

(2013) 08 AP CK 0032

Andhra Pradesh High Court

Case No: Writ Petition No. 20029 of 2005

A. Raja Murali

APPELLANT

Vs

M/s. Singareni Collieries
Company Limited

RESPONDENT

Date of Decision: Aug. 7, 2013

Citation: (2013) 6 ALD 306 : (2013) 5 ALT 691

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: N. Vijay, for the Appellant; Nandigam Krishna Rao, SC for Singareni Collieries,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.

This writ petition is filed seeking a Writ of Mandamus declaring the proceedings Ref. No. RGI/Gdk 1/W-03/04/984, dated 26.03.2004, issued by the respondent-Singareni Collieries Company Limited, determining the age of the petitioner as 25 years as on 12.01.1971 and fixing the date of superannuation as 31.01.2006, as illegal and arbitrary and consequently to direct the respondent-Company to rectify the same and incorporate the date of birth of the petitioner in his service records as 10.02.1950 and permit him to continue in service up to 31.01.2011. The petitioner was initially appointed as Badli Coal Filler casual worker in the respondent-Company, vide order No. K2/Est/4/71/803, dated 22.04.1971. The case of the petitioner is that in the school records his date of birth was mentioned as 10.02.1950 and as per the said entry he was aged about 21 years as on the date of joining in the respondent-Company, but the respondent-Company mentioned his age as 25 years instead of mentioning it as 21 years in his service register. His case is that the recruiting officials neither asked him to produce his date of birth certificate nor school leaving certificate in proof of age, and they themselves by

looking at him made self assessment and incorporated his age as 25 years in his service register, which was not communicated to him at any point of time. His further case is that during his service, he passed various examinations under the Mines Act and under Coal Mines Regulations 1957 and obtained Shot Firer's Certificate, SIRDAR Certificate and Overman's Certificate and in all the said certificates his date of birth was mentioned by the Chairman of Board of Mining Examinations as 10.02.1950 and that after joining the respondent-Company, he passed SSC and in the said certificate also his date of birth was mentioned as 10.02.1950. The case of the petitioner is that the respondent-Company issued proceedings dated 26.03.2004 assessing his age as 25 years and fixing his date of superannuation as 31.01.2006 instead of fixing the same as 10.02.2010. Questioning the said proceedings, the petitioner filed the present writ petition.

2. The respondent-Company filed counter affidavit denying the allegations of the petitioner and stating that the petitioner joined the respondent-Company as illiterate and he did not produce any evidence at the time of his entering into service as proof of his age, as such, as per the rules and practice in vogue, at the time of appointment the petitioner was examined by the Company's Medical Officer and his age was assessed as 25 years as on 12.01.1971 and the same was entered in his service book and the petitioner also affixed his thumb impression in the service book as a token of acceptance. The petitioner has intentionally got entered his date of birth as 10.02.1950 while possessing the Shot Firer and other statutory examinations and subsequently the same was entered in other service records. Their case is that in consonance with the JBCCI guidelines, the respondent-Company issued circular dated 23.11.2001 and as per the said guidelines in respect of cases of mining staff whose date of birth entered in statutory certificate basing on the SSC/HSC/Matriculation/SSLC certificate, acquired after joining the company or on the basis of any transfer certificate or otherwise and varying with the age mentioned in company records, the date of birth/age mentioned in company records at the time of initial appointment shall be treated as authentic and final and employee will be made to retire accordingly. The case of the respondent-Company is that since there is variation in the age recorded in the records of the company, the petitioner was called for determination of age by Area Age Determination Committee on 08.01.2004 and the said committee assessed and confirmed his age as 25 years as on 12.01.1971 and accordingly notice dated 26.03.2004 was issued to the petitioner informing the date of his superannuation as 31.01.2006. The petitioner acquired the SSC certificate in the year 1974 i.e., after joining in the respondent-Company.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent-Company.

4. Learned counsel for the petitioner submitted that the date of birth of the petitioner is 10.02.1950 and though he submitted all his educational certificates as

well as statutory certificates issued by the mines authorities indicating his age and date of birth as 10.02.1950, but the respondent-Company did not correct the wrong entries made in his service records. He further submitted that when the same date of birth is consistently mentioned in all the certificates of the petitioner prior to joining in the respondent-Company till now, calling the petitioner to appear before the age determination committee is bad and illegal. He further submitted that since the petitioner is one of the active union members, the respondent-Company, with an intention to deprive him from his service, subjected him for age assessment in defiance of his date of birth certificate and terminated him from service on 31.01.2006 though he is having another 5 years of service. He further submitted that the age determination has to be done only to the employees those who are not having date of birth or educational certificates, but not to the employees who are possessing requisite qualifications and having authenticated record. He further submitted that the action of the respondent-Company in calling the petitioner for determination of age by Area Age Determination Committee and altering his date of birth at the fag end of service is improper and not permissible under law. In support of the above contentions, he relied on the decisions reported in [Kore Gattaiah Vs. Singareni Collieries Company Ltd. and Others,](#) , [B. Komaraiah Vs. The Singareni Collieries Co. Ltd. and Another,](#) [P. Pochamma Vs. Principal Secretary, Technical Education, Govt. of A.P. and Others,](#) , [Kotte Rajam Vs. Singareni Collieries Company Ltd. and Others,](#) , and [Boddu Laxmi Rajam Vs. The Singareni Collieries Company Limited,](#)

