

## Nunu Ram Vishwakarma Vs Bharat Coking Coal Limited and Others

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 10, 2010

**Citation:** (2010) 4 JLJR 25 : (2010) 127 FLR 161

**Hon'ble Judges:** R.R. Prasad, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

R.R. Prasad, J.

The petitioner having resigned from his earlier assignment applied for appointment on the post of Welfare Officer in the establishment of M/s. Bharat Coking Coal Limited. Thereupon, interview letter was issued whereby the petitioner was directed to bring all the

testimonials including matriculation certificate which he submitted on the date of interview. The respondents having been satisfied with the

qualification, allowed the petitioner to join at Bhowra Colliery on 17.12.1974 as Welfare Officer. Further case of the petitioner is that on the basis

of age recorded as 1.1.1948 in the matriculation certificate, an identity card was issued on 1.1.1977 whereby age of the petitioner was recorded

as 29 years which corresponds to the date of birth of the petitioner. Thus, there was every reason for the petitioner to believe that date of birth of

the petitioner must have been recorded as 1.1.1948 but to his utter surprise, he received a letter dated 4.8.2004 (Annexure 4) whereby it was

intimated to the petitioner that he is supposed to retire on 31.1.2005 taking the date of birth of the petitioner as 4.1.1945. On receiving the said

letter, the petitioner made several representations stating therein that his date of birth is 1.1.1948 which has been recorded in the matriculation

certificate and hence, he is supposed to superannuate on 31.1.2008 and not on 31.1.2005 but the respondents did not pay any heed to it and

made the petitioner to retire on 31.1.2005.

2. Being aggrieved with the action of the respondents, this writ application has been filed whereby letter dated 4.8.2004 by virtue of which the

petitioner was made to retire on 31.1.2005 has been challenged to be bad, arbitrary and illegal.

3. The stand taken by M/s. Bharat Coking Coal Limited in the counter affidavit is that the petitioner at the time of appointment as Welfare Officer

submitted his application showing date of birth as 5.1.1945, i.e. 29 years. Subsequently in the year 1987, when the petitioner submitted a

nomination form required to be submitted under Executive Cadre Retirement Gratuity Scheme, 1973, the petitioner declared his date of birth as

5.4.1945. Not only that the petitioner in his Executive Evaluation Report himself recorded his date of birth as 5.1.1945 which would be evident

from Executive Evaluation Report of the year 1996-97, 1997-98 and 2002-03. On the basis of these entries relating to date of birth of the

petitioner, when a seniority list was published in the year 1980, date of birth of the petitioner was shown as 5.1.1945. Thereupon the petitioner

represented for correction of his age and his placement in the seniority list. On getting such representation, the petitioner was advised to submit

relevant document. Pursuant to that, the petitioner did submit document relating to his qualification but did not submit the matriculation certificate.

Thereupon, he was again asked to submit the matriculation certificate which he did. Therefore, on the basis of entry made with respect to date of

birth as 5.1.1945, a letter was issued intimating him that he would retire on his superannuation on 31.1.2005. Only thereafter the petitioner made a

representation on 17.12.2004 annexing therewith copy of the matriculation certificate which representation though was not required to be

considered as the certificate had been submitted at the fag end of his service, still the respondents proceeded with the verification of the date of

birth whereby information was sought relating to the date of birth from concerned school. Thereupon the Headmaster of the school intimated, vide

letter dated 30.9/21.10.2005 that the date of birth of the petitioner has been recorded as 5.4.1941 in the school admission register but still taking

the date of birth of the petitioner as 5.1.1945, recorded in the records of the respondents, made the petitioner retired n 31.1.2005 which action of

the respondents in no case can be said to be arbitrary, illegal and unjustified.

4. Learned Counsel appearing for the petitioner submitted that as per the instruction of N.C.W.A-III, age of the employee shall be governed by

the date of birth recorded in the matriculation certificate but the authority by giving complete go-bye to the said instruction made the petitioner to

retire prematurely which is quite illegal in view the decision rendered in a case of Kamta Pandey Vs. B.C.C.L. and Others, holding therein that the

date of birth recorded in the matriculation certificate would prevail over any other document showing age of the petitioner.

5. Thus, it was submitted that the impugned order as contained in letter No. 7876-84(A) dated 4.8.2004 is fit to be quashed and the petitioner is

entitled to consequential relief.

6. As against this, learned Counsel appearing for the respondents-B.C.C.L submitted that from the statement made in the counter affidavit, it

would appear that the petitioner neither did submit matriculation certificate at the time of appointment nor he did submit in the year 1980 when he

was asked to do so, rather the petitioner did submit the matriculation certificate just a few months before his retirement and as such, petitioner

cannot be allowed to raise controversy relating to date of birth at his fag end of service.

7. In this respect it was further submitted that on verification made by the respondents with respect to date of birth, it was found from the

communication made by the Headmaster of the school where the petitioner had pursued his studies that date of birth entered into the admission

register of the school is different than what is there in the matriculation certificate and under this situation, decision by the Full Bench as referred to

by the petitioner would not be applicable and this submission gets support from the decision rendered by this Court in a case of Phoolchand

Tripathi Vs. Steel Authority of India Ltd. and Others, .

8. There has been no dispute that under instruction of N.C.W.A-III, age of the employee is to be determined on the basis of matriculation

certificate, if it is submitted at the time of appointment.

9. In the instant case, the petitioner never seems to have submitted his matriculation certificate at the time of appointment as had he submitted the

matriculation certificate, he would not have recorded his date of birth in the application submitted at the time of appointment and subsequently in

other documents, differently than what was there in the matriculation certificate. Not only that when the seniority list was published in the year

1980, the petitioner when made representation for correction of the date of birth, he was asked to submit his matriculation certificate but he failed

to do so and only when intimation of his superannuation was given, he submitted his matriculation certificate but from verification of the school

register, where the petitioner had pursued his studies, it was found different than the entry made in the school register.

10. Under these situations, the controversy raised relating to age cannot be allowed to be gone into. Therefore, the ratio laid down by the Full

Bench of this Court will not be helpful to the petitioner as in that case identity card issued to the petitioner was bearing the same date of birth as it

was there in the matriculation certificate and even Seva Abhilesh contained the same date of birth, though it was different in statutory Form B

register and under this situation, it was held that date of birth as recorded in the matriculation certificate would prevail over other document

showing age of the person but, in the instant case, nothing seems to be there on the record to establish or even to suggest that the matriculation

certificate was produced at the time of recorded age. Almost in identical situation, this Court in a case of Nand Kishore Singh v. The Indian Iron

and Steel Co. Ltd. and Ors. L.P.A. No. 550 of 2006 was pleased to hold that date of birth cannot be allowed to be changed at the fag end of the

service when certificate showing different date of birth was never produced before the authority at the time of recording the age.

11. Thus, I do not find any merit in this writ application. Hence, it is dismissed.