
(2022) 12 TEL CK 0011

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 15687 Of 2016

B.Ashok Kumar

APPELLANT

Vs

Singareni Collieries
Company Ltd And
Others

RESPONDENT

Date of Decision: Dec. 6, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 19(1)(g)

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Advocate: C.Vikram Chandra

Final Decision: Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned Government Pleader for Labour.

2. This writ petition is filed to issue a writ or writs more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in

not rectifying its mistake of not incorporating the correct date of birth 05.04.1960 as per the Transfer Certificate issued by the ZPCC school

Mandamarri as per JBCCI rules and continuing the wrong entry of 03.07.1957 in service records and basing on wrong entries issuing impugned order

ref.No.RG3/OC2/W/30, dated 14.02.2013 is illegal, arbitrary and against the principles of natural justice and violative of Articles 14, 16, 19(1)(g) of the

Constitution of India consequently permit the petitioner to continue in service till 30.04.2020.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner was initially appointed in the 1st respondent company as casual employee on 01.08.1978. In the year 1994-95 after acquiring

knowledge to work on dumpers, the petitioner was promoted as Dumper Operator and posted at RG3 OCP 2 and was awarded 7th Grade

wage since 2010.

b) The petitioner belongs to Madiga S.C. community, and is born on 05.04.1960, and failed X class in the year 1976.

The petitioner passed 7th class Board examination in the year 1973-74 and date of birth was mentioned as 05.04.1960.

c) The 2nd respondent issued notice to all workmen, if there is any discrepancy in their age as per records, to make

representation with necessary documentary proof. While travelling the petitioner lost marks memo and transfer certificate and hence, applied for

duplicate and obtained. The petitioner came to know in the year 2013 that in the another service book, his age was recorded by the respondents as 20

years and date of birth is 03.03.1977.

d) The petitioner made a representation in the month of January, 2013 to the respondents to rectify the mistakes that had rept in the B register. Instead

of rectifying the mistake, the respondents issued impugned order ref No.RG3/OC2/W/30, dated 14.02.2013 that his date of birth is 03.05.1957 and the

petitioner is retiring on 31.07.2017.

e) The petitioner filed application under RTI Act on 11.03.2016 and obtained copy of service record along with covering letter dated 04.04.2016.

Instead of furnishing original service record prepared on 03.07.1977, the respondent officials furnished service record prepared on 18.08.1987,

wherein the respondent officials entered wrong date of birth. Hence, the present writ petition is filed.

4. The counter affidavit filed by the respondents, in brief, is as follows:

a) At the time of initial appointment, the petitioner did not submit any documentary evidence in proof of his age/date of birth, and as such, his age was

assessed by the then Colliery Medical Officer as 20 years as on 03.07.1977 in the initial medical examination report, which was converted as his date

of birth as 03.07.1947 and the same was recorded in the service records of the petitioner.

b) Once the age or date of birth recorded in the service records basing on the age as assessed by the then colliery Medical Officer in the initial

medical examination report, the same is authentic and final. Therefore, the date of birth already recorded in the authentic records, cannot be changed

just basing on the educational qualification certificates.

c) The respondent company is bound to follow the guidelines/instructions issued from time to time by the Central and State Governments and other

governmental bodies constituted like the Joint Bipartite Committee for Coal Industry. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. A bare perusal of the order impugned dated 14.02.2013 of the 2nd respondent reads as under :

“This is to inform that as per Service and Identity Card (Service Book) your Date of Birth/Age is recorded as 03.07.1957. As such you will retire

from the Company's Services w.e.f. 31.07.2017 as per the Company's Rules.”

6. Paras 8, 9 and 10 of the Counter Affidavit reads as under :

Para 8 : It is submitted that the Petitioner, Sri B. Ashok Kumar, E.P. Operator, EC No.2265664, RG-OC-2, RG-III Area, was initially appointed in the

