(2007) 08 CAL CK 0062

Calcutta High Court

Case No: FMA No. 169 of 2006

Bajrangi Rabidas		APPELLANT
	Vs	
Chairman, Managing Director, E.C.L. Ltd. and Others		RESPONDENT

Date of Decision: Aug. 17, 2007

Acts Referred:

- Coal Mines Regulations, 1957 - Regulation 15(1), 15(2)

Citation: (2008) 2 CHN 259 : (2007) 115 FLR 590

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: C.R. Bag and Monojit Bhattacharyya, for the Appellant;Raja Basu Chowdhury and Sanchita Barman Roy, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.
Whether the date of birth of the appellant recorded in the Madhyamik Examination Certificate of Bihar Vidyalaya Pariksha Samity can be altogether ignored by the employer in view of the recording of different date of birth of the said appellant/writ petitioner in Gas Testing Certificate under the Mines Act, 1952, Sirdar''s Certificate under Coal Mines Regulations, 1957 and also Overman''s Certificate of Service under Coal Mines Regulations, 1957.

2. The appellant/writ petitioner initially joined the services of the Bengal Coal Co. Ltd. at Chinakuri Mine No. Ill on 9th January, 1970 as Mining Sirdar. After nationalisation of the coal mines, the said writ petitioner became an employee of Eastern Coal Fields Ltd.

3. It is not in dispute that all the individual coal companies operating prior to the nationalisation had to submit employment particulars of their employees to the competent

authority of the nationalised coal company. It is the case of the appellant/writ petitioner that the original employer, namely, Bengal Coal Co. Ltd. recorded the date of birth of the said appellant as 2nd April, 1948 on the basis of the date of birth recorded in the Matriculation Certificate and the said date of birth was thereafter also mentioned in the Identity Card issued by the said Bengal Coal Co. Ltd. After the nationalisation of the coal mines, the appellant/writ petitioner became an employee of Eastern Coal Fields Ltd., a subsidiary of Coal India Limited as a taken over staff of the private coal company.

4. According to the appellant, important excerpts from the service records of the said appellant were recorded in a document dated 15th May, 1987 and were- issued under the signature of the competent authority of the Eastern Coal Fields Ltd. wherein the date of birth of the appellant/writ petitioner was shown to be 2nd April, 1946. It is the specific case of the said appellant/writ petitioner that while acknowledging the receipt of the said document, specific objection was also raised in respect of wrong recording of the date of birth in the service records and the appellant requested the concerned authority to rectify the aforesaid mistake by recording the correct date of birth in the service records as 1948 in place and stead of 1946 on the basis of Matriculation Certificate.

5. Since the respondent authorities did not correct the date of birth pursuant to the request of the appellant/writ petitioner on the basis of the Matriculation Certificate, a writ petition was filed before this Court in the month of March, 2001 and the said writ petition was finally disposed of by the order dated 30th July, 2003 whereby and whereunder the respondent authorities were directed by this Hon''ble Court to give a decision on the objection raised by the writ petitioner regarding the wrong recording of the date of birth in the service excerpts recorded in the document dated 15th May, 1987.

6. Pursuant to the said order of this Hon''ble Court, General Manager, Eastern Coalfields Ltd., Sodepur area considered the objection of the appellant herein and by the order dated 26th February, 2004 disposed of the said objection by rejecting the claim of the appellant for recording his date of birth on the basis of the Matriculation Certificate. Challenging the said decision of the respondent authorities appellant herein filed another writ petition, which was finally decided by a learned Single Judge of this Court by the judgment and order under appeal. The learned Single Judge while deciding the said writ petition specifically recorded his satisfaction about the decision given by the concerned respondent rejecting the claim of the appellant to record his date of birth on the basis of the Madhyamik Certificate.

7. Assailing the aforesaid decision of the learned Single Judge, learned Counsel of the appellant submits that the respondent authorities herein cannot alter the date of birth of a taken over staff like his appellant herein ignoring the fact that at the time of joining the service in the private coal company, correct date of birth was duly recorded in the service records on the basis of the Matriculation Certificate.

8. The learned Counsel of the respondent authorities, however, submits that the appellant/writ petitioner was appointed by the private coal company as Mining Sirdar on 9th January, 1970 on the basis of the Gas Testing Certificate issued under the Mines Act, 1952 and Sirdar''s Certificate under the Coal Mines Regulations, 1957 wherein the date of birth of the said appellant was recorded as 2nd April, 1946. The said appellant also passed Overman''s Certificate of Service under Coal Mines Regulations, 1957 wherein the date of birth of the said appellant was also recorded as 2nd April, 1946. It has further been submitted on behalf of the respondent authorities that the service records and the ''B'' Form were signed by the appellant wherein the date of birth of the appellant was specifically mentioned as 2nd April, 1946.

