

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No.2312 of 2013**

Ashok Kumar Thakur, S/o Shri Bhola Thakur, aged about 53 years,  
R/o Q.No.67, Type-B, Charcha Colliery, P.S. Charcha, Civil and  
Revenue District Korea, Chhattisgarh

**---- Petitioner****versus**

1. South Eastern Coal Fields Ltd. Through Chairman-cum-Managing Director, South Eastern Coal Fields Ltd., Seepat Road, Bilaspur, Chhattisgarh
2. Director (Personnel) South Eastern Coal Fields Ltd., Head Quarters, Seepat Road, Bilaspur, Chhattisgarh
3. Chief General Manager, South Eastern Coal Fields Ltd., Baikunthpur Area, District Korea, Chhattisgarh
4. Chief Personnel Manager, Baikunthpur Area, South Eastern Coalfields Limited, Baikunthpur Area, District Korea, Chhattisgarh
5. Deputy Chief Personnel Manager, Baikunthpur Area, South Eastern Coalfields Limited, Baikunthpur Area, District Korea, Chhattisgarh

**---- Respondents**


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For Petitioner	:	Shri Chandresh Shrivastava, Advocate
For Respondents/SECL	:	Shri Adil Minhaj, Advocate

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**Hon'ble Shri Navin Sinha, Chief Justice****Order on Board****31/8/2015**

1. Heard Learned Counsel for the Petitioner and the Respondents SECL.
2. Copy of the writ application was served on 13.8.2013. No counter-affidavit has been filed till today. The Court is not inclined to grant any adjournment at such belated stage as it is satisfied that in view of the orders of this Court in Writ Appeal No.399 of 2014 (South Eastern Coalfields Limited and others v. Sampat Kumar Chauhan) affirmed in Special Leave Petition (Civil) No.19199 of 2015 dated 20.7.2015, in Writ Appeal No.181 of 2014 (Prabhuram v. South Eastern Coalfields Limited and others) affirmed in Special Leave Petition (Civil) No.14686 of 2015

dated 14.5.2015 and another order in Writ Appeal No.533 of 2013 (South Eastern Coalfields Limited and others v. Amarnath Kurrey), the writ application can be disposed by remanding the matter to the authorities for taking appropriate decision in light of the same.

3. Learned Counsel for the Petitioner submits that the Petitioner was appointed in 1976. In the statutory Form B Register his date of birth was mentioned as 14.11.1960. The Respondents have ex-parte corrected it to 14.11.1958. No notice or opportunity to show cause was given and the Petitioner was never made known with an opportunity to defend that the issue with regard to his age has been referred to the Age Determination Committee under Implementation Instruction No.76 of National Coal Wage Agreement as purportedly mentioned in the impugned order dated 19/21.5.2009. The Petitioner is still in service and even according to the corrected date of birth he will be superannuated in 2018.

4. Learned Counsel for the Respondents SECL raises a preliminary objection to the maintainability of the writ application on the ground of delay. He submits that the impugned order is dated 19/21.5.2009. Copy has been marked to the Petitioner also. Correction was directed to be made in his service book. It is difficult to believe that the Petitioner though he was in service was not served with the impugned order. There is no explanation whatsoever for the delay in the writ application. It is next submitted that the impugned order specifically mentions that the case of the Petitioner has been determined by the Age Determination Committee. With regard to the entry in the statutory Form B Register, it is submitted that the Petitioner cannot have employment beyond forty assuming that he was appointed at the age of 18 years.

5. The question whether the impugned order dated 19/21.5.2009 was served on the Petitioner or not is a question of fact. A presumption arises that it may have been served in accordance with law. It shall be open for

the Respondents to arrive at preliminary finding in that regard. If the Respondents arrive at a finding of fact that the order was in fact made known to the Petitioner and served immediately on basis of documentary material available, it shall be shown to the Petitioner and no further action shall be required on the part of the Respondents as the writ application would then be dismissed for delay and laches and presentation of incorrect facts before the Court.

6. In the event that there is no documentary proof with regard to service of the order dated 19/21.5.2009 upon the Petitioner, it becomes a rebuttable presumption. In that event, the Respondents are required to pass a reasoned and speaking order with regard to the determination of age of the Petitioner by the Age Determination Committee and whether it was after due notice to the Petitioner or not, the date of birth recorded in the statutory Form B Register and the issue with regard to his entire duration of service if the date of birth claimed by him be correct.

7. If the Petitioner requests for a personal hearing, it may be granted to him.

8. Let such fresh orders be passed by the Respondents in the aforesaid manner within a maximum period of five weeks from the date of receipt and/or presentation of a copy of this order provided the Petitioner himself cooperates.

9. The writ application is disposed.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**