

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2860 OF 2003

PETITIONER:

Bankelal, S/o Shri Bhulai,  
Aged about 52 years,  
Motor Driver, Category - 6,  
Sub Area - Kalyani, Post- Bhatgaon,  
District: Sarguja (Chhattisgarh).

Versus

RESPONDENTS:

1. The Chairman cum Managing  
Director, South Eastern Coal  
Fields Ltd. Seepat Road,  
Bilaspur, (C.G.).
2. The General Manager,  
S.E.C.L. Bhatgaon Area,  
P.O. Bhatgaon, Distt.: Sarguja
3. The Sub-Area Manager,  
S.E.C.L. Kalyani, Bhatgaon Area,  
Post Bhatgaon, District: Sarguja  
Chhattisgarh.

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POST FOR ORDER ON 29<sup>th</sup> SEPTEMBER, 2003

Sd/-  
L.C. Bhadoo  
Judge

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Present: -

Shri Prafull N. Bharat, Advocate: For the petitioner  
Shri P. S. Koshy, Govt. Advocate: For the respondents

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 29<sup>th</sup> September, 2003)

1. The petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India by which he has challenged the decision of the Sub Area Manager, S.E.C.L. Kalyani Bhatgaon Area, District Sarguja dated 28/29-8-2003 by which a decision has been taken to retire the petitioner w.e.f. the last date of September 2003.
2. The petitioner's petition is that he was appointed on 25-6-72 as general mazdoor through a general interview/ fresh appointment. At the time of appointment he submitted a school leaving certificate showing his date of birth as 1-9-51 which was issued to him on 15-7-67

Annexure-P/1. After joining the service, the petitioner's date of birth was recorded in the relevant records as 1-9-51. Annexure-P/2 is the copy of the pay slips of the petitioner in which the petitioner's date of birth has been shown as 1-9-51. Later on, he was promoted to the post of Motor Driver and posted at West Chirmiri area. On 29-1-99, vide Annexure-P/3, the petitioner was transferred to Bhatgaon area on the same post. After joining at Bhatgaon area the petitioner came to know that his date of birth is being shown as 14-9-43. After coming to know about this fact the petitioner immediately represented on 3-5-99 to correct the date of birth. Copy of the same is Annexure-P/4.

3. When nothing was heard from the respondents, the petitioner again made a representation. Copy of the same is Annexure-P/5. Thereafter respondents wrote a letter on 2-9-2002 to the Regional Commissioner, Coal Mines Provident Fund Jabalpur about the grievances raised by the petitioner and enquired regarding the date of birth of the petitioner. Copy of the same is Annexure-P/6. The office of Regional Commissioner vide letter dated 30<sup>th</sup> December 2002 intimated respondent No.2 that the date of birth as recorded in form 'A' is 1-9-1951. Copy of the same is Annexure-P/7. Vide letter dated 16-8-2003 the Deputy Chief Personnel Manager, Bhatgaon Area referred the matter to the Administration Department regarding the finalization of the case of the petitioner.
4. A Joint Bipartite Committee for the Coal Industry met and on 25-4-88 came with National Coal Wage Agreement III which was numbered as Instruction No. 76. The aforesaid agreement was in respect to the procedure/verification of the age of the employees for resolution of disputed cases of service records. In view of the above Instruction No. 76, respondent No.2 requested respondent No.1 to place the case of the petitioner before Age Determination Committee but no action was taken on the said request. On 3-9-2003, a notice was served upon the petitioner regarding the retirement of the petitioner with effect from 1<sup>st</sup> October 2003 which is Annexure-P/10. Ultimately, the petitioner has requested for declaring the Annexure-P/10 as illegal and arbitrary and for referring the matter of the petitioner before the Age Determination Committee.