9. The appellant herein, however, categorically submitted that the aforesaid wrong recording of the date of birth was noticed by the said appellant for the first time from a document containing important excerpts from the service records and issued by the concerned authority of the Eastern Coal Fields Ltd. on 15th May, 1987.

10. It has never been disputed that the date of birth of the appellant was recorded in the Matriculation Certificate as 2nd April, 1948 and the identical date of birth was also recorded in the Identity Card issued by the Bengal Coal Co. Ltd in the year 1970 at the time of initial appointment of the said appellant in the service. It has not been explained by the respondent authorities how and under what circumstances the date of birth of the appellant was subsequently changed in the service records. It is true that the date of birth of the appellant herein was recorded as 2nd April, 1946 in the Gas Testing Certificate, Sirdar''s Certificate and Overman''s Certificate of Service. According to the respondents, the writ petitioner gained advantage at the time of passing the Miningship Examination by disclosing higher age and consequently obtained the initial appointment in the Bengal Coal Co. Ltd.

11. We are unable to accept the aforesaid contention made on behalf of the respondents as in the Coal Mines Regulations, 1957, it has been specifically provided that no person shall be admitted as a candidate to any examination for Overman''s or Sirdar''s Certificate unless he has passed the Secondary School Examination of a recognised Board or its equivalent. Regulation 15(2) of the said Coal Mines Regulations, 1957 is set out hereunder:

15. Age and general qualifications of candidates.-

(1) ....

(2) No person shall be admitted as a candidate to any examination for Manager''s, Surveyor''s, Overman''s or Sirdar''s Certificate unless he has passed the Secondary School Examination of a recognised Board or its equivalent, and for an Engine-driver''s or Shot firer''s Certificate unless he satisfies the Board that he is literate;....

12. The appellant herein admittedly passed the Madhyamik Examination in the year 1963 wherein the date of birth of the appellant was recorded as April 2, 1948. The appellant appeared at the Gas Testing Examination in May, 1969 and at the Ridership Examination held on July, 1969. The said appellant could not be admitted as a candidate to the said Overman''s and Sirdar''s Certificate Examination in the year 1969 without submitting the pass certificate of the Madhyamik Examination wherein the date of birth of the said appellant was recorded as April 2nd, 1948. The appellant herein could not be held responsible for wrong recording of the date of birth in the Overman''s or Sirdar''s Certificate in spite of production of the Matriculation Certificate wherein the correct date of birth of the said appellant was recorded.

13. It has been urged on behalf of the respondent authorities that the appellant intentionally suppressed the correct date of birth for the purpose of wrongful gain as according to the respondents, if the date of birth recorded in the Madhyamik Examination as 2nd April, 1948 is taken into account then the appellant would have been less than 21 years on the date of submission of application for appearing in the Gas Testing Certificate Examination and would become ineligible for appearing at the said examination.

14. The aforesaid contention of the respondents is of no relevance as for the purpose of appearing at the Sirdar''s Certificate Examination under Coal Mines Regulations, 1957, prescribed minimum age of a candidate is 20 years. Regulation 15(1)(a) of the Coal Mines Regulations, 1957 is set out hereunder:

15. Age and general qualifications of candidates.-(1) (a) No person shall be admitted as a candidate at any examination held by the Board unless he is 20 years of age.

15. The appellant herein was, admittedly, appointed as Mining Sirdar on the basis of the Sirdar''s Certificate wherein the minimum age has been prescribed as 20 years and not 21 years. In any event, the learned Single Judge dismissed the writ petition summarily on the ground that the appellant herein remained absolutely silent and at the fag end of his service tenure approached this Court for directing the respondent authorities to correct the date of birth. The learned Single Judge also observed that if the writ petitioner had a genuine grievance he would have objected to the recording of his date of birth in the service records.

16. In our opinion, the aforesaid observations of the learned Single Judge are not based on correct appreciation of the relevant facts. We fail to understand why the objection raised by the appellant in the year 1987 should not be taken into account.

17. It is not in dispute that the appellant herein raised objection for wrong recording of the date of birth in the service records in the year 1987 and ultimately, approached this Court for disposal of the said objection. The concerned respondent disposed of the said objection of the appellant after long 17 years only on 26th February, 2004 and that too after issuance of the direction by this Hon''ble Court.

