fair and justified.

From pleading and argument of the parties, it appears that the petitioner-workman has been appointed under the respondent on 18.08.1970 under the West Godhar Colliery and his date of birth was mentioned as 07.07.1953. On nationalisation of the Coal Mines in the year 1973 the service of the petitioner has been taken under the respondent-BCCL. The service excerpts made has been circulated and on such circulation the workman has made objection for correction of date of birth claiming his real date of birth as 07.07.1953 not 07.07.1949 as mentioned in the service book.

It appears that the since the date of birth as claimed, has not been corrected, an Industrial Dispute has been raised in the year 2012 under section 10 of the

Industrial Disputes Act, 1972 which on failure of conciliation, has been referred for adjudication vide Reference Order 17/2012 The terms of the reference is as follows:-

"Whether the action of the management of East Basuria Colliery of M/S BCCL in superannuating Sri Krishnadeo Pd. Yadav from the service of the company considering the date of birth as 07/07/1949 instead of 07/07/1953 mentioned in the school leaving certificate and the letter issued by the Medical Officer of the company on 29/20.10.1990 is fair and justified? To what relief the concerned workman is entitled to?"

It appears that one witness has been examined by the workman (himself) and one witness has been produced by management being M.W-1 Shri P.N. Singh. The petitioner has submitted school leaving certificate. On the other hand management has relied upon statutory "Form-B" upon which the petitioner has put his signature.

Counsel for the petitioner has submitted that the petitioner has raised industrial dispute. Further, the school leaving certificate and other certificate has been produced by the concerned workman disclosing the date of birth as 07.07.1953 and that should have been accepted by the Tribunal. On the other hand counsel for the respondent has submitted that it is settled principle of law that any dispute regarding date of birth is not maintainable at the fag end of employment.

In the present case, the petitioner has superannuated in the year 2009 while industrial dispute has been raised in the year 2012. Thus, the reference itself was bad being stale one. For this purpose he has relied upon Para-20 of the judgment reported in (2000) 8 SCC 696 in case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad & Ors. is quoted hereinbelow:-

"20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to the Medical Board. The Medical Board as laid down in the instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of mandamus that the date as claimed by the employee (the respondent herein) should be accepted."

Counsel for the respondent has also submitted that it is also settled principle of law that finding of fact recorded by the Tribunal cannot be disturbed unless and

until it is perverse. Perversity means if it is without evidence or the relevant evidence has not been considered or irrelevant evidence has been considered.

Admittedly, in the present case considering the entire material available on record especially statutory Form-B, which contains the signature of the petitioner-workman, as acceptance, has been relied upon and as such the finding cannot be termed as perverse.

It is admitted position that the petitioner has joined the service in the year 1973 under the Respondent. At the time of entry into the service his date of birth was entered as 18.08.1949 mentioned in statutory "Form-B", and in acceptance of the same, the workman has put his signature. Further the petitioner has stood retired in the year 2009 and after receiving the entire retiral dues, the industrial disputes has been raised in the year 2012 i.e. after three years of retirement.

It is trite that dispute regarding the date of birth cannot be raised at the fag end of employment, while in the present case it has been raised after retirement. Further the finding of fact has been recorded by the Tribunal on the basis of statutory "Form-B" and as such there is no perversity.

In view of above discussion, this Court finds no merit in the present writ petition. Accordingly, the same is, hereby, dismissed.