

HIGH COURT OF MADHYA PRADESH: JABALPUR**(Division Bench)****Writ Appeal No. 228/2018**

Chief Managing Director, WCL & others **Appellants**
 - V/s -

Sheikh Yusuf **Respondents**

WITH**Writ Appeal No. 232/2018**

Western Coalfields Limited & Another **Appellants**
 - V/s -

Sheikh Yusuf & Another **Respondents**

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri Anoop Nair, Advocate for the appellants in WA-228-2018.
 Shri Greeshm Jain, Advocate for the appellants in WA-232-2018.
 Shri N.N. Tripathi, Advocate for the Respondent on Caveat.

Whether Approved for Reporting : Yes**Law Laid Down:**

- * In absence of any allegation that the date of birth was not correctly recorded in Form-B, a statutory form stipulated under the Mines Rules, 1955, the service record or certificate of registration with Employment Exchange, which are based upon declaration of the employee, cannot be made basis of holding that the date of birth was not correctly mentioned in Form-B.
- The approximate age determined by the Age Determination Committee to be between 50 to 55 years which is too wide a range and contrary to the Implementation Instructions No.I.I.-76, cannot be relied upon to accept the claim for correction of date of birth.

- The school leaving certificate mentioning the date of birth of an employee, which itself is disputed and obtained after employee had already entered in services cannot be a ground for correction of date of birth particularly when it was not stated to be the authentic document as per the Instructions issued.
- The Matriculation and the Higher Secondary School certificate issued much after employment of the employee have not been rightly taken into consideration in terms of the Instructions issued. Supreme Court decision in (2014) 12 SCC 570 (*Bharat Coking Coal Ltd. And others vs. Chhota Birsa Uranw*) distinguished on facts.
- Report of the Age Determination Committee which is not in terms of the Instructions binding between the parties, cannot be said to be legal and binding on the appellants.

Significant Paragraph Nos.: 4, 7, 10 to 14 and 16 to 19

Order Reserved on: 13.03.2018

ORDER

(Passed on this 16th day of March, 2018)

Per : Hemant Gupta, Chief Justice:

The challenge in the present writ appeals is to an order passed by the learned Single Bench on 01.02.2018 in Writ Petition No.10700/2016 (*Sheikh Yusuf vs. Chief Managing Director, Western Coalfields Limited and others*) and Writ Petition No.18348/2016 (*W.C.L. and others vs. Sheikh Yusuf and others*) whereby the learned Single Bench has allowed the Writ Petition No.10700/2016 filed by the respondent (hereinafter referred to as “the employee”) and his date of birth has been ordered to be treated as 24.05.1962 instead of 22.10.1956 in terms of decision of the Age Determination Committee whereas the writ petition filed by the appellants against the decision of the Age Determination Committee, has been

dismissed. It may be stated that the reconstituted Age Determination Committee has given its report on 22.03.2016 whereby the earlier report of the Age Determination Committee dated 10.07.2015 was not accepted.

2. As such, a common question of fact and law is involved in both the writ appeals and therefore, they were heard together and are being disposed of by this common order. However, for the sake of convenience, the facts are taken from Writ Appeal No.232/2018.

3. The employee joined the services on 25.09.1983 as Badli Tub Loader i.e. a manual worker. The date of birth of the employee was recorded as 22.10.1956 i.e. the date of birth, which finds mention in Form-B, a statutory form stipulated under the Mines Rules, 1955.

4. A Joint Bipartite Committee for Coal Industries has issued Implementation Instructions (for short “the Instructions”) under the National Coal Wages Agreement-III on 25.04.1988. As per the Implementation Instructions No.I.I.-76, the procedure for recording/correction of date of birth is contemplated. The relevant clause reads as under:-

“(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.

Provided that where both documents mentioned in (i)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) 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 registers CMPF Records and Identity Cards (untempered) 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 Management for determination of age.

- (D) For Determination of the age, the Committee/Medical Board referred to above may consider the evidence available with the Colliery Management and/or adduced before it is the employee concerned.

