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Sanjit Kumar Mukherjee @ Sanjit Mukherjee Vs Coal India Limited and Others

Writ Petition No. 385 of 2012

Court: Calcutta High Court

Date of Decision: Sept. 3, 2013

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: P. Ghosh and Mr. S. Chatterjee, for the Appellant;A. Halder, for the Respondent

Final Decision: Dismissed

Judgement

Sambuddha Chakrabarti, J.
By the present writ petition the petitioner inter alia has prayed for a writ in the nature of Mandamus

commanding the respondents to correct the date of birth of the petitioner as May 2, 1955 as per the school certificate and admit card and a writ in

the nature of Mandamus to declare the date of birth recorded in the official records as illegal. The case of the petitioner inter alia is that he is an

employee of the Eastern Coal-Fields Limited, i.e., the respondent No. 2 herein. He appeared at the School Final examination and in the admit

card, which was issued to him, it appears that the date of birth was May 2, 1955. He thereafter pursued his further studies and obtained

postgraduate degree in sociology as well as a degree in law. In 1987 the respondents authorities supplied to all employees service excerpts to raise

any objection with regard to the same so that the mistake could be rectified. He found that his date of birth was correctly mentioned and as such he

did not raise any objection in the columns specified for that.

2. The further case of the petitioner is that the respondents had forwarded particulars of the family and the nomination of the petitioner in the year

1998. From that also it appeared that May 2, 1955 was accepted by the authorities on his date of birth. But when he learnt that in the service

record his date of birth was mentioned as 1952 he raised a dispute regarding his date of birth and the respondent No. 5 herein wrote a letter to the

General Manager (System) to the headquarter of the respondent No. 2 with a request to confirm the record regarding the date of birth of the

petitioner in the system record of the headquarter. Thereafter, the respondents had forwarded an application before the West Bengal Board of

Secondary Education for verification of the result and the date of birth of the petitioner and the Board of Secondary Education in turn replied that

the date of birth of the petitioner is May 2, 1955.

3. The petitioner thereafter requested the Senior Manager (P)IR, Headquarters of the respondent No. 2 to correct his date of birth as per the

school certificate. This has been regretted by the respondents and the petitioner alleged that finding no alternative he had to file this present writ

petition.

4. The writ petition has been contested by the respondents by filing an affidavit-in-opposition. It has been their case that the petitioner was

appointed in Kunustoria Colliery on January 20, 1973 in a non-executive cadre and when he was appointed he did not pass matriculation

examination. The petitioner had annexed a duplicate copy of the admit card, dated February 29, 2012 along with the writ petition while he had

claimed that during the month of May, 1973 he had appeared in the School Final examination. He could not qualify in the said examination and had

appeared in the compartmental examination in the next year. The respondents further alleged that after appointment on January 20, 1973 the

petitioner had submitted his application form directly on his own to the Board of Secondary Education declaring his personal particulars including

the date of birth. As such the respondents cannot accept its responsibility to vouch the personal declaration of the petitioner.

5. The petitioner was required under the relevant provisions of the Mines Rules to execute Form B on August 1, 1990. He had signed the said

form wherein in column 4 he had declared his date of birth as 1952 and under column 10 his date of termination or date of leaving the employment

was mentioned as 2012. A copy of the said form has been annexed to the affidavit-in-opposition. At the time of transfer from Kunustoria Colliery

to Kenda Colliery in the year 1997 the Last Pay Certificate was issued from the office of the Agent, Kunustoria Colliery which also would reveal

that in column 4 thereof that the date of birth of the petitioner had been recorded as July 1, 1952. In the year 1997 also the petitioner had

exceeded another Form B. There also in column 4 he had declared his year of birth as 1952.

6. According to the respondents a study of the copy of the service book where with the photo of the petitioner details of his name, father''s name,

designation etc. have been embossed would resolve all doubts and would lead to the conclusion that the date of birth of the petitioner had been

printed and recorded as 1952. The respondents had relied on Implementation Instruction of National Coal Wage Agreement III which provides

that in a case where instead of date of birth year had been recorded, July 1 of the year would be deemed to be the date of birth. Accordingly, in

the case of the petitioner who had declared the year of birth as 1952 the date of birth has been recorded as July 1, 1952.

