

CONSTITUTIONAL WRIT
PRESENT: The Hon'ble Justice Mr. Tapen Sen
Judgment Delivered on : 09.02.2010
W.P. No. 10367 (W) of 2009
Ramasis Pandey
Vs.
Union of India & Ors.

Point:

DATE OF BIRTH: - Date of birth recorded in Matriculation certificate as well as other certificates and submitted to the authority- Whether can be changed-Service Law.

Fact: The Petitioner by filing the instant writ application prays for a declaration declaring that he should be allowed to remain in service on attainment of 60 years of age by treating his date of birth as 10.2.1954 and accordingly prays for the issuance of a writ of mandamus commanding upon the Authorities/Respondents not to force him to relinquish office on 30.6.2009 on the basis of the date of birth recorded in the Form-B Register as 1.7.1949.

Held:

In view of the Matriculation Certificate as well as the date of birth recorded in the Sirdar's Certificate and the Overman's Certificate it is difficult for a Writ Court to accept that the Petitioner's date of birth as 10.2.1954. Paragraph – 23

Cases: Kamta Pandey vs. M/s. B.C.C.L etc. reported in 2007(3) JLJR 726, Awadh Singh vs. the Bharat Coking Coal Ltd. & ors. reported in 2005 (2) JCR 474(JHR), State of Uttar Pradesh vs. Shiv Narayan Upadhyay reported in AIR 2005 SC 4192, Ashwani Kr. Singh vs. U.P.S.C. reported in (2003) 11 SCC 584, Union of India Vs. C. Ramaswami & ors. reported in 1997 SC 2055, G.M. Bharat Coking Coal Ltd. vs. Shib Kumar Dushad reported in AIR 2001 SC 72.

For the Petitioners : Mr. Achintya Kr. Banerjee,
Mr. Siddhartha Ray

For the Respondents : Mr. L.K. Gupta,
Mr. Soumendra Kr. Ghosh

The Court: The Petitioner prays for a declaration declaring that he should be allowed to remain in service on attainment of 60 years of age by treating his date of birth as 10.2.1954 and accordingly prays for the issuance of a writ of mandamus commanding upon the Authorities/Respondents not to force him to relinquish office on 30.6.2009 on the basis of the date of birth recorded in the Form-B Register as 1.7.1949.

2. The Petitioner's case, on the basis of the pleadings made in the Writ Petition are, that having passed the Madhyamik Examinations in the year 1969, he joined the services of the erstwhile Indian Iron and Steel Company Ltd. as a General Mazdoor on 25.1.1971. Thereafter in the year 1972, the said Company was nationalised and it became a subsidiary of Steel Authority of India Ltd. The Petitioner has stated that thereafter, he sat for the Mining Sirdar Certificate Examinations conducted under the Coal Mines Regulations, 1957 and was declared successful and accordingly, was promoted to the post of a Mining Sirdar immediately after the results were declared in March 1976. According to the Petitioner, he appeared in the said examinations with prior permission of the Authorities and on the basis of a Mining Sirdar Certificate which was duly issued. A copy of the said Mining Sirdar Certificate along with the Madhyamik Certificate have been collectively marked as Annexure- 1 to the Writ Petition.

3. Subsequently, the Petitioner again sat for the Overman's Examinations which were also conducted under the Coal Mines Regulations, 1957 on 17.11.1978. This examination was also undertaken by the Petitioner with prior permission of the authorities.

After declaration of results, a Certificate was issued to the Petitioner on 2.4.1979 certifying that he had passed the Examinations which were held on 17.11.1978. Thereafter the Petitioner was promoted to the post of an Overman, belatedly in the year 1985 although he ought to have been promoted in the year 1978 itself. However, according to the Petitioner, since the date of his last promotion, he had been discharging his duties sincerely and subsequently, on 4.6.1993, he was again promoted to the post of a Senior Overman, T & S Grade "A". The Overman Certificate has been brought on record vide Annexure- P2.