- (E) Medical Board constituted for determination of age will be required to assess the age in accordance with the requirement of "Medical Jurisprudence" and the Medical Board will as far as possible indicate the accurate age assessed and not approximately.

- (F) Where the Management (i.e.) Area Age Assessment Committee consisting of General Manager, Personnel Manager and Medical Officer in charge of the Area is satisfied that there is a glaring disparity between the date of birth recorded in the company records and the apparent age of the employee, the cases may be referred to the Apex Medical determination of age,

- (H) After the assessment of the age by the Age Determination Committee/Medical Board, the same will be computerised and

print out of the same will be given to the employee concerned and the unit from where the reference was received with a month. If age is not, however, computerised, still the same will be intimated to the employee concerned and the Unit within a month.

- (I) It was agreed that in cases where instead of date of birth, year has been recorded, 1st July of the year will be deemed to be the date of birth.”

5. The stand of the appellants is that after the appointment of the employee as General Mazdoor, he filled up statutory Form-B (Annexure P-3), which was duly countersigned by him. In 1987, a decision was taken to fill up the service excerpts to update the service records of the employees. The employee mentioned his date of birth as 24.05.1962. The Age Determination Committee constituted in terms of the Instruction No.76 examined the employee and on the basis of physical, dental and radiological examination assessed the age of the employee as 40 years, which was conveyed to the employee on 12.06.1996. Such determination corresponds to the date of birth mentioned in Form B.

6. The matter was again put on the representation of the petitioner before another Age Determination Committee. Such committee again determined the age of the employee as 50 years on 06.12.2006. Such decision was also conveyed to the employee. Such determination again corresponds to the date of birth mentioned in Form B. The employee challenged the said decision by way of Writ Petition (S) No.13225/2009 (*Sekh Yusuf vs. Chief Managing Director and another*), which was disposed of on 06.05.2015 with a direction to the appellants to examine the

matter afresh and decide through the Age Determination Committee. The relevant extract of the order dated 06.05.2015 reads as under:-

“However, when confronted with the document dated 11.1.2007 which is the decision of the Age Determination Committee as well as the document dated 18.12.2007 filed by the petitioner alongwith his application for taking additional documents on record, I.A No.12370/2012 which is the document by which the petitioner's case has been recommended subsequent to the decision by the Age Determination Committee, the learned counsel for the respondents fairly concedes that in the said decision there is no consideration of the certificates submitted by the petitioner or the date of birth mentioned in the previous service record of the petitioner. In such circumstances it is submitted that the matter shall be re-examined by the Age Determination Committee by taking all the documents into consideration in accordance with the Implementation Instruction 76.

In view of the statement of the learned counsel for the respondents, without entering into the merits of the case, the petition filed by the petitioner is disposed of with a direction to the respondent authorities to take up the matter afresh and get the same decided through the Age Determination Committee. The authority would also be at liberty to decide the matter by taking all facts and circumstances into consideration and thereafter take a decision expeditiously in accordance with law, preferably within a period of three months.

It is further made clear that in case the petitioner is aggrieved by the decision of the Age Determination Committee, he would be at liberty to avail of the statutory remedy available to him under the provisions of the Industrial Disputes Act.”

7. Such Age Determination Committee vide its report dated 10.07.2015 determined the age of the employee to be between 50 to 55 years. The Committee has taken into consideration the following documents and given its opinion, which read as under:-

“1. Service record No.1917 issued by Manager, Damua his age was 21 yrs as on 06.11.1983.

2. Employment Exchange (Parasia) – Reg No.22/82 dt. 27.05.1982, his DOB is 24th May, 1962.
3. School Transfer Certificate from “Janpad Madhyamik Shala, Barkuhi” dt. 21.5.1982, his DOB is 24th May, 1962.”

OPINION OF COMMITTEE.