5. Return has been filed on behalf of respondents in which it has been mentioned that the petitioner ought to have approached the Industrial Dispute Court instead of filing the writ petition before this Court. The petitioner has raised disputed questions of fact which cannot be adjudicated without proper appreciation of the evidence. It is denied that the date of birth of the petitioner was recorded as 1-9-1951. The date of birth of the petitioner is 14-9-1943 which is based on form 'B', register No. 3887 maintained at Chirmiri Area and subsequently his last pay certificate was issued by the West Chirmiri Colliery on his transfer to Bhatgaon area in which also his date of birth was mentioned as 14-9-43. His service register was prepared at Chirmiri Area in the year 1987 in which also he has declared his date of birth as 14-9-43. On joining of the petitioner at Kalyani Project of Bhatgaon Area, his form 'B' as per the provisions of Mines Act was prepared on the basis of documents/details received from West Chirmiri Colliery his previous place of posting/appointment. The date of birth of the petitioner has been correctly mentioned as 14-9-43 based on the form 'B' which was prepared at Chirmiri and Bhatgaon, the release order of the petitioner on his transfer to Bhatgaon shows the date of birth of the petitioner as 14-9-43. In the L.P.C. issued by the Chirmiri Area the date of birth of the petitioner was mentioned as 14-9-43 and service register prepared at Chirmiri Area in the year 1987 also shows the petitioner's date of birth as 14-9-43, therefore, there is no substance in the petition of the petitioner and the same may be dismissed.
6. I have heard the learned counsel for the parties.
7. The learned counsel for the petitioner submitted that the school leaving certificate shows his date of birth as 1-9-1951 and the initial pay slips also show his date of birth as 1-9-51. The petitioner is an illiterate person and his date of birth has been changed without his knowledge. Moreover, when the petitioner came to know about this fact, he immediately represented before the respondents. In view of the dispute raised by the petitioner, the respondents ought to have referred the matter to the Age Determination Committee, but they

have arbitrarily in spite of the documents in favour of the petitioner rejected the prayer of the petitioner.

8. On the other hand, the learned counsel for respondents argued that the petitioner himself signed form <sup>A</sup>'B' in which the date of birth has been mentioned as 14-9-43 which are Annexures-R/1 and R/3, therefore, the petitioner cannot challenge at the fag end of the career and he relied upon the decision of the Hon'ble Apex Court reported in (2003) 6 Supreme Court Cases 483 in the matter of State of U.P. and others Vs. Gulaichi (Smt). I have gone through the judgment. The Hon'ble Apex Court has held that " at the fag end of career correction can be sought within a period, if prescribed under statutory rules or in absence thereof, under administrative instructions, should be followed and in absence of such rules or instructions, correction should be sought at least within a reasonable time. Onus on the employee to prove, by adducing evidence, wrong recording of date of birth.
9. In the light of the above judgment, if we look into the petitioner's case the school leaving certificate submitted by the petitioner shows that his date of birth was 1-9-1951 and the pay slips issued by respondents at the initial stage of appointment also show his date of birth as 1-9-51 and declaration filed by the petitioner Annexure-P/7 shows his date of birth as 1-9-51 when the petitioner in the year 1999 came to know about the change of his date of birth in the record, he started representing before respondents. A perusal of Annexures-R/1 and R/3 (Form-'B') reveals that these forms were filled up only in the year 1999 when he was transferred to Bhatgaon. When the petitioner was appointed in the year 1972 he submitted his school leaving certificate and based on that his date of birth was recorded as 1-9-51 and the pay slips issued to the petitioner are also showing his date of birth as 1-9-51 and declaration Annexure-P/7 also shows 1-9-1951. The photo-state copy submitted by respondents of the service register does not show when it was filled.
10. After hearing the learned counsel for the parties and perusal of the record, it is clear that the reasonable and plausible dispute was raised by the petitioner by making representation in the year 1999 about the

correctness of his date of birth recorded in the service record which is evident from the school leaving certificate, the pay slips issued by respondents and declaration Annexure-P/7. In the given situation, proper course for the respondents was that on account of the difference of date of birth in the school leaving certificate, pay slips of the petitioner and form - 'B' respondents ought to have referred the matter as per clause B-(ii) of Instruction No. 76 which the respondents have not done. Therefore, in my opinion, the proper course for respondents is that they should refer the matter of the petitioner before the Age Determination Committee.

11. As far as the question of maintainability of this petition is concerned, the learned counsel for respondents has not submitted anything on this. Even otherwise, learned counsel for the petitioner could not point out anything that how the writ petition is not maintainable whereas, the respondents have not followed the procedure envisaged in Instruction No. 76 and violated the principle of natural justice, therefore, in my opinion the writ petition is maintainable.
12. In the result, the petition of the petitioner is allowed and respondents are directed to refer the matter of the petitioner before the Age Determination Committee and to implement as per the decision communicated by the Age Determination Committee.
13. With these observations, the writ petition is disposed of.

Sd/-  
L.C. Bhadoo  
Judge