4. According to the further case of the Petitioner, he heard a rumour that the authorities had wrongly recorded his date of birth as 1.7.1949 and he therefore filed an Application on 15.12.2008 requesting them to correct his date of birth as 10.2.1954 on the basis of his Matriculation Certificate which he enclosed along with the said Application and which has been brought on record vide Annexure-P3.

5. In a Supplementary Affidavit sworn on 29.6.2009 the Petitioner has brought on record a letter dated 30.5.2009 which has been marked Annexure-4 therein and which, according to the Petitioner, was served upon him on 24.6.2009 and in the said letter, the Petitioner was informed that since he was going to attain his age of superannuation on 1.7.2009, he would consequently be superannuating from the afternoon of 30.6.2009. The Petitioner was also directed to vacate the Company's quarter within 2 months and he was further advised to hand over the Company's property etc. and do all acts which were necessary to be done for purposes of facilitating the final settlement of his dues. According to the Petitioner, the aforementioned notice of superannuation is illegal and is liable to be set aside and quashed.

6. In the Affidavit-in-Opposition, the Respondent Nos. 3,4 and 5 have stated that at the time when the Petitioner had joined services of IISCO on 25.1.1971, it was in

the hands of Private shareholders and also privately managed. Thereafter, it was taken over by the Central Government, initially for a period of 2 years and then, the period was extended to 5 years and subsequently, by an Act of 1976 (Indian Iron and Steel Company { Acquisition of Shares } Act 1976), all shares of the Company stood transferred and vested in the Central Government. They have further stated that subsequently, the Petitioner was transferred to the Ramnagar Colliery in 1980 where his date of birth was recorded as 1.7.1949 as per his own Self-Declaration and this was taken cognizance of for all practical purposes. The said Self- Declaration, made under the Coal Mines Private Fund dated 25.1.1971, has been brought on record vide Annexure- R. The Respondents have further stated that at the time of joining, the Petitioner had not produced any Madhyamik Examination Certificate nor had he claimed to have passed such an examination and as per his own Declaration made on 25.1.1971 he had mentioned his date of birth as 1.7.1949 and this Declaration was not only signed by him but he had also put his left thumb impression portraying to be illiterate or semi-literate. They have further stated that production of the Matriculation Certificate at such a distant point of time raises doubts about its authenticity and even if the said Certificate is true, the prayer for change of birth, at this stage, cannot be acceded to as the said Certificate was suppressed on the date of joining for wrongful gain of getting employed. The Respondents have further stated that a Mining Sirdar Certificate or an Overman's Certificate are mere proofs of the qualifications or training acquired but they cannot be treated to be proof of date of birth particularly where these Certificates were obtained after employment. They have further stated that the Petitioner got his Sirdar Certificate in 1976 and became an Overman in 1985 but in the Register of Employees maintained as Form-B, his date of birth has been recorded as 1.7.1949 and the Petitioner had never asked for correction thereof and it was only on the eve of his

retirement that on 15.12.2008, he filed the Application (Annexure- P3) protesting to the entry in the Form-B Register and praying for correction thereof.

7. These Respondents have referred to the Bio Data Form (Annexure – R3) filled up and signed by the Petitioner himself in 1988 wherein, once again, he had declared his date of birth as 1.7.1949. This Bio Data Form contains a Verification/Declaration regarding the correctness of the statements made therein. According to this Declaration also, the Petitioner was born on 1.7.1949 and not on 10.2.1954 as claimed by him in the Writ Petition. According to the Respondents, the statement that the Petitioner was born in 1954 is not at all correct and if he was so born then he would be an adolescent on 25.1.1979 when he was being inducted as an employee in the Jitpur Mine and he could only have been so employed if he had a Medical Certificate in the prescribed Form Certifying that he was fit to work as an adult in the custody of the Manager of the Mine. No such Certificate was produced and therefore, the Petitioner could not have got employment on the basis a Declaration that he was born on 10.2.1954 and therefore, in order to get himself employed, he suppressed facts and led an employer to believe that he was born on 1.7.1949 so that he could be employed without the required Medical Certificate.