On the basis of Medical Examination (Physical and Radiological), the Age Determination Committee is of the opinion that the age of Shri SK Yusuf (S/o SK Gulzar) is between Fifty (50) years to Fifty Five (55) years. However, in view of the guidelines issued as per Letter No.CIL/C-5b/MP/ADVR/2074 dated 07.07.1992, the candidate's age is fixed at 24.05.1962 (As per documents).”

8. The said report was not accepted by the Competent Authority i.e. the Director (Personnel) at Headquarters of the appellants and ordered that the age be determined afresh by a reconstituted Age Determination Committee. Before such reconstituted Age Determination Committee, the employee did not appear on 29.01.2016, 08.02.2016 and 21.03.2016. Thus, the date of birth of the employee was maintained as 22.10.1956.

9. The appellants filed writ petition challenging the proceedings of the Age Determination Committee dated 10.07.2015 whereas the employee filed a Writ Petition No.10700/2016 for challenging the decision of the appellants to retire him on the basis of the date of birth as 22.10.1956. The learned Single Bench vide order dated 01.02.2018 allowed the writ petition filed by the employee. The relevant extract of the order dated 01.02.2018 is reproduced as under:-

“9. In the present case, the committee has given its report on the basis of the documents produced by the petitioner and has assessed the date of birth of the petitioner as 24.05.1962, however, when the matter was referred to the Head Quarter of W.C.L. it was decided to

refer the matter to the Apex Medical Board as per instruction no.76 and however, the petitioner did not turn off before the Apex Committee and has filed the present petition. The Committee was also of the opinion that the A.D.C has assessed the age of the petitioner only on the basis of the documents produced by the petitioner and has not assessed the age of the petitioner on the basis of medical facts and jurisprudence. Accordingly, committee has decided to examine the matter afresh and accordingly, it was decided to reconstitute the A.D.C. The report of A.D.C. shows that the committee has considered the documents produced by the petitioner relating to the education and service and thereafter, he was subjected to physical as well as radiological examination and thereafter, the findings were given by the A.D.C.. Thus, the findings of the apex body that the A.D.C. has not given the report on the basis of medical jurisprudence is not correct. The A.D.C. has given its findings on the basis of documentary as well as physical and radiological examination of the petitioner. As per the tri partite settlement also the decision of the A.D.C./Medical Board will be binding and final. A conjoint reading of Clause 10(11) aforesaid with Clause B(C) of Annexure I of II No.76 prima facie shows that the report of the A.D.C. is not recommendatory in nature. On the contrary, it has binding force on the parties. Clause (H) of the said instructions makes it clear that Clause (H) after assessment by A.D.C., the same shall be computerized and printout will be given to the employee concerned and to the respective unit which shows that this report of A.D.C. is not subject to any acceptance by any authority and, therefore, the question of further examination of the petitioner by another A.D.C. does not arise. II-76 further shows that when the age of an employee cannot be determined as per Form B Register, ID card, etc then his case should be sent before A.D.C. for age determination. Once A.D.C. is constituted, this report of the Committee will prevail.

10. Thus as per the instruction no.76 as decision of the A.D.C is final and, therefore, in view of the aforesaid, the writ petition is allowed and the impugned orders dated 21.03.2016, 22.03.2016 and 20.04.2016 are hereby set aside. The respondents are directed to amend the date of birth of the petitioner in service record as 24/05/1962 as per report of the age determination committee dated 10/07/2016.”

10. Learned counsel for the appellants contended that the employee has relied upon three documents i.e. the service record issued by the Manager, Damua wherein the age of the employee was mentioned as 21 years as on 06.11.1983; date of birth recorded in the Employment Exchange; and school transfer certificate. Learned counsel for the appellants have argued that in terms of the Instructions, the Matriculation or Higher Secondary Certificate issued by the recognized Universities/Board/Institutions is treated as authentic provided they were issued by the said Universities/Board/Institution prior to the date of employment. It is contended that the employee has not produced any Matriculation or Higher Secondary Certificate prior to his appointment reflecting his date of birth as 24.05.1962. In terms of Clause (B)(i)(b) of the relevant Instructions, the Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic. It is also contemplated that where both documents mentioned in clause (B)(i)(a) i.e. Matriculation or Higher Secondary Certificate are available and the Mining Sirdarship etc. in Clause (B)(i)(b), the date of birth recorded in clause (B)(i)(a) will be treated as authentic. Clause (B)(ii) contemplates that 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. Such committee will be constituted by the Management. In terms of Clause (D), the Committee may consider the evidences available with the Colliery