7. The respondents further relied on a clause of the said Instrument that in respect of the existing employees Matriculation or Higher Secondary

certificate should be treated as correct provided they were issued by the appropriate authority prior to the date of employment. The respondents

have alleged that the petitioner instead of disclosing his exact date of birth preferred to declare his year of birth as 1952. With reference to the

allegations made by the petitioner with regard to the documents in connection with his nomination, family etc., the respondents contended that these

documents were submitted by the petitioner himself and they relate to the declaration of the members of the family for the purposes of pension and

these declarations were self-declarations regarding the details of the dependants and the nomination for the purposes of pension and cannot be

treated as an authentic for the purpose of considering the actual date of birth. Only the statutory B Form register is the authentic document for the

purpose of determining the date of birth for an employee employed in coal mines. The respondents have alleged that the petitioner was fully aware

that his date of birth was recorded in the B Form register as 1952 to which he had put his signature as a token of his confirmation and acceptance

thereof which he cannot deny. The B Form register is a statutory record under the Mines Act and is binding upon the parties. The respondents

have acted in terms of the provisions of Implementation Instruction No. 76 and the petitioner has no valid ground to file the present writ petition.

8. To this affidavit-in-opposition the petitioner has affirmed an affidavit-in-reply largely reiterating his contentions made in the writ petition itself.

The petitioner states that Coal Mines Acquisition Act, 1973 had come into force on May 1, 1973 which is the ""Appointed Date"" of the said Act.

Hence from this date the services of the employees of the coal industries should be treated as the date of employment and before that date an

employee should not be treated as an employee of the coal industry. The petitioner had submitted the school certificate dated April 11, 1972

issued by the Headmaster of the school where he had studied before the appointed day.

9. The petitioner has further alleged that the bio-data including the date of birth has been carried and forwarded from the school records. He has

very specifically denied to have ever declared 1952 as the date of birth because the date of birth of a person cannot be a year. According to the

petitioner every employee was required to sign the B Form but raising of any objection in the said form was not permissible as in the case of

service excerpts forms. The petitioner alleges that until and unless he puts his signature in the said form he would not be permitted to work. This

does not mean that he had accepted his date of birth as fixed by them. According to the petitioner in the date of birth which has been mentioned by

the respondents no details have been given as to how the said date of birth was fixed and what was the source of such date of birth. With regard to

the allegation of the respondents relating to the recording of the date of birth in the Last Pay Certificate at the time of his transfer the petitioner says

that the same was purely an internal document and the petitioner is not responsible for any wrong entry made therein.

10. It may be mentioned that with the leave of the court the respondents have filed two supplementary affidavits. With the first affidavit a copy of

the Service Book of the petitioner has been enclosed and with the second affidavit a copy of the service excerpts was recorded.

11. Pursuant to the order of the court the respondents had produced the original service book of the petitioner in court.

12. The competing claims between the petitioner and the respondents may be reduced to comparative acceptability of two documents. They are

the educational certificate so far as the petitioner is concerned and his own declarations in different documents from the point of view of the

respondents. The sheet anchor of the petitioner''s case is a certificate given by the Headmaster of the school of which the petitioner was a student

which shows that his date of birth as per the school record is May 2, 1955. The petitioner has also relied on the Admit Card issued by the West

Bengal Board of Secondary Education which also records the same date of birth. Relying on the same the petitioner has developed the case that

his date of birth must be reckoned as May 2, 1955 and any other date that might have been recorded in the service record of the petitioner must

be deemed to be invalid and not relevant for computing the petitioner''s date of retirement.

13. The petitioner has also referred to several other documents in connection with his employment. He particularly relies on the service excerpts

dated April 26, 1987 which was circulated to him for filling the blank columns and for necessary corrections. There the date of birth was recorded

as May 2, 1955. The petitioner''s case is that since this service record contained the correct date of birth he had no reason to correct it and he was

subsequently taken aback when the authorities decided to retire him in July, 2012 taking 1952 as his year of birth.

