

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 602 of 2014**

Maicho Mahto **Petitioner**

Versus

1. The Central Coalfields Limited through its Chairman-cum-Managing Director, Ranchi.
2. The Senior Personnel Manager, Urimari Project, Central Coalfields Limited, Urimari, Hazaribagh.
3. Project Officer, Urimari Project, Central Coalfields Limited, Urimari, Hazaribagh. **Respondents**

.... ... **Respondents**

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Birendra Kumar Burman, Advocate
For the Respondents : Mr. Amit Kumar Das, Advocate
Mr. Shivam Uttkarsh Sahay, Advocate

5/31.10.2023 Heard the parties.

2. The petitioner is seeking direction upon the respondents to change the date of birth as per educational certificate as 17.8.1956, instead of 1.7.1951 and to release the arrears of salary during the period he remained out of service due to his forceful retirement prior to actual date.

3. The facts of the case are that the petitioner was appointed under the respondent-Company as Dumper Operator on 1.1.1973. It is specific case of the petitioner that though the petitioner has passed 8th Class which mentions his date of birth as 17.8.1956, his date of birth was mentioned by the respondent Company as 1.7.1951. When the petitioner came to know about the error committed by the Company, he represented before the authorities of the respondents on 20.4.2011, but no heed was paid and finally, he was forcefully made to superannuate on 30.6.2011, i.e. four years prior to his actual date of retirement and hence, the petitioner is deprived to serve the remaining services and to get the fruits thereof. With these compelling circumstances, the petitioner has approached this Court.

4. Learned counsel appearing for the petitioner submits that as per the Implementation Instruction No. 76, the educational certificate has to be taken into consideration by the Management for the purpose of recording the date of birth. Learned counsel further submits that it was incumbent upon the respondent authorities to correct the date of birth of

the petitioner as mentioned in the said certificate. Learned counsel further submits that since the respondents have taken no decision, the petitioner retired before his actual date of retirement, for which he has suffered a lot. Therefore, a direction be given to the respondents to change the date of birth of the petitioner as per matric certificate in the service excerpts and extend the benefits to the petitioner for remaining service period.

5. Per contra, counter affidavit has been filed. Learned counsel appearing for the respondents opposing the contention of learned counsel for the petitioner, submits that the issue involved in the writ petition is no more *res integra*. In plethora of judgments, it has been decided that no correction in the date of birth can be made at the fag end of service. The employer and employee are stopped from making any correction in the date of birth at the fag end of service. Learned counsel further submits that after appointment of the petitioner, Form-B Register was prepared mentioning his date of birth as 1.7.1951 and the same has been acknowledged to be correct by the petitioner by putting his signature thereon. Even the entire service excerpts carried the date of birth of petitioner as 1.7.1951 and the petitioner accepted it and never approached the authorities at the time of joining in the service. Learned counsel further submits that the petitioner has approached the authorities only after rendering 32 years of service and as such, the writ petition deserves to be dismissed on the ground of delay and laches.

6. Having the heard learned counsel for the parties and having gone through the entire records, this Court is of the considered view that no interference is warranted in the writ petition for the following reasons:-

- (i) The petitioner has raised the dispute regarding date of birth for the first time in the year 2011 on the basis of school leaving certificate, whereas he was appointed in the year 1973 itself, i.e. after lapse of 32 years.
- (ii) The claim of the petitioner that correction should be made as per the Implementation Instruction No. 76 is not accepted to this Court on the ground that the petitioner has failed to submit the school leaving certificate at the time of initial appointment. Any settlement entered into by the parties has got its statutory force

and once the parties have agreed in the settlement, the same cannot be challenged by the parties.

- (iii) Had the petitioner got the school leaving certificate at the time of initial appointment, there was no occasion for respondents not to enter the date of birth of the petitioner as per certificate. Since the petitioner produced it only in the year 2011, the request for changing the date of birth has not been acceded to by the respondents on the ground of delay and laches.
- (iv) In this context, the Hon'ble Apex Court in the case of ***Union of India Vs. Harnam Singh***, reported in **(1993) 2 SCC 162** held that “*No Court or the Tribunal can come to the aid of those who sleep over their rights.*”
- (v) The Hon'ble Apex Court as well as this Court in catena of decisions has held that request for change of date of birth in service records at the fag end of service career is not sustainable. In case of State of ***Tamil Nadu Vs. T.V. Venugopalan***, reported **(1994) 6 SCC 302**, the Hon'ble Apex Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under:-
.....The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register”.
- (vi) The Hon'ble Apex Court in case of ***Secretary and Commissioner, Home Department & Ors. Vs. R. Kirubakaran***, reported in **1994 Suppl. (1) SCC 155**, has held as under:

“7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ...According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while

examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book. ”

- (vii) The Hon'ble Apex Court in case of ***Nedungadi Bank Ltd. Vs. K.P. Madhavankutty & Ors.***, reported in **(2000) 2 SCC 455**, dealing with the issue relating to stale claim, has held that, reference of the said dispute at a belated stage is bad in eyes of law both on the grounds of delay as well as on non-existence of an industrial dispute.
- (viii) Taking into consideration the aforesaid ratio laid down by the Hon'ble Apex Court as well as by different High Courts, this Court in the case of ***Ajit Singh Vs. M/s Tata Iron & Steel Co. Ltd.***, Jamshedpur, decided in **W.P.(L) No. 1251 of 2010**, held that *“if Government servants sleep over their right and are not vigilant, the Court cannot come to their rescue / aid and grant relief only because they were ignorant of the Rules.”*

7. As a sequitur to the aforesaid observations, rules, regulations, guidelines, legal propositions and judicial pronouncements, this writ petition is devoid of any merit and the same is hereby dismissed.

(Dr. S.N. Pathak, J.)

R.Kr.