Management and/or adduced before it by the employee concerned. The Medical Board has to assess the age in accordance with the requirement of the Medical Jurisprudence and as far as possible indicate the accurate age assessed and not approximate. Clause (H) contemplates that after assessment of the age by the Age Determination Committee, the same will be computerised and print out of the same will be given to the employee concerned.

It is argued that out of three, two documents/records i.e. service record and that of the Employment Exchange are not issued under any Statute but based upon declaration of the employee, therefore, such documents are not relevant to determine the age of the employee in terms of the Instructions issued, which makes Matriculation or the Higher Secondary Certificate as the authentic document.

11. It is further contended by the learned counsel for the appellants that the school leaving certificate (Annexure P-27 to W.P. No.10700/2016) issued on 29.01.1993 by the Head Master, Model Primary School, Iklahra, Janpad Panchayat, Parasia reflects the date of birth as 24.05.1962 and also that he left the school on 30.04.1974 and that he qualified Class 5th in the year 1974. If the employee has qualified Class 5th in the year 1974, then there is no reason for the employee to declare the date of birth as 22.10.1956. Such school leaving certificate was issued in the year 1993. The employee also relies upon Matriculation Certificate i.e. High School Certificate (Open School) Examination (10+2) obtained from Board of Secondary Education, M.P., Bhopal in the year 1989 and the Higher

Secondary School Certificate in the year 1991. It is, thus, contended that Matriculation and the Higher Secondary School certificates have been issued after the date of appointment and therefore, cannot be relied upon whereas the school leaving certificate of Class 5th was issued in the year 1993 and that such certificates are not relevant in terms of the Instructions issued.

12. Learned counsel for the appellants argued that the respondent has accepted his date of birth as 22.10.1956 in Form-B, a statutory requirement under the Mines Rules, 1955 and therefore, in absence of Matriculation or Higher Secondary Certificate, the date of birth entry in the statutory form has to be treated to be authentic. It is further contended that to be fair to the employee, the appellants referred the matter of age to the Age Determination Committee, which has given its report on 13.08.1996. As per the said report, the employee was bound to be 40 years, which makes the year of birth as 1956. In the subsequent report on 06.12.2006, again, the Age Determination Committee determined the age of the employee as 50 years, which again states the year of birth as 1956. However, such report of the Committee was set aside by this Court with a view to give liberty to the Age Determination Committee to examine the documents produced by him. Such documents though produced, are not relevant in terms of the Instructions issued. Therefore, such documents cannot form basis of the age of the employee. Still further, in terms of the Instructions, there cannot be approximate age determination. The employee has been found to be of the age of 50 to 55 years, which is *prima facie* approximate and thus, against the Instructions issued.

13. Still further, though the Age Determination Committee has conducted Radiological examination and X-ray report examination but the opinion of the Committee is based upon the documents filed, therefore, the report of such Age Determination Committee cannot nullify the report of earlier Age Determination Committee dated 13.08.1996, which was not disputed by the employee. In terms of the findings of the learned Single Bench, the report of the Age Determination Committee is final, therefore, the report dated 13.08.1996, which was not subject matter of challenge even in the earlier writ petition, cannot be brushed aside when the subsequent report dated 10.07.2015 is not in terms of the Instructions issued.