14. Mr. Alok Banerjee, the learned Advocate for the respondents has very strongly relied on the documents executed by the petitioner himself.

According to him the petitioner himself had declared 1952 in the Form B as his year of birth. In the Last Pay Certificate dated January 23, 1997

his date of birth was recorded as July 1, 1952 which was accepted by the petitioner. Even in the service book there is a photograph of the

petitioner on which his name, his father''s name and the date of birth have been embossed and that also has recorded 1952 as his year of birth.

15. Mr. Banerjee submits that the petitioner himself had corrected his date of birth in the relevant official documents and had endorsed his signature

thereon. He particularly refers to the Service Book of the petitioner where May 2, 1955, which was initially written, was scored through and has

been substituted by the figure ''1952'' and the petitioner has authenticated the said recording by his own initials. In a very vital document, i.e., in the

service record of the petitioner the date of birth has been recorded as 1952 and the petitioner had put his signature to that. In fact, there are

various documents where the date of birth of the petitioner had been recorded as 1952 by the petitioner himself and applying the rule for fixing the

date of birth of the employees in the respondent No. 1 company where no specific date is given by an employee the respondents had fixed July 1

as the date of birth of the petitioner.

16. It is true that the date of birth mentioned in the Admit Card or an equivalent document issued by a Board of examination is generally taken to

be an authentic one and Mr. Ghosh the learned Advocate for the petitioner in support of his contention has referred to several judgements. He has

referred to the case of Kamta Pandey Vs. B.C.C.L. and Others, where the full bench of the Jharkhand High Court had referred to Implementation

Instruction No. 76 and held that in the case of the existing employees the date of birth mentioned in the Matriculation Certificate alone shall be

treated as authentic and correct. The Jharkhand High Court further held that if it is found that the said certificate which was issued by a recognized

University or Board of education it cannot be altered under any circumstance. Therefore, it cannot be said that entries made in the service register

by the employee would nullify the effect or the object with which this instruction No. 76 has been introduced. This judgment, however, cannot be

made applicable to the facts of this case as in that case what was recorded in the B Form was that the petitioner was aged about 23 years in 1971

making 1948 as his year of birth. As against this recording in the B Form the identity card showed his date of birth as 1.7.1951 reflecting the date

of birth mentioned in the matriculation certificate. The Jharkhand High Court held that this showed that the matriculation certificate was recognized

by the respondents authorities. Moreover, there were other records as well where his date of birth was also recorded as July 1, 1951. This,

however, is not the case here. Even if the date of birth recorded in the Admit Card issued by the statutory board be May 2, 1955 it may not be

lost sight of that in umpteen number of documents the petitioner himself changed the year of birth and as a mark of authentication had put his

initials. These declarations of the year of birth are binding on him and there is no satisfactory explanation why he did it except the feeble one that

unless he signed it there would not have been any employment for him. This is too unconvincing and fragile an explanation to rely on.

17. On the top of everything the conduct of the petitioner leaves much to be expected. In the service excerpts his date of birth was recorded as

May 2, 1955. This has been strongly relied on by the petitioner as evidence of his correct date of birth. As against that the respondents have taken

a very specific stand that the petitioner himself had written the said form and, therefore, he filled up the way he liked. Mr. Partha Ghosh, the

learned Advocate for the petitioner, admitted it; but tried to justify it by saying that by virtue of the position he held he filled up forms of about 600

employees. Be that as it may, the fact remains that the petitioner himself had filled up the form in his handwriting. In spite of it he has pleaded in the

petition that he noticed that the date of birth had been mentioned there correctly and, therefore, he did not raise any objection in the specific

column.

18. This is a clear case of deliberate suppression of fact and an effort to mislead the court by giving a wrong information. The petitioner initially

tried to make believe as if this was a document prepared by others and, was thereafter circulated to him for raising any objection if it contained any

mistake. He never disclosed that this was his own creation and as such the question of his discovery about his date of birth was redundant. The

petitioner by trying to create this impression did something wrong. This court cannot praise the conduct of the petitioner.