8. On the basis of the aforementioned contentions, the Respondents have submitted that the Representation dated 15.12.2008 asking for changing the Records relating to the entry of his date of birth is misconceived and does not deserve to be dealt with at all. According to them, the Petitioner has served the Organisation for more than 38 years and therefore, his prayer for change of his date of birth in the service Records at the fag end of his career is not maintainable at all. They have further stated that the alleged Representation as contained in Annexure - P3 being the Representation said to have been filed with the Management on 15.12.2008 could not be found in the Records of the Company and they have therefore put the

Petitioner to strict proof of his claim regarding submission thereof. They have further stated that the Petitioner has not been prematurely retired but he has attained the age of superannuation of 60 years on 30.6.2009 and therefore, a Notice to that effect was given on 30.5.2009 which has been marked Annexure- R4 to the Affidavit-in-opposition and which corresponds to Annexure-P4 to the Supplementary Affidavit filed by the Petitioner. The Respondents have disputed the contents of the Petitioner and have described the claim made by him as being totally baseless and misconceived.

9. Learned Counsel for the Petitioner, in answer to the aforementioned submissions and the points taken in the Affidavit-in-opposition, submits that the Respondents cannot be allowed to ignore the Matriculation Certificate issued by the Bihar School Examination Board (Annexure- P1) showing his date of birth as being 10.2.1954. He submits that in view of Clause (B) (i) (a) read with (B) (i) (b) of Instruction No. 76 (Annexure- R1 to the Affidavit-in-reply), the Respondents cannot be allowed to ignore the same. Clause (B) (i) (b) of the aforementioned Instruction lays down that in the case of existing employees, the Matriculation Certificate or the Higher Secondary Certificate issued by a recognised University or a Board should be treated as correct provided they were issued by them prior to the date of employment. Similarly, a Mining Sirdar Certificate or other Statutory Certificates in which the Manager has Certified the date of birth has to be treated as authentic under Clause 1(b) and, where both the documents mentioned in Clauses 1(a) and 1(b) are available, then the date of birth as recorded in the Matriculation Certificate will be treated as being authentic. According to him, the Matriculation Certificate was issued on 2.9.1969 which was prior to his employment and therefore, this should be treated as correct. Learned Counsel further submits that both the statutory Certificates being the Overman's Certificate as well as the Sirdar Certificate were issued under the Coal Mines Regulations 1957 and these were both available with the Company and therefore, in terms of

Instruction No. 76, the date of birth as recorded in the Matriculation Certificate should be treated as being authentic. Learned Counsel submits that the submission of the Respondents to the effect that the Petitioner had suppressed facts for an unlawful gain, is totally misconceived inasmuch as under the provisions of Section 40 of the Mines Act 1952 as it then stood, it is clearly laid down that no adolescent shall be allowed to work in any part of a Mine which is below-ground unless he has completed his 16th year. In the case of the Petitioner, even on the date when he joined the service on 25.1.1971, he was above 16 years and therefore, he had completed his 16th year and therefore, there was no necessity at all for submitting a Medical Certificate and therefore there was no question of his having attempted to gain an unlawful advantage by suppressing his date of birth only for the purposes of securing an employment.

Section 40 of the Mines Act as it then stood, reads as follows:-

“ 40. Employment of adolescents. (1) No adolescent shall be allowed to work in any part of a mine which is below-ground unless-

4(a) he has completed his sixteenth year;

5(aa) a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine;

(b) the adolescent carries, while at work, a token giving reference to such certificate;

(c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work of any day.

