

(2008) 04 JH CK 0019
Jharkhand High Court
Case No: None

Laxmi Narayan Singh

APPELLANT

Vs

Bharat Coking Coal Ltd. and
Others

RESPONDENT

Date of Decision: April 10, 2008

Citation: (2008) 2 JCR 514

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

In this writ petition, the dispute is with regard to age/date of birth of the petitioner.

2. Mrs. M.M. Pal, learned Counsel appearing for the petitioner, submitted that the Age Determination Committee (for short "the Committee") determined the petitioner's age as 38 years on 22.8.1986, according to which, his date of birth comes to 22.8.1948 and the same was mentioned in his service excerpt as well as in the Identity Card also. But petitioner has been superannuated with effect from 31.8.2006 before completing 60 years. She lastly submitted that, in any event, the respondents be directed to get the petitioner's age determined by constituting a fresh Medical Board.

3. Mr. Anoop Kumar Mehta, learned Counsel appearing for the respondents, on the other hand submitted that the petitioner's age was recorded in the statutory Form "B" register as 28 years as declared and signed by him; and accepted by the Management, on the date of his appointment i.e. on 30.1.1973, according to which, his date of birth comes to 30.1.1946. (However, in the service records, it came as 30.8.1946). He further submitted that therefore if he was referred to the Committee, it was wholly improper, as there was no occasion for the same. Further referring to

the petitioner's representation dated 21.1.2005 (Annexure 3), he also submitted that the greed of the petitioner did not stop there and he went to the extent of claiming that his date of birth was 21.3.1955. He further submitted that the petitioner's age/date of birth as recorded in the statutory Form "B" register is binding on the petitioner. He relied on a judgment of this Court in [Taraknath Upadhyay Vs. Bharat Coking Coal Ltd. and Others](#), and submitted that it was affirmed in L.P.A. and then by Supreme Court vide S.L.A (Civil) No. 13755 of 2006 by order dated 29.11.2007.

4. It appears that a copy of the purported letter dated 22.9.1986 with it's enclosed list of age assessment (Annexure 5) was not supplied to the counsel for the respondents. Accordingly, in paragraph 20 of the counter affidavit, the respondents stated that the genuineness and correctness of such letter can be verified only after a copy of the same is supplied. After a copy of the said letter was supplied, a supplementary counter affidavit on behalf of the respondents was filed stating therein that the said letter alongwith the enclosed list was neither available in Katras Area Office nor in the different Units of Katras Area, to which the said letter is said to have been addressed and sent. Thus the respondents have doubted and disputed the genuineness of the said letter dated 22.9.1986 relied by the petitioner.

It may further be noted that the petitioner has not disputed Annexure A, which is a copy of the statutory Form "B" register, rather he has admitted in paragraph 5 of his affidavit filed on 10.8.2006 that the said Form "B" register (Annexure A) was prepared in the year 1973, at the time of his appointment in West Moonidih Colliery, "but when he was transferred to Angar Pathra Colliery in 1984-1985, due to the discrepancy/dispute regarding the date of birth, he was referred to the Medical Board held in 1986 and, accordingly, Form "B" register was opened in Angar Pathra Colliery wherein his date of birth was recorded as 38 years as on 28.8.1986".

It further appears that the Committee was constituted "to assess the age of those workers whose age records were not available in any records like Form "B" and/or CMPF"-vide letter dated 18.6.1986 (Annexure 6) (emphasis supplied). Though the genuineness of the said age assessment dated 2.8.1986 (Annexure 5) has been disputed by the respondents, but even if it is accepted that the petitioners age was assessed by the Committee in 1986, he cannot rely on the same in view of the fact that admittedly his age was already recorded in Form "B" register prepared at the time of his appointment on 30.1.1973 (Annexure A). Only because he was transferred to other colliery in 1986, his age was not required to be re-determined, and he cannot take advantage of the age, which came to be mentioned in his service excerpt, identity card etc., on the basis of the purported age determined by the Committee.

5. Thus it is clear that the age declared by the petitioner at the time of his appointment on 31.1.1973 was accepted and recorded by the management in Statutory Form "B" register which he acknowledged by putting his signature. Thus

he fully knew what was his age recorded in Form "B" register. If after his transfer to another colliery, his case was sent to the Committee, it was either due to ignorance or suppression of the fact that his name was already recorded in Statutory Form "B" Register.

6. Even Instruction 76, relied by the petitioner, says that unless "there is a very glaring and apparent wrong entry" the cases of date of birth will not be reopened. Paragraphs 22 and 23 of the judgment of Taraknath Upahyay (supra) support the case of the respondents, which reads as follows:

22. For the aforementioned and foregoing reasons, this Court has no hesitation, therefore, in holding that the act of referring the case of the petitioner to the Medical Board was not only irregular, but it was contrary to the Implementation Instruction No. 76 as the said reference did not meet with the essential pre-requisite contained in Clause (B)(ii) thereof.

23. Consequently, the arguments to the effect that the respondents once having corrected the date of birth on the basis of the findings given by the Medical Board are estopped from acting contrary thereto cannot be accepted because it is well settled that the State cannot be bound by unauthorized acts of its employees and that the concept of promissory estoppel cannot be raised if the State or its servants act beyond the scope of their duty or contrary to the directions or standing administrative instructions. This view was taken by the Full Bench of the Patna High Court in the Case of Rita Mishra and Ors. v. Director of Primary Education reported in 1987 BBCJ 741 (FB).

7. The order of [Jiwan Kishore Vs. Delhi Transport Corporation and Another](#), , relied by Mrs. Pal is not applicable in this case.

8. In the result, I find no merit in this writ petition, which is, accordingly, dismissed. However, no costs.