19. Mr. Ghosh has referred to an unreported judgment dated April 30, 2013 in the case of Sukumar Dawn Vs. Coal India Limited & Ors. (WP

No. 425 of 2012). The facts of that case, however, were different from those in the present one. That was a case where the petitioner raised his

age dispute in the year 1987 and respondents did not raise any question about the authenticity of the admit card. That was a case where the

petitioner himself had corrected his date of birth as against the one mentioned in the admit card. Here the petitioner despite his knowledge about

the date of birth mentioned in the admit card had given a contrary date of birth and had all through written his year of retirement to be in 2012. This

is a case where the petitioner had raised his dispute with regard to the date of birth towards the fag end of his career and this is a settled principle

of law that any dispute raised towards the fag end of an employee"s career regarding the date of birth is not to be accepted. Mr. Banerjee has

referred to the case of Birad Mal Singhvi Vs. Anand Purohit, for a proposition that the entry regarding the age of a person in a school register is of

not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. He has further referred to

a division bench judgment of this court reported in the case of Saroj Kumar Bhattacharya Vs. Bengal Immunity Ltd., where the division bench had

observed on the distinction between a regular student and a private student. In the case of a regular student his age or date of birth is registered

with the register of the school where the school authorities insist upon production of some records or documents or statements made from the

guardian and the same is also considered in view of the appearance of the boy by the trained and experienced teachers. In such a case there is

very little scope for suppressing the real age or to manipulate the age before the teachers who are dealing with these things of similar students and

in that case the age recorded in the school register is reflected in the matriculation or the school final certificate. But in the case of a private student

the concerned Board accepts the age declared by the candidate in the application form without any verification and in such a case any age may be

declared suppressing the real age. The division bench had further held that documents which had come into existence subsequent to admission in

service cannot be made a ground for correcting something with retrospective effect. The respondents contended that the petitioner also appeared

as a private candidate. Whatever that may be, it cannot also be lost sight of the fact that the Headmaster of the school who had given the certificate

in April, 1972 certified that the petitioner was a student of class X and that school was established only in the year 1969 which means that the

petitioner did not prosecute his studies right from the beginning in the school.

20. Mr. Ghosh has relied on a judgment and order dated January 11, 2008 passed by a division bench of this court in Sri Baidya Nath Tiwari Vs.

Coal India Limited & Ors. (APOT 47 of 2007, WP 547 of 2007). There the division bench had held that the date of birth of the appellant ought

to have been rectified by the respondent authority as per the school final certificate. The division bench set aside the conclusion of the learned

single judge in that case that the petitioner had appeared as a private candidate and held that it is immaterial whether the appellant appeared as a

private or a regular candidate and held that: ""what is relevant in the context of the matter in dispute is the actual date of birth declared by the

appellant for appearing at the School Final Examination before joining the service. The date of birth declared by an employee before joining the

service and recorded in the School Final Certificate or school leaving certificate has to be accepted as the correct date of birth of the said

employee.

21. This judgment, however, is not applicable to the facts of the present case and can easily be distinguished on the facts. The appellant in that

appeal had passed the School Final Examination in the year 1969 before he joined the Coal Company and his date of birth was recorded as

August 13, 1948. Subsequently, in the year 1987 he raised a dispute regarding the wrong recording of date of birth in his service record. As per

the provisions contained in Implementation Instruction No. 76 the date of birth recorded in the school leaving certificate is to be accepted provided

the petitioner appeared at the examination before he joined the company. In the present case, however, the petitioner joined subsequently. The

attempt of Mr. Ghosh to fix the appointed day as May 1, 1973 has no connection with the date of joining of an individual employee. The whole

purpose behind adopting the policy that a school leaving certificate in order to be acceptable must be before an employee joins the company, will

be nullified if a notional date of joining is fixed with reference to an Act.