(2) Notwithstanding anything contained in this Act, no adolescent who has been granted a certificate under sub-section (1) shall be employed in any mine except between the hours of 6 A.M. and 6 P.M.:

Provided that the Central Government may, by notification in the official Gazette, vary the hours of the employment of such adolescent in respect of any mine or class of mines so however that no employment of any such adolescent between the hours of 10 P.M. and 5 A.M. is permitted thereby.”

(Quoted)

10. The next submission of the learned Counsel for the Petitioner is that under Regulation 15 of the Coal Mines Regulations, no person can be allowed to appear in any examination held by the Board of Mining Examinations unless he is 20 years of age. In the instant case, the examinations for purposes of obtaining the Sirdar Certificate was held on 16.1.1976 and moreover, the said Certificate as well as the Overman's Certificate both certified that the Petitioner was born on 10.2.1954. These documents go to show that the Respondents were aware of the date of birth as recorded by the Bihar School Examination Board as otherwise, Certificates issued in 1976 and 1979 respectively would not have clearly mentioned the date of birth of the Petitioner as 10.2.1954. According to the learned Counsel, the Respondents were aware of the Matriculation Certificate and therefore, within 6 years from his entry of 25.1.1971, the Sirdar Certificate was issued on 20.1.1976 Certifying that the Petitioner had passed the examination which was held on 16.1.1976 and that his date of birth was 10.2.1954. A similar Certificate being the Overman's Certificate was also issued on 2.4.1979 in relation to an examination held on 17.11.1978. These two Certificates are at pages 20-21 of the Writ Petition.

11. Learned Counsel then submitted that even in the Affidavit-in-opposition, the Respondents have clearly mentioned in para-3 (f) that it was under a private Management that the Petitioner had joined on 25.1.1971. He submits that from a perusal of Annexure-R brought on record by the Respondents in their Affidavit-in-opposition, it would be clear that the Declaration was given not by the Petitioner, but by his guardian and therefore, even if the date of birth mentioned therein is 1.7.1949, the same should be deemed to be a Declaration by his guardian and not a Declaration by himself and therefore, no importance should be given to such a Declaration. Relying on the Sirdar's Certificate and the Overman's Certificate, learned Counsel states that the Respondents, being aware of his date of birth as 15.2.1954, should have themselves

corrected the error in their own Records and having not done so, they cannot act to the prejudice of the Petitioner.

12. Learned Counsel heavily relies upon a Full Bench Judgment of the Hon'ble Jharkhand High Court passed in the case of **Kamta Pandey vs. M/s. B.C.C.L etc.** reported in **2007(3) JLJR 726** in support of his contention that merely because of some entries in the Form "B" Register, Instruction No. 76 however cannot be ignored. In the aforementioned Full Bench Judgment of the Jharkhand High Court, there were two judgments passed by two Division Benches giving conflicting views and as a result thereof, the matter was referred to the Full Bench. In the first judgment, a Division Bench comprising of Hon'ble Mr. Justice Altamas Kabir (then Chief Justice of the said Court sitting with Hon'ble Mr. Justice R.K. Merathia) held, in the case of *Awadh Singh vs. the Bharat Coking Coal Ltd. & ors.* reported in 2005 (2) JCR 474(JHR), that as per Instruction No. 76, the date of birth as mentioned in the Matriculation Certificate alone will have to be taken as a conclusive proof and not the entry in the service Register. On the other hand, another Division Bench of the same Court comprising of the Hon'ble Mr. Justice M.Y.Eqbal sitting with Hon'ble Mr. Justice D.P. Singh held, in LPA NO. 50 of 2006 (*Bipin Bihari Singh vs. Central Coalfields Ltd. & Ors.*) that the date of birth in the Matriculation Certificate will not prevail upon the service Records admitted and acknowledged by the employee and the service Register alone has to be taken as conclusive proof of the date of birth.

13. In view of the said two conflicting views, and considering the relationship between an employer and employee who were governed by the National Coal Wage Agreement, a learned Single Judge of the said Jharkhand High Court referred the matter to the Full Bench of the said Court framing the following question:

“whether the date of birth recorded in the Matriculation Certificate duly authenticated should be considered as the conclusive proof of age or the age determined by the Medical Board and other service record ?”