5. Per contra, learned counsel for the respondent-Company submitted that the petitioner did not produce any evidence at the time of his entering into service as proof of his age, as such, as per the rules and practice in vogue, at the time of appointment the petitioner was examined by the Company's Medical Officer and his age was assessed as 25 years as on 12.01.1971 and the same was entered in his service book and the petitioner also affixed his thumb impression in the service book as a token of acceptance. He further submitted that in consonance with the JBCCI guidelines, the respondent-Company issued circular dated 23.11.2001 and as per the said guidelines in respect of cases of mining staff whose date of birth entered in statutory certificate basing on the SSC/HSC/Matriculation/SSLC certificate, acquired after joining the company or on the basis of any transfer certificate or otherwise and varying with the age mentioned in company records, the date of birth/age mentioned in company records at the time of initial appointment shall be treated as authentic and final and employee will be made to retire accordingly. He further submitted that the petitioner acquired the SSC certificate in the year 1974 i.e., after joining in the respondent-Company and since there is variation in the age recorded in the records of the company, the petitioner was called for determination of age by Area Age Determination Committee on 08.01.2004 and the said committee assessed and confirmed his age as 25 years as on 12.01.1971 and accordingly notice dated 26.03.2004 was issued to the petitioner informing the date of his

superannuation as 31.01.2006. In support of his contention, he relied on the decision reported in [G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others](#), . He has also relied on the unreported judgments of this Court passed in W.F. No. 32207 of 2010, dated 16.06.2011 and in W.A. No. 584 of. 2011, dated 17.11.2011.

6. The point that arises for consideration is whether the petitioner is entitled for the benefit of change of date of birth as claimed by him?

7. In Kore Gattaiah's case (1 supra), relied on by the learned counsel for the petitioner, admittedly the age of the petitioner therein was determined as 25 years as on the date of joining into service and subsequently the respondents tried to alter the date of birth as determined by the apex medical board. The petitioner informed the apex medical board that he has no evidence to substantiate his age. Admittedly, there was no consistency with regard to the date of entry of the petitioner in service records. In the above circumstances, it was held that the petitioner therein was bound by the decision of the apex medical board. In that decision there is reference to the implementation of Instruction No. 76 of the Joint Bipartite Committee for Coal Industries (JBCCI) and the learned counsel for the petitioner is relying on those instructions. The same will be referred in the subsequent paras.

8. In B. Komaraiah's case (2 supra), the petitioner therein had entered into service as Munshion on 17.03.1958. He claimed that he produced transfer certificate at the time of joining duty. According to him, his age was wrongly recorded as 26 years as on 17.03.1958. Then he made a request to correct his date of birth as 11.07.1935. In support of his claim he filed true copy of transfer certificate. This Court observed that the transfer certificate issued by the Government institution is prima facie evidence of its contents and presumption may be rebuttable u/s 114(c) of the Evidence Act. It was also observed that in the absence of any evidence that the certificate was obtained fraudulently or was tampered with or was otherwise undependable, respondents are bound to consider the same as authentic document indicating the date of birth of the person in whose favour it was issued.

9. Reliance is also placed on P. Pochamma's case (3 supra). In that case, the management retired the petitioner on 31.07.2003 on the basis of date of birth fixed by them instead of the date of birth recorded in the service register. The petitioner claimed that she submitted a certificate issued by the Sarpanch of Grampanchayat showing the date of birth. She has also produced certificate issued by the Doctor. So, at the time of initial appointment her date of birth was noted as 16.05.1950 basing on the certificate issued by the Sarpanch of the village. This Court observed that when the certificate was never challenged and no enquiry was conducted, the respondents were not justified to determine her age on the basis of forensic report which was ever put to the petitioner.

10. Reliance is also placed on Kotte Rajam's case (4 supra), wherein the age of the petitioner as on the date of entry in to service was mentioned in the service book, B register and identity card as 25 years. It was nearly 32 years later the respondent sought to doubt the correctness of the age of the petitioner that too when he submitted application for voluntary retirement. In the circumstances, the writ petition filed by the petitioner therein was allowed.

