(2005) 106 FLR 499 : (2005) 2 JCR 474

Jharkhand High Court

Case No: L.P.A. No. 482 of 2004

Awadh Singh		APPELLANT
	Vs	
The Bharat Coking Coal Ltd. and Others		RESPONDENT

Date of Decision: May 4, 2005

Citation: (2005) 106 FLR 499 : (2005) 2 JCR 474

Hon'ble Judges: Altamas Kabir, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: Sameer Saurav, for the Appellant; Anoop Kumar Mehta, P.K. Choudhary and Arun Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is directed against the judgment and order dated 6th May, 2004 passed by the learned single Judge in W.P(S) No. 2911 of 2002, dismissing the writ application on the ground that no case had been made out for interference by the Court.

2. As will appear from the materials on record, the petitioner/appellant was appointed as an Assistant Store Keeper in Bararee Colliery No. 10, Area Lodana on 1st May, 1972 and at the time of his appointment, his date of birth as per matriculation certificate was shown as 7.5.1954. Inasmuch as, there was certain irregularities with regard to the recording of his dated of birth in the records the matter was referred to the Deputy Secretary, Bihar School Examination Board, Patna who by his letter dated 3rd January, 1992 verified that the date of birth of the writ petitioner/ appellant was 7th May, 1954, as had been shown in his matriculation certificate. Pursuant thereto, a settlement was arrived at between the Management and the concerned Union and it was agreed by way of settlement that the age of the writ petitioner/ appellant would be corrected after verification report, received from the Bihar School Examination Board, Patna within one year from the date of settlement. Thereafter, the matter was once again referred to the said Board which vide

its letter dated 17th September, 1996 re-affirmed its earlier stand regarding the date of birth of the petitioner/ appellant and despite the above and despite Implementation Instruction No. 76 regarding the procedure for determination/ verification of the age of employees the respondents issued to the writ petitioner, a notice of retirement dated 28th March, 2000, on the basis of a medical examination to which the petitioner/appellant was subjected.

3. Admittedly, the petitioner/appellant had raised a further dispute regarding his date of birth and had requested the authorities to correct his date of birth in terms of his matriculation certificate, but he was instead made to undergo a medical test in which his age was assessed as 55 years on 27th June, 2000. As will appear from a subsequent officer order dated 28th July, 2000 issued by Bharat Coking Coal Limited, the petitioner''s date of birth was corrected to be 55 years as on 27th June, 2000, which automatically rendered the notice of retirement dated 28th March, 2000 redundant. It is obvious that even in terms of the petitioner''s medical examination and subsequent correction of the date of birth, the writ petitioner/appellant could not have attained the age of 60 years as on 31st March, 2000.

4. Be that as it may, it appears that the writ petitioner/appellant was allowed to continue in service since even according to the medical report, the writ petitioner/appellant would attain the age of 60 years only in the month of July, 2005. However, the writ petition, which was filed in 2002 was in respect of notice issued to him on 28th March, 2000.

5. In the unusual facts of this case, the cause of action for the writ petitioner appears to have altered to some extent, having regard to the fact that the notice impugned in the writ petition was no longer relevant in view of the medical examination of the writ petitioner/appellant. The same has now assumed significance, having regard to the agreement, which had earlier been arrived at between the Management and the writ petitioner/appellant by way of a settlement dated 28th August, 1994.

6. There is no dispute that after the said settlement, the matriculation certificate of the writ petitioner/appellant was once again verified from the Bihar School Examination Board, Patna, which repeated its earlier stand that the date of birth of the writ petitioner/appellant was 7th May, 1954. There is also no dispute that under Implementation Instruction No. 76, which is followed by the respondents age determination is to be done at the time of appointment firstly on the basis of matriculation certificate, if available. In fact, the said Instruction indicates that in the case of appointees, who have passed matriculation or equivalent examination, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same cannot be altered under any circumstances. There is no dispute that the petitioner is a matriculate and his matriculation certificate was repeatedly verified from the concerned Board. The question of sending the writ petitioner for medical examination did not, therefore, arise, notwithstanding the fact that the petitioner did not object to be examined by the Medical Board.

7. Appearing in support of the appeal, Mr. Saurav contended that in view of the earlier settlement and the subsequent verification of the writ petitioner''s matriculation certificate from the Board, it was no longer open to the respondents to have the petitioner examined by the Apex Medical Board and the writ petitioner/appellant had no choice in the matter since the notice of retirement had been issued to him and he was compelled to appear before the Medical Board. It was submitted by Mr. Saurav that the learned single Judge proceeded on the basis that writ petitioner/appellant had voluntarily appeared before the Medical Board and, therefore, nothing was required to be done in the matter.

8. Appearing on behalf of the respondents, it has been alleged by Mr. Mehta that having once agreed to the Medical examination, it was no longer open to the writ petitioner/appellant to take a different stand. According to Mr. Mehta, the writ petitioner-appellant was estopped from raising any objection after his age had been corrected in terms of the medical examination to which he had allowed himself to be subjected, notwithstanding the earlier settlement arrived at between him and the Management, which Mr. Mehta very fairly conceded, was binding between the parties. In support of his submission, Mr. Mehta referred to and relied on a decision of the Hon''ble Supreme Court in the case of Bharat Coking Coal Ltd. Vs. Presiding Officer and Another, wherein it has been held that after having agreed to an examination by the Medical Board, it was no longer open to the workman to contend after retirement that the Medical Board was not adequately equipped to determine his age. Mr. Mehta submitted that in the circumstances no interference was called for with the order of the learned single Judge.

9. We have carefully considered the submissions made on behalf of the respective parties and we are unable to convince ourselves that the respondents acted bonafide in asking the writ petitioner/appellant to appear before a Medical Board, when the matter had been decided earlier and a settlement had been arrived at between the parties that the age of the writ petitioner/appellant would be recorded in terms of his matriculation certificate upon proper verification. Admittedly, the certificate was duly verified from the Bihar School Examination Board and there could have been no further doubt in the matter and having particular regard to the Instruction No. 76, the respondents should have accepted the petitioner''s age in terms of his matriculation certificate. It cannot be ruled out that the petitioner/appellant had no option but to subject himself to the medical examination by the Apex Medical Board, once he had been served with the notice of retirement.

10. In such circumstances we are unable to uphold the decision of the learned Single Judge and the same is, accordingly set aside. The respondents rate directed to correct the writ petitioner''s age in their records in terms of the matriculation certificate of the petitioner/appellant within one month from date.

11. The appeal is accordingly, allowed. There will be no order as to costs. Appeal allowed