14. The Full Bench considered the question and also considered Instruction No. 76 of the National Coal Wage Agreement –III dated 25.4.1988 which, according to the learned Counsel for the Petitioner is Annexure- R/1 appended to the Affidavit-in-reply. The said Full Bench framed the following questions:

“whether the date of birth recorded in the Matriculation Certificate duly authenticated or the date of birth mentioned in any other records including the service records should be considered as the conclusive proof of age when mutual relationship between employer and employee is governed by the Implementation Instruction No. 76 of the National Coal Wage Agreement –III ?”

15. Having considered the matter in the light of the aforementioned facts and circumstances, their Lordships of the Full Bench of the Jharkhand High Court held and answered the reference in the following manner:

“The date of birth recorded in the Matriculation Certificate duly authenticated by the Education Board is a conclusive proof of age and no other records including service records as both the parties are governed by Implementation Instruction No. 76 of the National Coal Wage Agreement-III ?”

16. Learned Counsel for the Respondents, on the other hand, submitted that the Writ Petition is not maintainable as these are questions of fact. He relied upon the Judgment passed by the Supreme Court in the case of **G.M. Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Ors.** reported in **2001 SC 72**, submitting that correction of date of birth and a controversy pertaining to date of birth raised by the employee long after joining service should not be interfered by the High Court and entries made in service issued by School authorities are questions of fact which depend on evidence and therefore, the High Court, in a writ

Petition, cannot make an enquiry into such disputed questions of fact. Learned Counsel further submits that an Application for correction of date of birth should not be dealt with by a Court inasmuch as any such direction for correction of the date of birth has a chain reaction inasmuch as others waiting for years below him for their respective promotions are affected and some may suffer irreparable injury if the concerned officer continues in office for several years which would have the effect of making other officers below him in seniority waiting for their promotion, lose such promotion forever. Learned Counsel relies upon the Judgment of the Supreme Court in the case of **State of Uttar Pradesh vs. Shiv Narayan Upadhyay** reported in **AIR 2005 SC 4192**.

17. On the question of maintainability of the Writ Petition and in the opinion of this Court, blind reliance upon a Judgment without considering the facts is improper. In the case of **Ashwani Kr. Singh vs. U.P.S.C.** reported in (2003) 11 SCC 584, the Supreme Court has held that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The Supreme Court has further held that observations of Courts are not to be read as Euclid's theorems nor as provisions of the Statute. It has further been observed that Judgments of the Courts are not to be construed as Statutes and that disposal of Cases by blindly placing reliance on a decision is not proper.

18. In the background of the aforementioned Judgment, this Court is of the view that so far as the judgment passed in the case of **the Union of India Vs. C. Ramaswami & ors.** reported in **1997 SC 2055**, is concerned and which was cited by Mr. L.K. Gupta, learned Sr. Advocate for the Respondents, the same relates to the interpretation of the All India Services (Death-cum-Retirement Benefits) Rules (1958) where an employee is entitled, after coming into force of the 1978 Rules, to seek a change of date of birth only in the case of a bona

fide mistake in recording his date of birth at the time of employment. In the instant case, the parties are not governed by the said Rules and therefore, the said Judgment has no application in the facts and circumstances of the case.

19. So far as the other Judgment is concerned and which has been passed in the case of **G.M. Bharat Coking Coal Ltd. vs. Shib Kumar Dushad** reported in **AIR 2001 SC 72**, the ratio decided therein is that correction in the service records long after joining the service and particularly when the employee is on the verge of retirement, is not to be accepted generally and the burden can be discharged only by producing evidence which is clinching in nature.

