

Madan Bouri Vs Central Coalfields Ltd

Court: Jharkhand High Court

Date of Decision: Feb. 14, 2025

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Ratnesh Kumar, Rashmi Kumar, Prashant Vidyarthi, Romit Kr.

Final Decision: Allowed

Judgement

Deepak Roshan, J

1. This intra court appeal is directed against the order dated 05.09.2022 passed by the learned writ court in W.P. (S) No.4550 of 2013, whereby the

claim of the petitioner for reinstating him in service in the same place and position from where he has been illegally retired on 31.10.2011 with

continuity in service and also for quashing of the office order dated 30.09.2011/03.10.2011, has been rejected.

2. The brief facts of the case are that the writ petitioner was appointed on 03.11.1983 and he joined his service on 07.12.1983. He was given a notice

of retirement stating that the petitioner would retire from 31.10.2011 against which he filed a representation on 14.03.2012.

3. The case of the appellant is that as per the statutory Form *Form A*, his date of birth is 27.10.1961 which was correctly reflected in the salary slips

also. Even as per statutory Form *Form A*, exercised under CMPF Scheme, 1948 for nomination purpose, his date of birth was recorded as

27.10.1961. However, he has been pre-maturely forced to retire from actual date of retirement.

4. The case of the respondent-Company before the writ court as per the counter affidavit was that in the Form *Form A*, the date of birth of

petitioner has been recorded as 27.10.1951 which was duly acknowledged by him by putting his thumb impression. Further, in Form *Form A*, the

date of birth which was originally recorded as 27.10.1951 was subsequently tampered, and that the petitioner during his employment, never disputed

his date of birth i.e., 27.10.1951.

5. Mr. Ratnesh Kumar, learned counsel for the appellant submits that the appellant is an illiterate person and though he put his thumb impression on

the Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$, but the fact remains that he did not know about that. Further, in Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{A}\tilde{A}\phi\hat{a},-\hat{a},\phi$ exercised under CMPF Scheme, 1948 for

nomination purpose, the date of birth of appellant was rightly recorded as 27.10.1961. Mr. Kumar further draws attention towards the salary slips

which indicates the date of birth of the appellant as 27.10.1961.

Relying upon the aforesaid documents including the Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{A}\tilde{A}\phi\hat{a},-\hat{a},\phi$ and the salary slips, he contended that the learned writ court has committed an

error in rejecting the claim of the appellant by observing that the petitioner has also received all post retiral benefits from the respondents, and after

that he has filed the representation, which was not only undated, but also has no receipt of any authority and finally rejected the claim of the petitioner

holding that the interpolation in the Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$ cannot be decided in writ jurisdiction and also that the petitioner has remedy under Industrial

Disputes Act, 1947.

6. Mr. Prashant Vidyarthi, learned counsel for the respondent-CMPF supports the statement of the appellant with regard to entry of date of birth in

Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{A}\tilde{A}\phi\hat{a},-\hat{a},\phi$ as 27.10.1961 which is used for nomination purpose as per the CMPF Scheme, 1948.

7. Mrs. Rashmi Kumar, learned counsel for the respondent-CCL reiterated the stand of the respondent-Company, which was taken in the counter

affidavit and further submitted that the petitioner has superannuated on 31.10.2011 and has already withdrawn all the retiral dues without any objection

and the writ petition is an afterthought as it was filed on 25.07.2013.

8. She further contended that interpolation in the statutory Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$ is a disputed question of fact; accordingly, the learned writ court has rightly

rejected the claim of the petitioner and has granted liberty to move Industrial Tribunal.

9. Having heard learned counsels for the parties and after going through the documents available on record, it appears that the appellant was

appointed on 03.11.1983 and joined his service on 07.12.1983. All of a sudden, he was given a notice of retirement that he would retire on 31.10.2011.

From record, it further appears that in Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$, there is an interpolation in the date of birth, but at this stage itself, it is categorically opined that

appellant is an illiterate person which is apparent from the statutory Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$ as he has put his thumb impression. Moreover, the appellant has

no access to make any interpolation with Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{B}\tilde{A}\phi\hat{a},-\hat{a},\phi$, inasmuch as, the same always remains in custody of the employer.

10. From record, it further transpires that in the salary slips also, which were issued till the date of retirement, the date of birth of this appellant was

indicated as 27.10.1961. It is also an admitted fact that in Form $\tilde{A}\phi\hat{a},-\tilde{E}\phi\tilde{A}\tilde{A}\phi\hat{a},-\hat{a},\phi$ exercised by the CMPF authorities under the CMPF Scheme, 1948 for

nomination purpose, the date of birth of the appellant was recorded as 27.10.1961.