14. Shri N.N. Tripathi, learned counsel appearing on behalf of the employee vehemently argued that the appellants have treated the date of birth of the employee as 13.08.1956 as per the print out dated 07.10.2015, which is not the date mentioned in the record of the appellants, therefore, contradictory date of birth is recorded in the records of the appellants. It is also pointed out that the documents produced by the employee i.e. of registration in the Employment Exchange and the school leaving certificate are much before joining the service of the appellants by the employee, therefore, such documents have been rightly taken into consideration by the Age Determination Committee in terms of the Instructions, which permit the Age Determination Committee to consider other evidence as well. It is also contended that the Supreme Court in a judgment reported as **(2014) 12 SCC 570 (Bharat Coking Coal Ltd. And others vs. Chhota Birsa Uranw)** found that the employee in the aforesaid case has not sought

correction of the date of birth at the fag end of service but it was raised at the earliest possible opportunity in the year 1987. It was held that entry in Form-B cannot be relied upon as there were errors in the same. The Court concluded as under:-

“14. We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in *Secretary and Commissioner, Home Department and Ors. v. R. Kirubakaran*, 1994 Supp (1) SCC 155. However, with an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public corporations/ departments, should not benefit from their own omission of duty. In the present case, the appellant-company failed to follow the procedure as laid down in the implementation instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. The attitude of such corporations wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.”

15. We have heard learned counsel for the parties and find that the order of the learned Single Bench cannot be sustained in law.

16. The strong reliance of the employee is on a judgment of the Supreme Court in **Chhota Birsa's** case (*supra*). That was a case where the employee disputed his date of birth in the year 1987 though in the present case as well the employee was disputing his date of birth but after the determination of the date of birth by the Age Determination Committee on 13.08.1996, the employee has not taken any recourse to legal remedy. He submitted representation time and again and another Age Determination

Committee was constituted. The Age Determination Committee constituted in terms of the order of this Court, in its report dated 10.07.2015 has given the approximate age from 50 to 55 years whereas the Instructions contemplate that the age has to be specific and not by approximation. Therefore, the report of Age Determination Committee runs counter to the instructions issued and therefore, cannot be made basis for correction of date of birth.

17. Still further, reliance of the employee is on three documents; firstly, the service record No.1917 issued by the Manager, Damua where the age of the employee was mentioned as 21 years as on 06.11.1983. Such record will not rebut the correctness of the statutory Form-B under the Mines Rules, 1955 for the reason that if the employee was 21 years of age in 1983, there is no reason for the employer to give his date of birth as 22.10.1956. At the time of appointment, there was no reason for the employer to record a date which may not be correct. There is no allegation of any *mala fide* or mischief against any functionary of the employer. In absence of any allegation that the date of birth was not correctly recorded in statutory Form-B, the service record or certificate of registration with Employment Exchange cannot be made basis of holding that the date of birth was not correctly mentioned. The school transfer certificate is again not a document whose authenticity is not in dispute. There is no proof that such document is a genuine document nor the Committee has verified such certificate. The Age Determination Committee has determined the age as 50 to 55 years, which is too wide a range which can be relied upon to hold that the date of birth of the employee was 24.05.1962.

18. The judgment in **Chhota Birsa's** case (**supra**) arises out of a fact where two different dates were recorded by the Coal Company i.e. one in Form-B as 15th February, 1947 and another in the Mining Sirdarship where the date of birth was recorded as February 6, 1950. Still further, in the said case, the genuineness of the Matriculation certificate was verified to be correct. It was issued in the same year as the date of appointment; therefore, such certificate was taken into consideration in terms of the Instructions, such certificate has to be treated as authentic. Whereas in the present case, the Matriculation certificate and the Higher Secondary School certificate is much after employment of the employee in the year 1983. The entire case is based upon the school leaving certificate of Class V, which does not find mention as the authentic document in the Instructions issued.

19. Since the report of the Age Determination Committee is not in terms of the Instructions issued, which are binding between the parties, the report of the Age Determination Committee cannot be said to be legal and binding on the appellants.

20. Consequently, both the appeals are **allowed**. The Writ Petition No.10700/2016 filed by the employee is dismissed whereas Writ Petition No.18348/2016 filed by the appellants/employer is allowed.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

S/