

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.296/2019

Prabhat Kumar Dwivedi
-Versus-
Union of India and others

Shri Shyam Yadav, Advocate for the appellant.

CORAM :

Hon'ble Shri Justice S.K. Seth, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	After having accepted the date of birth in the service record for the entire career, at the fag end of service, an employee cannot seek correction of the date of birth.
<i>Significant paragraph Nos.</i>	Para 9.

ORDER
(Jabalpur, dtd.25.02.2019)

Per : Vijay Kumar Shukla, J.-

Heard on **I.A. No.2161/2019**, which is an application for condonation of delay of 215 days in filing the present writ appeal. It is stated in the application that after the order dated 13-4-2018 passed by the learned Single Bench dismissing the writ petition (W.P. No.19334/2013), the petitioner/appellant preferred a review petition (R.P. No.867/2018) which was also dismissed on 23-01-

2019. Thus, the appellant was prosecuting the remedy of appeal and the delay caused in filing the present appeal is *bonafide*.

2. Considering the averments made in the application, duly supported by an affidavit, the **I.A. No.2161/2019** is allowed and the delay in filing the writ appeal is condoned.

3. Also heard on admission.

4. The present intra-court appeal takes an exception to the order passed by the learned Single Bench in W.P. No.19334/2013 and also the order dated 23-01-2019 passed in the review petition. The appellant-petitioner filed the writ petition under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to correct the date of birth of the writ petitioner in his service record according to his Higher Secondary School Certificate Examination, 1978 issued on 24-6-1978 and further, the date of birth of the petitioner for all purposes, be treated as 01-01-1961.

5. The factual matrix of the case lies in a narrow compass. The appellant-petitioner was appointed as General Mazdoor on 13-01-1982. In the service record, the date of birth of the petitioner was recorded by mentioning that age of the petitioner is 24 years as on 22-11-1981. It is putforth that the appellant preferred a

representation on on 26-02-1996 and thereafter another representation (Annexure-P/6) was filed by him. It is argued that in the case of one Janki Singh his age was corrected pursuant to the finding of the Age Determination Committee (ADC).

6. The respondents raised a preliminary objection regarding delay and laches. It was stated that at the fag end of his career the petitioner is “estopped” from challenging the date of birth, which was accepted by him during his long service career. In support of their contention the respondents have filed a copy of the service register (Annexure-R/1), service excerpts of the petitioner and relevant copy of Form-B register (Annexure-R/2 and Annexure-R/3). In addition to that the respondents also filed statutory forms PS-3 and PS-4 (Annexure-R/5), prepared under various provisions of enactments including Mines Rules, 1955. The documents clearly show that the date of birth of the petitioner-appellant was consistently recorded as 22-11-1957 in all the records. It is strenuously urged that on the basis of 9th Class mark-sheet the date of birth cannot be altered. A reference has been made to the Implementation Instructions No.76 (I.I. No.76) which has been annexed as Annexure-R/6. It is not in dispute that the aforesaid Implementation Instructions No.76 is a binding agreement between the employer and employee. It is vehemently urged by the

respondents that the certificate (Annexure-P/2) was not submitted by the writ petitioner at the time of entering the service. The so called representation, Annexure-P/5 was disputed by the respondents that it does not bear the seal and signature of the department.

7. Learned counsel for the appellant submitted that the date of birth recorded in his school certificate is the correct date of birth and, therefore, the same ought to have been accepted by the respondents. He relies upon the judgment of the Apex Court rendered in the case **Bharat Coking Coal Limited and others vs. Chhota Birsa Uranw, (2014) 12 SCC 570**.

8. Regard being had to the arguments advanced on behalf of the appellant and on a bare perusal of the record, we do not perceive any merit in the instant appeal. The petitioner-appellant was admittedly appointed in the year 1981. He filed the writ petition seeking correction of his date of birth in October, 2013. The employer by placing reliance on various documents annexed to the return, stated that the petitioner is signatory to various documents including service register, copies of other statutory forms, which show that he was aware since very beginning of his career about the date of birth, i.e., 22-11-1957.

9. The law relating to date of birth is no longer *res integra* as the Apex Court in the case of **Burn Standard Co. Ltd. and others vs. Dinabandhu Majmdar & another**, AIR 1995 SC 1499, it has been held that the entry in regard to the date of birth in the service record cannot be allowed to be changed at the fag end of service. The relevant para is extracted hereunder:

“Ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his ‘Service and Leave Record’ or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.”

The same view has been taken in the case of **State of Maharashtra vs. Gorakhnath Sitaram Kamble and others**, (2010)14 SCC 423; **Surendra Singh vs. State of M.P. & Ors.**, 2007(1) MPLJ 286. A Division Bench of this Court in **WA-101-2017 [Suresh Kumar Pithode vs. Western Coalfields Ltd.]**; **WA-881-2017 [Shiv Prasad vs. Western Coalfields Ltd. and others]**; and **WA-228-2018 [Chief Managing Director, WCL & others vs. Sheikh Yusuf]** reiterated the same view.

10. A perusal of the judgement in **Bharat Coking Coal Ltd. (supra)** shows that The National Coal Wage Agreement III was executed in 1987 which gave an opportunity to the employees to

identify and rectify the discrepancies or correct the record as per prescribed procedure. Though the said agreement was executed in respect of the respondents as well, but the appellant has not availed the said remedy. In **Bharat Coking Coal Ltd. (supra)**, the employee has sought correction of record soon after the agreement was executed.

11. The judgement passed in the case of **Bharat Coking Coal Limited (supra)** has been distinguished by the Co-ordinate Bench of this Court in **Sheikh Yusuf (supra)** wherein it is held that the Matriculation and the Higher Secondary School certificates issued much after employment of the employee have not been rightly taken into consideration in terms of the Instructions issued, vide Implementation Instructions No.76 (I.I No.76).

12. In view of the aforesaid facts and enunciation of law, we do not find any error in the order passed by the learned Single Bench which may warrant any interference in the present intra court appeal. **It is accordingly dismissed.** There shall be no order as costs.

(S.K. Seth)
Chief Justice

ac.

(Vijay Kumar Shukla)
Judge