11. Admittedly, there was cutting in Form A, however, as stated hereinabove, the said document was always in the custody of the employer

and the appellant has no access to it; as such, it cannot be presumed that the appellant has made any interpolation. This observation is corroborated by

the fact that the salary slips of this appellant reflects the date of birth as 27.10.1961.

12. Moreover, in case of dispute, the Management could have easily constituted a Medical Board for age determination. At this stage, it is also

relevant to mention Instruction No.76 dated 27.04.1988, which deals for determination/verification of the date of birth in respect of existing employee.

For brevity the same is quoted hereinbelow:

A“(B) Review determination of date of birth in respect of existing employees.

i) (a) 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.

i) (b) 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. Provided that where both documents mentioned in (i) (a) and (i) (b) above are available, the date of birth recorded in (i) (a) will be treated as

authentic.

ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the

Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Determination

Committee/Medical Board.

(C) Age Determination Committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be

determined in accordance with the procedure mentioned in (B) (i) (a) or (B) (i) (b) above, the date of birth recorded in the records of the company, namely,

Form B register, CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the

records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for determination of

age.

(D) For determination of the age, the Committee/Medical Board referred to above may consider the evidences, available with the Colliery Management and/or

adduced before the employee concerned.

(E) Medical Board constituted for determination of age will be required to assess the age in accordance with the requirement of "Medical Jurisprudence" and the

Medical Board will as far as possible indicate the accurate age assessed and not approximately.

(F) Where the Management (i.e.) Area Age Assessment Committee consisting of General Manager, Personnel Manager and Medical officer-in-charge of the Area

is satisfied that there is a glaring disparity between the date of birth recorded in the identity cards and the apparent age of the employee, the cases may be

referred to the Apex Medical Board located at Headquarters of the company for determination of age.

(H) After the assessment of the age by the Age Determination Committee/Medical Board the same will be computerised and print out of the same will be given to

the employee concerned and the unit from where the reference was received within a month. If age is not, however, computerised, still the same will be intimated to

the employee concerned and the Unit within a month.

(I) It was agreed that in cases where instead of date of birth, year has been recorded, 1st July of the year will be deemed to be the date of birth.

Emphasis Supplied

13. From bare perusal of Instruction No.76, it clearly transpires that if there is a very obvious and deceptive wrong entry brought to the notice of the

Management, the Management should take appropriate action for correction through Determination Committee/Medical Board. Non-compliance of

Instruction No.76, leads to an adverse inference against the respondents.

14. The contention of learned counsel for the respondents is that the appellant had duly signed the statutory Form where the date of birth of

the appellant was recorded as 27.10.1951 but subsequently he tampered the same for his vested interest. This contention of the respondents

counsel is misconceived and cannot be accepted for the simple reason that on the one hand, the appellant was an illiterate and cannot understand the

description entered in the said document; and on the other hand, the interpolation cannot be attributed to the appellant as the said documents always

remains with the employer and the employee has no access to it.

15. Further, the salary certificates issued by the employer and the Form, which is used for nomination purpose and remains in custody of

the CMPF, also reflects the date of birth of the appellant as 27.10.1961; as such, we are constrained to observe that on the ground of disputed

question of fact, the learned writ court should not have rejected the claim of the petitioner. As a matter of fact, the learned writ court got swayed

away by looking to the interpolation made in the official document i.e., Form and has given liberty to the appellant to move to Industrial

Tribunal, but as sated hereinabove, the learned writ court has failed to appreciate that the said document was always within the custody of the

management, and the appellant had no access to do anything, therefore, the reasoning for rejecting the claim of the petitioner by the learned writ court

is palpably not sustainable in the eyes of law.Ã,

16. Having regard to the aforesaid discussion, we are of the considered view that the order passed by the writ court deserves to be, and is hereby,

quashed and set aside. Further, the order dated 30.09.2011/03.10.2011 (Annexure-4 to the writ petition) whereby, the petitioner has been retired from

service on 31.10.2011, is also quashed and set aside.

17. Since the petitioner cannot be reinstated now because otherwise also, he would have retired by now; as such, looking to the last pay drawn which

appears from the salary slip and also taking into account that the appellant remained out of service for about ten years for no fault of his; in interest of

justice a compensation of Rs.5,00,000/- is directed to be paid to the appellant by the respondent authorities.

Ordered accordingly. The aforesaid payment should be made within a period of eight weeks from the date of receipt/production of copy of this order.

18. Accordingly, the instant Letters Patent Appeal stands allowed. Pending I.A.s, if any, also stands closed.