11. Reliance is also placed in Boddu Laxmi Rajam's case (5 supra). In that case the petitioner joined the service of Singareni, Collieries Company Limited on 28.10.1975. His age was mentioned as 21 years as on the date of joining the duty. The same was reflected in the identity card as well as in "B" register. In 1996 when he was referred to medical examination, his age was mentioned as 25 years as on the date of appointment. When the petitioner disputed the action of the respondents, he was referred to the apex medical board. Challenging the decision of the medical board he filed the writ petition. The Court observed that it was only in 1996 when the petitioner was to attend for a routine medical examination his age was mentioned as 25 years in the reference form.

12. As seen from the above decisions, as far as the entries made at the time of initial appointment are concerned, the case of the petitioner is totally different. In the instant case, the petitioner's case is that treating him as an illiterate his age was determined as 25 years at the time of his initial appointment, but it is incorrect. According to the petitioner, he had been to Primary School and the school records reveal his date of birth and that soon after joining the service, he continued his studies and passed SSC as private candidate and informed the respondent-Company about his actual date of birth and in all other certificates such as Shot Firer Certificate, SIRDAR Certificate and Overman's Certificate his date of birth has been correctly mentioned as 10.02.1950. So, it appears that the above referred decisions are not much useful to the petitioner except the decision reported in B. Komaraiah's case (2 supra).

13. Learned counsel for the respondent-Company has relied on a decision reported in G.M. Bharat Coking Coal Limited., West Bengal v. Shib Kumar Dushad (6 supra). In that case, the case of the respondent was that he was an employee of a private colliery before being absorbed in the service of the appellant-Bharat Cooking Coal Limited on nationalization of the colliery. He asserted that his service records received from the previous employer showed his year of birth as 1932. After 20 years he raised a claim that his date of birth was 09.02.1946 and not 1932. He was referred to medical board. The medical board after examining the employee, determined his age as 52 years in 1988. Accepting the report of the medical board his year of birth was determined as 1936 and accordingly he was given all the benefits of superannuation in 1996 instead of 1992. Again he approached the High Court claiming that his year of birth is 1946 and not 1932. Referring to the certificates issued for gas testing and mining sirdarship, it was observed that when

the certificates were not issued by the Manager of the colliery who was competent authority in the matter it was incumbent on the respondent to place evidence on record and material that the date of birth as entered in the certificates is the correct one. Referring to the school certificate produced by him it was observed that there was no material on record to show that when the document was issued to the employee or that he had produced a copy of the same when he entered into the service and if at all he had furnished that certificate why it was not sent with the service records when the service of the employee was taken over by the appellant. It was also observed that if at all the date of birth as given by the employee is accepted then he would have been 14 years of age when he joined service in 1960. So for valid reasons and basing on the facts and circumstances of the case, the contention of the employee was not accepted in that case.

14. The respondent-Company has also relied on a judgment of this Court passed in W.P. No. 32207 of 2010, dated 16.06.2011. In that case the petitioner, who was appointed in 1983 and got further promotions, has relied on transfer certificate and other certificates. At the time of joining in service his date of birth was shown as 15.01.1951. It was observed that the petitioner had not produced those documents on earlier occasion. In view of the delay in furnishing those documents and in view of the fact that the employee was retired, his case was not considered.

15. Reliance is also placed on a Division Bench judgment of this Court passed in W.A. No. 584 of 2011, dated 17.11.2011. In that case just before his superannuation the employee applied for change of date of birth on the basis of certain documents obtained by him. In the circumstances, the claim of the employee was not accepted.

16. The crucial aspect in this case is whether the documents furnished by the petitioner can be accepted and whether the stand of the petitioner has been consistent. According to the petitioner, he was born on 10.02.1950. His father got him admitted in Primary School on 05.06.1956. At the time of joining the school, his date of birth was mentioned as 10.02.1950 basing on the information furnished by his father. He left the school while he was studying 7th class and he could not continue his studies. Admittedly, the petitioner joined in service on 22.04.1971. According to the respondent-Company, on the date of his appointment the petitioner's age was shown as 25 years. According to the petitioner, he was only 21 years in 1971 i.e., when he joined the respondent-Company as Badli Coal Filler. His services were confirmed in 1972. According to the petitioner, he has no knowledge with regard to mentioning of his age as 25 years at the time of his appointment. According to the petitioner, he passed examinations under Coal Mine Regulations of 1957 and obtained Shot Firer Certificate and Sirdar certificate on 07.08.1974 and 03.03.1976 respectively, wherein his date of birth was mentioned by the Chairman, Board of Mining Examinations as 10.02.1950. He has also passed Overman's examination and obtained certificate on 30th October 1978. In that certificate also his date of birth was mentioned as 10.02.1950. It is also his case that he passed SSC

and in the Board of Secondary School Certificate also his date of birth was mentioned as 10.02.1950. He has also completed graduation in AP Open University on 05.05.1999. The petitioner is relying on the circular dated 01.08.1988 issued by the respondent-Company for determining the age in case of dispute.