18. The learned Single Judge, therefore, committed serious error in holding that the writ petitioner, namely the appellant herein remained absolutely silent and at the fag end of his service tenure approached this Hon''ble Court for the order directing the respondents to correct his date birth when the facts are admittedly, otherwise as mentioned hereinabove.

19. The respondent authorities as well as the learned Single Judge also failed to appreciate the specific provision mentioned in the Implementation Instruction No. 76 issued by the respondent authorities for determination of the correct date of birth in respect of existing employees. Sub-clauses (i)(a) and (i)(b) of Clause (B) of the said Implementation Instruction No. 76 are set out hereunder:

(i)(a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board of Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit card 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 Ridership, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic:

Provided that where. both documents mentioned in (iXa) and (i)(b) above are available the date of birth recorded in (i) (a) will be treated as authentic.

20. Admittedly, the employee concerned, namely the appellant herein passed the Matriculation Examination long before his joining the service and, therefore, the date of birth recorded in the Madhyamik Certificate has to be accepted as the only valid and authentic document for the purpose of determination of the date of birth of the appellant. In the present case, however, specific provision has been made for determination of the date of birth in respect of an employee in Sub-clause (i)(a) and (i)(b) of Clause (B) of the Implementation Instruction No. 76.

21. The respondent authorities cannot refuse to follow the prescribed rules, guidelines, notifications and/or written instructions issued in relation to the service condition of an employee wherein the procedure for determination of the date of birth has been specifically provided. The respondent authorities, unfortunately, refused to act in terms of the specific provision recorded in the Implementation Instruction No. 76 without assigning any reason. Furthermore, 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 some establishment without serving any notice and granting adequate opportunity to the concerned employee.

22. At the time of joining the service, date of birth of the appellant was recorded as 2nd April, 1948 by the then employer. Bengal Coal Co. Ltd., which would be evident from the Identity Card issued by the said employer in the year 1970. The subsequent employer,

namely, the respondent E.C.L, authorities while changing the date of birth of the appellant as 2nd April, 1946 instead of 2nd April, 1948, neither served any notice upon the appellant nor granted any opportunity of hearing to the said appellant in this regard, which, in our opinion, is highly illegal and cannot be permitted.

23. In view of the aforesaid prescribed procedure for determination/verification of the age of employees as mentioned in the Implementation Instruction No. 76 date of birth recorded in the Matriculation Certificate should be treated as authentic. The respondent authorities herein are not permitted to ignore or violate its own prescribed procedure for determination/verification of age of its employees.

24. Therefore, under the aforesaid circumstances, the concerned respondent namely, the General Manager. Eastern Coalfields Ltd., Sodepur Area should not have rejected the claim of the appellant herein for rectifying the mistake in the service records upon recording the correct date of birth on the basis of his Madhyamik Certificate while disposing of the objection of the said appellant.

25. The learned Single Judge also erred in recording his satisfaction about the findings of the respondent General Manager, Eastern Coalfield Ltd., Sodepur Area ignoring the aforesaid prescribed procedure of the respondent authorities for determination/verification of the age of its employees. Furthermore, we have already noted hereinbefore that the impugned judgment of the learned Single Judge is based on a number of wrong facts, which are contrary to the facts available on record.

26. For the reasons mentioned hereinabove, the decision of the concerned respondent, namely, the General Manager, Eastern Coalfields Ltd., Sodepur Area, dated 26th February, 2004 cannot be sustained in law and the same is, therefore, quashed. For the identical reasons the judgment and order under appeal passed by the learned Single Judge on 14th June, 2004 also cannot be sustained and the same it set aside accordingly.

27. The respondent authorities are now directed to rectify the service records of the appellant upon recording the correct date of birth of the said appellant on the basis of the Madhyamik Certificate without any further delay, but positively within a period of two weeks from the date of communication of this order and allow the said appellant/writ petitioner to resume his duties immediately, in the event the said appellant has already retired due to the aforesaid wrong recording of the date of birth in the service records.

28. The appellant herein will also be entitled to receive admissible arrear salary and all other consequential service benefits in the event he has already retired from service on the basis of the aforesaid wrong recording of the date of birth. The said respondents are further directed to refix the age of superannuation of the appellant herein upon correcting the date of birth as per the Matriculation Certificate in terms of this order.

Needless to mention that the respondent authorities will calculate the arrear dues payable to the appellant herein in terms of this order at an early date, but positively within a period of three weeks from the date of communication of this order and disburse the necessary payment to the appellant within one week thereafter positively.

29. This appeal thus stands allowed. There will, however, be no order as to costs.

30. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

I agree.