Respondent Company on 01.08.1978. It is submitted that the since the Petitioner did not submit any documentary evidence in proof of his age/date of

birth at the time of appointment, treating him as illiterate, his age was assessed by the then Colliery Medical Officer as 20 years as on 03.07.1977 in

the Initial Medical Examination Report, which was converted as his Date of Birth as 03-07- 1957 and the same Age/Date of Birth was carried out in

all the Service Records of the petitioner. Accordingly, the petitioner retired from the Company's services on attaining 60 years of superannuation age

by end of July,2017. The contentions of the petitioner that at the time of appearing for Interview he had submitted the original Transfer Certificate

obtained from ZPSS, Mandamarri as proof of his date of birth and educational qualifications in which his date of birth was mentioned as 05.04.1960

and that officials of respondent company recorded his personal particulars including educational qualifications and that he continued his service having

unblemished service record, are not true and correct and hence denied and the petitioner is put to strict proof of the same. It is pertinent to mention

that the petitioner was actually dismissed from the Company's service due to unauthorized absenteeism under Company's Standing Orders 16(16), vide

Lr.No.P/MM/53/150/80/503, dated 22/24.11.1980. However, on the representation of the Union, the case of the petitioner was considered and

reappointed vide Lr.No.PMR/3/81/252, dated 09.10.1981.

Para 9 : It is reiterated that the Petitioner had not submitted any educational qualification certificates containing his date of birth at the time of initial

appointment and hence his age was assessed as 20 years as on 03.07.1977 by the then Colliery Medical Officer in the Initial Medical Examination

Report and the said age as assessed in the IME Report is authentic and final. Any other certificates/ documents containing the DoB as 05.04.1960.

subsequently obtained and submitted by the petitioner and also basing on which the DOB of the petitioner entered in the service records, cannot at all

be taken into consideration for change of date of birth as against the age assessed in the IME Report. The contention of the petitioner that while

travelling he lost his marks memo and transfer certificate so he applied once again to the educational authorities and obtained duplicate and submitted

the same to rectify the mistake in service records, is baseless and hence denied and the petitioner is put to strict proof of the same:

Para 10 : It is submitted that in response to the Circular No.CRP/PER/IR/A/51/1864, dated 16.08.2012, the Petitioner has submitted an application

dated 05.09.2012 for change of date of birth in the company records. It is submitted that the application submitted by the petitioner was examined and

he was intimated vide Lr.No.RG.3/W26/1173, dated 19.05.2013 that considering his application for change of date of birth, is not covered under the

JBCCI guidelines and hence the date of birth displayed on the notice board stands continued.

DISCUSSION AND CONCLUSION :

7. According to the averments made by the petitioner in the affidavit filed in support of the writ petition, the petitioner joined the respondent company

as casual employee on 01.08.1978 and was allotted E.C.No.2265664 and posted at Mandamarri KK1CSP and further the petitioner at the time of

appearing for the interview had submitted the original transfer certificate obtained from ZPSS School, Mandamarri as proof of petitioner's date of

birth and educational qualifications in which the petitioner's date of birth is mentioned as 05.04.1960, but petitioner however, came to know the

mistake in the entries only in the year 2013 and realized that the respondent had recorded petitioner's age as 20 years as on 03.03.1977 and

thereafter, petitioner approached the respondents for correction. But the above referred contention of the Petitioner is seriously disputed at paras 8, 9

and 10 of the counter affidavit filed by the respondents extracted above. Even according to the petitioner, it is only in the year 2013 that the petitioner

realized about the mistake which had crept in the petitioner's service record. In response to petitioner's application dated 05.09.2012 the

Superintendent of Mines vide Ref. No.R.G.3/W26/1173, dated 19.05.2013 passed orders observing as follows :

"Ref.No.R.G.3/W26/1173, dt. 19.05.2013, Sri B. Ashok Kumar, Designation : EP Operator, E.Code : 2265664, OC.2, As per the Company

Circular No.CRP/PAR/IR/A/51/1864, dt. 16.08.2012, we are giving an opportunity, if there is any correction in your Date of Birth in our company

records kindly make an application to our office, for the same you have made an application for the correction of Date of Birth on 05.09.2012 and the

same was verified.

In this matter we are not considering your application due to not having proper evidences under the terms of JBCCI. We are herewith taking into your

notice that your Date of Birth has been continued further same as above in the company records.

8. In the present case the petitioner did not submit any educational qualification certificate containing the Date of Birth at the time of initial

appointment and hence the Petitioner's age was assessed as 20 years as on 03.07.1977 by the then Medical Officer of the respondent company.

9. The various Judgments relied upon by the Counsel for the Petitioner are given below :

(i) Order passed in W.P.No.19645/2018 in the High Court for the state of Telangana.

(ii) Order passed in W.A.No.23/2020 in confirming order in WP No.19645/2018 in the High Court for the State of Telangana.

