Mahendra Bherihar Vs North Eastern Coal Fields and Others

WP (C) No. 3526 of 2000

Court: Gauhati High Court

Date of Decision: Feb. 25, 2004

Citation: (2005) 1 GLR 224 : (2004) 2 GLT 156

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: A.B. Choudhury and I. Rafique, for the Appellant; M.A. Ahmed, B. Dutta and M. Singh, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.

The writ petitioner joined service as a Mazdoor in the Tipong Colliery under the North Eastern Coal Fields in the year

1966. The aforesaid colliery was owned, at the relevant point of time, by the Assam Railways and Trading Company. After the Coal Mines

Nationalisation Act was enacted in the Parliament in the year 1973, the colliery in question was taken over by the Central Government and it was

re-vested in Coal India Limited. Under the scheme framed under the provisions of the statute with regard to the service of the existing employees,

the services of the petitioner stood transferred to the respondent-organisation i.e. Coal India Limited. At the time of his entry into service, in the

Service records prepared by the employer, the date of birth of the petitioner was recorded as 1.7.1940. The service record of all the employees of

the Coal India Limited were entered into their respective service books in the year 1987 and all service particulars were sent to the employees

concerned for due confirmation. The petitioner was duly intimated of his service particulars wherein the date of birth of the petitioner was

mentioned as 1.7.1940. Necessary confirmation of such service particulars was made by the petitioner with a modification of his date of birth as

15.2.1948. Thereafter, the petitioner put up a representation on 11.8.1988 staking a claim to have his date of birth recorded as 15.2.1948 instead

of 1.7.1940. The claim being rejected by a notice issued on 8.7.1999 informing the petitioner that he would be superannuated with effect from

1.7.2000, the instant recourse to the writ remedy has been made by the writ petitioner.

2. I have heard Mr. A.B. Choudhury, learned counsel appearing for the writ petitioner and Mr. M.Z. Ahmed, learned counsel appearing for the

respondents.

3. Mr. Choudhury, learned counsel for the writ petitioner in the course of his very elaborate arguments, has contended that in so far as the

rectification/re-determination of the date of birth/age of the serving employees is concerned, the respondent authority has circulated a set of norms

by an Office Memorandum dated 25th April, 1988. According to the learned counsel for the petitioner, the determination that the respondent

authorities were required to make in so far as the age of the petitioner is concerned, would be covered by Clause (B)(1)(b) of the instructions

issued under the Office Memorandum in question. Elaborating, learned counsel for the petitioner has placed before the Court a Sirdar''s certificate

issued by the statutory authority under the Coal Mines Regulations, 1957 wherein the date of birth of the petitioner was certified as 15.2.1948.

According to the learned counsel for the petitioner, when a certificate as contemplated in Clause (B)(1)(b) of the norms applicable was available

and in terms of the said norms, the contents of such certificate are required to be treated as authentic, the rejection of the claim of the petitioner to

have his date of birth recorded as 15.2.1948 is wholly without any substance or basis. Learned counsel for the petitioner has further argued that

the respondent authorities having themselves set the norms and the petitioner having satisfied such norms by placing before the authority the

Sirdar''s certificate, the respondents could not have acted contrary to the norms in force, while entertaining the petitioner''s claim for a change of

the date of birth. The respondents, according to the learned counsel for the petitioner, must be bound to the norms in force and a departure

therefrom cannot be permitted at the whims and fancies of the employer.

4. The arguments advanced on behalf of the writ petitioner have been sought to be countered by Mr. M.Z. Ahmed, learned counsel for the

respondents who has argued that under Clause (B)(1)(b), the date of birth as recorded in the Sirdar''s certificate has to be further verified and

accepted by the Manager of the employer, which fact, according to the learned counsel, is evident by the use of the word ''Manager'' appearing in

the aforesaid Clause (B)(1)(b). Learned counsel has further argued that the petitioner himself had voluntarily given his date of birth as 1.7.1940 at

the time of his entry into service and the basis on which the date of birth has been recorded in the Sirdar''s certificate produced by the petitioner

not being known, the claim of the petitioner was not accepted by the respondents. Relying on the affidavit filed, it has also been argued that if the

petitioner''s contention is accepted, it would have the effect of conferring almost 42 years of service to the petitioner, a tenure which no other

employee has had. Besides, the same would go to show that the petitioner had entered service when he was a minor.

5. To appreciate the arguments advanced on behalf of the rival parties, the provisions of Clause B(1)(a) and (b) of the Instructions issued under the

Office Memorandum dated 25.4.1988 may be extracted hereunder:-

(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/Board/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.

The respondent authority having laid down the norms that is to guide its action in the matter of review/determination of the date of birth of the

existing employees, the Court would be slow to recognise the validity of any departure from the laid down norms. Under Clause (B)(1)(b) of the

aforesaid norms, which would be applicable to the facts of the present case, the respondents have expressed its unambiguous and unequivocal

intention to treat certain statutory certificate as authentic proof of the age of an employee. This Court must not to be understood have laid down

that once the statutory certificate, as contemplated in Clause (B)(1)(b) is produced by the employee, the employer has no option but to accept the

same as correct. For good and sufficient reasons, details of which need not to be expressly enumerated in the present case, the employer may

refuse to accept such statutory certificate but in that event, the reasons for such refusal must be stated so as to enable the Court to scrutinise the

validity of such reasons, in the event of a challenge being made. However, ordinarily, in the absence of good and sufficient reasons, the statutory

certificate must be accepted by the employer not only in view of the clear intention to do so as expressed in Clause (B)(1)(b) but also to confer

legitimacy to the actions of the statutory authority in issuing the certificate. In the instant case, the petitioner had placed on record before the

authority a Sirdar''s certificate issued by the statutory authority which certified his date of birth as 15.2.1948. If the respondents as the employer,

had any reason to doubt the authenticity of the said certificate, nothing prevented the employer from making an enquiry with the authority who had

issued the certificate so as to satisfy the employer the basis on which the certificate was issued. No material has been placed before the Court on

behalf of the respondents to show that any such enquiry was initiated with the statutory authority. In the absence of any such enquiry and the

consequential reasons for the attempted departure from the laid down norms, the actions of the respondent must be construed to be an exercise

unguided by any valid reason. Such an attempt would also amount to an action akin to an appellate exercise on the part of the respondents over

the discharge of the functions of the statutory authority. Surely, unless there are compelling reasons and in the present case, no such reasons having

been disclosed, such an exercise ought not to be permitted.

The argument advanced that acceptance of the claim of the petitioner would give him an unusually long tenure of service, by itself, will not be

sufficient to dismiss the claim advanced. The said fact must be viewed from the perspective of the possible age of the petitioner at the time of his

entry into service if his date of birth is to taken as 15.2.1948, as claimed. The petitioner''s entry into service, according to the respondents

themselves, being on 24.3.1966, it must be held that entry into service as a Mazdoor way back in 1966 at an age of a month less than 18 years is

not an altogether impossible event.

6. For all the aforesaid reasons, this Court is inclined to take the view that the actions of the respondents in refusing correction of the date of birth

of the petitioner is an arbitrary, unguided and unreasonable action which must be interfered with by this Court. The respondents are now directed

to carry out the necessary correction in the date of birth of the petitioner in terms of the direction hereinabove contained and grant all consequential

reliefs to the petitioner as would reasonably flow from such correction.

7. The writ petition shall stand allowed as indicated above.