22. The petitioner has further relied on a judgment and order dated December 16, 2008 passed in the case of Sri Mahendra Dave Vs. Coal India

Limited and Ors. (MAT 624 of 2008) wherein a division bench had held that the date of birth recorded in the Matriculation Certificate should

alone be treated as a conclusive proof of age. For the reasons for which the case of Kamta Pandey (Supra) is not applicable to the facts of the

present case the case of Mahendra Dave too is to be held inapplicable. In the present case the admit card was issued subsequent to his

appointment and the effect of the date of birth mentioned in the admit card has been significantly nullified and destroyed by his own declaration of

1952 as the year of birth. In an uncomplicated case the date of birth recorded in the school leaving certificate may be accepted as an authentic

document. But where, as here, a competing date of birth is declared by the same candidate he cannot subsequently take advantage of the school

leaving certificate at the time of retirement.

23. The petitioner further referred to the case of Food Corporation of India Vs. Ratan Dey, for the same proposition as in the case of Mahendra

Dave (Supra) and Baidya Nath Tiwari (Supra). In that case the appellant at the time of joining the service specifically declared his date of birth as

March 12, 1954 which was recorded in the service record and both the learned trial judge and the division bench had held that he had although

claimed that date as his date of birth which was also recorded by the West Bengal Board of Secondary Examination. Needless to mention, such is

not the position in the present case. The petitioner while entering the service had declared 1952 as his date of birth. One would have had no

difficulty in accepting the date mentioned in the school leaving certificate as his date of birth if the petitioner had been consistent in the declarations

of his date of birth. He had mentioned different dates and on occasions corrected the date of birth and authenticated the same by putting his initial.

In the absence of any cogent explanation he must be held to be bound by his own conduct.

24. The next case relied on by Mr. Ghosh is that of Gadadhar Konar Vs. Union of India, where a division bench of this court directed the

authorities not to rely on the date of birth mentioned in the register on the basis of the report submitted by the Age Determination Committee. The

school leaving certificate recorded the date of birth of the petitioner as June 4, 1959. The court had held that the school leaving certificate was

issued by the headmaster of the concerned school prior to the joining of the appellant in the employment of the respondents. The factual difference

between case of Gadadhar Konar (Supra) and the present is far too obvious to ignore. Moreover, the date of birth in Gadadhar Konar was

declared by the petitioner and recorded in the service records. This was sought to be altered from the one recorded in the service record on the

basis of the report of the Age Determination Committee and it was in this context that the said judgment is to be read and appreciated. In the

present case, the respondents did not intend to alter it on the basis of the medical examination report. I find, they merely sought to enforce the initial

declaration made by the petitioner about his date of birth.

25. Mr. Ghosh next refers to the case of Bajrangi Rabidas Vs. Chairman, Managing Director, E.C.L. Ltd. and Others, . This case also cannot be

of any help to the petitioner as in that case the date of birth mentioned in the Matriculation Certificate tallied with the date of birth recorded in the

service record of his original employer and the same date of birth was mentioned in his identity card as well. After the nationalization of coal mines

the appellant in that case became an employee of the Eastern Coalfields Limited. The Court had accepted the date of birth recorded in the

Matriculation Certificate which was the same as recorded in the service records and that was before the nationalization of the coal mines. In a

sense this judgment goes against the petitioner. The division bench had held that the date of birth originally recorded by the employer at the time of

joining the service could not be changed by the subsequent employer of the same establishment without serving any notice and granting adequate

opportunity to the concerned employee. This means that the division bench had attached due importance to the date of birth recorded by the

former employer. This belies the effort of the petitioner to treat the appointed date as mentioned in the concerned Act as the date of employment of

the petitioner.

26. Thus the petitioner has absolutely no case. No judgment referred to by the respondents supports his case. The year 1952 declared by him

must be deemed to be the year of birth of the petitioner. I do not find any infirmity in the order impugned of the respondents calling for an

interference by this court.

27. The writ petition is devoid of all merits and is hereby dismissed.

28. There shall, however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to

compliance with all requisite formalities.