17. It is not in dispute that there is in-house mechanism in determining the age. The Joint Bipartite Committee for Coal Industries (JBCCI) has passed Implementation Instructions No. 76 to resolve the age disputes. The relevant Clauses of JBCCI with regard to resolving age disputes read as 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 recognized 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/Boards/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.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Age Determination Committee/Medical Board.

(C) Age Determination Committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or B(i)(b) above, the date of birth recorded in the records of the Company, namely, Form B- Register, CMPF Records and Identity Cards (Untampered) will be treated as final. Provided that where there is a variation in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for determination of age.

18. There cannot be any doubt to say that the age of the petitioner was shown as 25 years at the time of his initial appointment. It may be also a fact that the petitioner had affixed his thumb impression on the relevant documents at the time of his appointment. However, the crucial aspect is whether the claim of the petitioner is genuine and whether his claim has to be thrown out merely because he had affixed his thumb impression on the relevant papers at the time of his appointment. Admittedly, the petitioner was appointed as Badli Coal Filler Casual Worker. No educational qualifications are required for that post and when the, person gets an

opportunity to join the service and where educational qualifications are not required, it is for the officers concerned to ascertain the correct age and guide the employees properly. They cannot take advantage of the illiteracy or semi-literacy of the candidates who come forward to join the post.

19. In this case, the petitioner filed the admission certificate issued by the Head Master of the Primary School, wherein his date of birth was shown as 10.02.1950. This document is dated 05.06.1956 i.e., prior to the date of petitioner joining into service. The respondent-Company has not disputed the genuineness of this document. The petitioner had also obtained Shot Firer's Certificate, dated 07.08.1974, Sirdar's Certificate, dated 03.03.1976 and Overman's certificate dated 30.10.1978, under Mines Act, 1952 and under Coal Mines Regulations, 1957. The said certificates were signed by both the Secretary and Chairman of the Board of Mining Examinations. In all the said certificates the date of birth of the petitioner was mentioned as 10.02.1950. The petitioner has also filed SSC certificate with Role No. 180550, dated 18.06.1974 to show that he passed SSC examinations held in April 1974, wherein his date of birth was shown as 10.02.1950. Admittedly, the petitioner obtained shot firer certificate on 07.08.1974 i.e., within three years from the date of his initial appointment. The date of birth of the petitioner in all the said documents is consistently shown as 10.02.1950 and the genuineness of the said documents is not in dispute. Besides the certificates, the petitioner also filed study certificate issued by the concerned head of the institutions and transfer certificates issued by Dr. B.R. Ambedkar Open University. He has also filed copy of attendance register. This copy of attendance register-cum-admission certificate admitting him into first class are very old documents i.e., more than 30 years old. When an employee soon after joining into his service or within five years from the date of joining his service, consistently claims a particular date as his date of birth and furnishes school record, may be Primary School record and when genuineness of such record is not in dispute, the claim of such employee cannot be rejected without valid reasons. When an employee passed all the departmental tests showing the date of birth as claimed by him and the concerned authorities issued certificates accordingly it becomes clear that such employee consistently claimed his date of birth as contended by him. The only presumption that can be drawn is that the authorities who issued Shot Firer's Certificate on 07.08.1974, Sirdar's Certificate on 03.03.1976 and Overman's certificate on 30.10.1978, in all probabilities must have issued those certificates mentioning his date of birth only after making reasonable enquiry and after satisfying themselves about the date of birth particulars and the documents furnished by the petitioner. When the respondent-Company accepted those documents i.e., Shot Firer Certificate etc., and acted upon those certificates without disputing the date of birth mentioned therein, they cannot say that those documents are not relevant documents. When the respondent-Company receives such statutory certificates, before acting upon those certificates and before promoting an employee basing upon those certificates they must verify whether the

date of birth mentioned in those certificates is in conformity with the date of birth mentioned at the time of initial appointment and if there is contradiction they must resolve the dispute before acting upon such statutory certificates. It has to be seen that each case has to be decided on its own facts and circumstances. It is clear from Instruction No. 76 issued by the Joint Bipartite Committee referred above that Mining Sirdarship, Winding Engine or similar other Statutory Certificates where the Manager had to certify the date of birth will be treated as authentic. When the genuineness of those documents are not in dispute and when those documents have been acted upon by the respondent-Company without any dispute, those certificates have to be taken into consideration. Moreover in this case the petitioner has produced his primary school record in support of his claim. In the above circumstances, I am of the considered view that the claim of the petitioner cannot be denied.

20. In view of the above discussion, the writ petition is allowed as prayed for. No costs. As a sequel, the miscellaneous petitions, if any, pending in this writ petition shall stand closed.