

(2005) 04 JH CK 0008

Jharkhand High Court

Case No: Writ Petition (S) No. 6136 of 2004

Ram Sumer Singh

APPELLANT

Vs

Central Coalfields Ltd. and
Others

RESPONDENT

Date of Decision: April 19, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 21

Citation: (2005) 2 JCR 464

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: V.N. Jha, for the Appellant; Anoop Mehta and Ananda Sen, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

In this writ application the petitioner has prayed for quashing the order as contained in Memo No. GM (PPR) Pars/Retirement/04/2916-24, dated 22.9.2004 passed by the respondent No. 4 (the Staff Officer (P & A) Piparwar Area), whereby the petitioner has been sought to be retired with retrospective effect, alleging that he has reached the date of superannuation on 29.2.2000.

2. The grievance of the petitioner is that he was employed as a Senior Security Inspector (P/S No. 12120572) GM Officer, Piparwar, Piparwar Area. Initially he was appointed as general mazdoor on 2.1.1963 and since thereafter he has been successfully rendering his service. According to the petitioner, when he joined, his service book was opened. His date of birth was recorded as 6.7.1946 in the service book. According to the petitioner his date of retirement, on attaining the age of 60 years, is 31.7.2006 but without issuing any prior notice and without giving any opportunity of hearing, the impugned letter as contained in Annexure-6 dated

22.9.2004 was suddenly issued to him informing that he had already attained the age of 60 years on 29.2.2000 and thus shall be treated to have retired on superannuation with effect from 29.2.2000. He was also advised to submit an application for settlement of the claims of terminal benefits.

3. The respondents have appeared and filed counter affidavit supporting the said impugned letter on the ground that the petitioner's date of birth was assessed and certified as 29 years as on 1.3.1969 by the medical board. It has been stated that the petitioner had thus attained the age of 60 years i.e. the age of superannuation on 29.2.2000.

4. In view of the said controversy between the parties, this Court by order dated 30.3.2005 directed the respondents to produce the original statutory service record for perusal of this Court. Learned counsel for the respondents produced the original service records including the minial service register before this Court, today. It is clearly evident from the said service record that the petitioner's date of birth is recorded as 6.7.1946. The entry has made by the Colliery Manager, Sayal dated 6.5.1969. There is no entry regarding further determination of date of birth by any Medical Board. However, learned counsel for the respondents brought to my notice a small slip which they termed as medical report in which it has been mentioned that according to his (petitioner's) statement, his age 29 years and that also from appearance is 29 years. In the back side of the slip the petitioner's signature appears without any date. Learned counsel for the respondents has justified the Annexure-5 on the basis of the said slip which is of the year 1969 without any date without bringing anything on record to prove its authenticity and propriety in face of clear contrary entry of date of birth in the original service record. The service record, with all necessary columns filled up in the year 1969, clearly mentions the petitioner's date of birth as 6.7.1946. Subsequently, the Central Coal Fields Limited also informed about the entries of the service record to the petitioner in which also the date of birth has been recorded as 6.7.1946. The said document is issued by the Manager, and it bears the signature of the petitioner and the other evidences. There are also other records available to show that the petitioner's date of birth is 6.7.1946 which supports the date of birth recorded in the service book.

5. It is an admitted fact that before issuing Annexure-6 whereby the petitioner has been sought to be superannuated with retrospective effect on 29.2.2000, no notice or opportunity of hearing was given to the petitioner. It is now well settled that the employment of a person being the source of his livelihood the same can not be taken away or the length of service of an employee can not be shortened except according to the procedure established by law. The respondents could not justify their said order Annexure-6 by producing any such legal provision. The order which is prejudicial to the petitioner having been issued without giving him opportunity to be heard is also violative of principles of natural Justice as well as Articles 14 and 21 of the Constitution and the same is a nullity. This writ application is thus allowed.

The impugned order as contained in Annexure-6 is quashed. The petitioner stands reinstated. He is entitled to get his full back wages and other consequential benefits.

6. Since the impugned action of the respondents is highly discriminatory and without any legal basis and for that the petitioner has to approach this Court and to suffer loss and harassment and further that the respondents have tried to justify the said illegality, also before this Court without any cogent basis, this writ application is allowed with cost of Rs. 10,000/- (Ten thousand only) to be paid to the petitioner by the respondents within a period of four weeks from the date of receipt/production of a copy of this order.