(iii) 2014 (6) SCC 434

(iv) 2014 (6) ALD 80

(v) 2015 (5) ALD 233

(vi) 2013 (6) ALD 306

(vii) 1992 (2) ALT 198

10. This court opines that the above referred judgments do not have any application to the facts of the present case, because in the present case it is

not the case that the respondents herein had unilaterally changed the Date of Birth of the petitioner and in fact, the medical report dated 03.07.1977

clearly indicates

petitioner's undertaking as follows :

“As I am unable to furnish the documentary proof of my age, I accept the age fixed by the Medical Officer.”

Accordingly the age of the Petitioner was fixed as 20 years as on 03.07.1977.

11. A bare perusal of the material documents filed by the petitioner in support of the present Writ Petition which is a declaration by the Petitioner

employed in the Coal Mine and the same shows the Petitioner's Date of Birth as 05.04.1960. The Transfer Certificate of the Petitioner also

indicates the Date of Birth of the Petitioner as 05.04.1960. The 7th Class Marks Memorandum issued by the ZPCC School (Boys), Head Master,

Mandamarri also reflects the Petitioner's Date of Birth as 05.04.1960. The Register of the Employees maintained by the Respondents shows

Petitioner's name at Sl.No.967 and Petitioner's Date of Birth as 05.04.1960. But a bare perusal of the proceedings dated 19.05.2013 vide

Ref.No.RG3/W26/ 1173 of the Superintendent of Mines, indicates clear consideration by the Respondents herein for correction of Petitioner's

Date of Birth in response to Petitioner's application but however, proper evidences under the terms of JBCCI were not before the Respondent

Authority at the time of taking a decision on Petitioner's application dt. 05.08.2012 and the Petitioner eventually retired from service on

31.07.2017.

12. As per circular instructions dated 01.08.1988 vide Ref.No.P49/ 4702/IR/1270 of the Singereni Collieries Company Limited, there is a clear

procedure prescribed for determination/verification of the age of the employee and for resolution of dispute cases of Service Record. Curiously

however, in the present case the said procedures had not been resorted to solve the dispute of the Petitioner.

13. Taking into consideration of the fact that the Petitioner realised the mistake of date of birth even as per the Petitioner's own averment made at

Para 6 of Petitioner's affidavit that is after a period of more than 35 years and the Petitioner retired from company services on attaining 60 years

of superannuation age by the end of July 2017 and further taking into consideration the fact that vide Ref.No.RG3/W26/1173, dated 19.05.2013 the

Superintendent of Mines of the respondent company in fact informed the Petitioner that the Petitioner's application could not be considered since

the Petitioner did not submit proper evidences under the terms of JBCCI. It is also strange that the in house mechanism in determining the age was

also not exhausted in the present case. The JBCCI has passed implementation instructions No.76 to resolve the age disputes which had a provision for

existing employees as well, but however, the same also was not resorted to resolve the age dispute of the petitioner.

14. Taking into consideration the above referred facts and circumstances and the specific averments made at paras 8, 9 and 10 of the counter

affidavit and also in view of the fact that the petitioner also superannuated by the end of July 2017 itself, the prayer of the Petitioner for setting aside

the order impugned dated 14.02.2013 of the 2nd respondent herein vide Ref. No.RG3/OC2/W/30, can be limited only to the extent of the benefits

which the petitioner would eventually get in the event the petitioner would succeed in favourably resolving the dispute of date of birth on due enquiry

to be conducted by the respondent authority, therefore, the order impugned dated 14.02.2013 of the 2nd Respondent vide Ref.No.RG3/OC2/W/30, is

set aside and this Court, however, makes it clear that it has not expressed any opinion in so far as the merits of the claim of the Petitioner that the

Petitioner's date of birth is 05.04.1960 and not 03.07.1957 as entered in the Service Records is concerned. Though the impugned order is dated

14.02.2013 yet, the respondents are however, directed to reconsider the whole issue by giving due opportunity to the petitioner in compliance with

principles of natural justice and take a decision afresh in the matter, within a period of 4 weeks from the date of receipt of the copy of the order, in

accordance to law, duly communicating the said decision/reasoned order to the petitioner and thereby, resolve the dispute of the petitioner pertaining to

the issue of date of birth of the Petitioner.

15. Accordingly, the writ petition is disposed of. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.