20. Read with the National Coal Wage Agreement-III, the Matriculation Certificate (Annexure- P1) the Sirdar's Certificate (Annexure- P1 at page 20) and the Overman's Certificate (Annexure- P2 at page 21), it is noticed that all of them are Certificates issued by not only a School Examination Board but also by Statutory Authorities under the Coal Mines Regulations and all of them described the Petitioner as being born on 10.2.1954.

21. However there is one document which goes heavily against the Petitioner and that is the Bio Data Form which has been brought on record vide Annexure – R3 in the Affidavit-in opposition. At page 1 of the said Bio Data Form, the date 1.9.1949 and 1st September, 1949 have been struck off and in their place, the date 1.7.1949 and 1st July, 1949 have been inserted. Just below such an insertion, the Petitioner has put his initials. This Bio Data Form was filled up on 19.4.1988 and in the Declaration/Verification portion, the Petitioner has declared that the information furnished by him on Pages 1, 2 and 3 of the said Form, are correct and that if any information so furnished is found to be false or incorrect, then the Company would have the right to take disciplinary action.

22. This document shows that in the year 1988, the Petitioner claimed that he was born on 1st July, 1949. In this context, the answer of the Petitioner is not very convincing because he has said nothing with regard to his having put his initials after striking off the date 1.9.1949 in the Bio Data Form. On the contrary he has made a mere argumentative submission which is reproduced below:-

“k) That Annexure “R-3” to the said affidavit disclosed by the respondents was claimed to be filled-up by the petitioner. The said document also would go to show that the qualification of the petitioner was recorded as Matriculation and the year of passing was 1969. Thus, it would be wholly absurd to suggest that the petitioner deliberately made an attempt to altar his date of birth at the fag end of life. On the contrary, it was only at a period when it came to his knowledge and understanding of wrong recording of date of birth when he took up the issue with the authority through the Union. In this contest, it may be stated herein that from time to time there has been agreements between the various Unions and the Management popularly known as National Coal Wage Commission. As per Implementation Instruction No. 6 being annexure-1 to the said National Coal Wage Agreement the date of birth recorded in the Matriculation and/or equivalent examination shall be treated as correct date of birth. It has also been provided in the said implementation instruction that in the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment. It has further been provided in the said Instruction that similarly Mining Sirdarship. Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic. It has also been provided in the said Instruction that where both documents mentioned hereinabove are available, the date of birth recorded in the Matriculation Certificate will be treated as authentic; copy of the extract of the Implementation Instruction No. 76 is annexed hereto and marked as “R-1”. Mining Sirdarship and the Overman certificates have since been in the possession of the writ petitioner the date of birth of the petitioner recorded therein is authenticated by the General Manager in terms of the provisions as aforesaid, and, as such, it was bounden upon the authority concerned to accept the date of birth of the petitioner as 10.2.54 and they were also dutybound to correct their wrong recording accordingly.”

(Quoted)

23. Because of Annexure-R3 above, this therefore becomes a question of fact as it tallies with the service Record of M/s. Indian Iron and Steel Company, namely Annexure- R2 of the Affidavit-in-opposition and goes against the Matriculation Certificate as well as the date of birth recorded in the Sirdar's Certificate and the Overman's Certificate and therefore difficult for a Writ Court to accept that the Petitioner's date of birth as 10.2.1954.

24. Under such circumstances, this Court is unable to rely upon the Matriculation Certificate issued by the Bihar School Examination Board.

For the foregoing reasons, the Writ Petition is Dismissed as no relief can be granted to the Petitioner. There shall however be no order as to costs. All interim Orders which were granted earlier, are hereby vacated.

Upon appropriate Application(s) being made, urgent Xeroxed Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.

(Tapen Sen, J.)

.....February, 2010

S.B.

A.F.R / N.A.F.R.

Later:

After the aforementioned judgment was delivered in Court, the learned Counsel for the Petitioner prayed for stay of the judgment so that he can prefer an appeal.

Having considered the facts and circumstances, this Court is not inclined to stay the judgment any more.

(Tapen Sen, J.)