

**IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 3rd OF JULY, 2023
WRIT PETITION No. 12369 of 2021**

BETWEEN:-

SARMAN AHIRWAR S/O SHRI KAPURA
AHIRWAR, AGED ABOUT 56 YEARS,
OCCUPATION: MINE LABORER R/O
WARD NO. 8, VILLAGE HIRAPUR, UP-
TEHSIL, SHAHGARH, TEHSIL BANDA,
DISTRICT- SAGAR (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI ROHAN HARNE - ADVOCATE)

AND

1. THE STATE OF MADHYA
PRADESH THROUGH THE
SECRETARY, MINING
DEPARTMENT, VALLABH
BHAWAN BHOPAL (MADHYA
PRADESH)

2. THE M.P. STATE MINING
CORPORATION LTD. THROUGH
ITS MANAGING DIRECTOR,
BOOK NO. 1A, 2ND FLOOR,
PARYAWAS BHAWAN, JAIL
ROAD, ARERA HILLS, BHOPAL
(MADHYA PRADESH)

3. THE MINE MANAGER, THE M.P.
STATE MINING CORPORATION
LTD., SUB OFFICE BEHIND SHRI

**ASHARAM BAPU, SHRI KRISHAN
NAGAR, MAKRONIA DISTRICT-
SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI SWAPNIL GANGULY - DEPUTY ADVOCATE GENERAL FOR
RESPONDENT NO.1/STATE AND SHRI ADITYA KHANDEKAR-
ADVOCATE FOR RESPONDENTS NO.2 & 3)**

*This petition coming on for admission this day, the court passed
the following:*

ORDER

This petition under Article 226 of the Constitutional of India has been
filed seeking the following reliefs:-

"7.1 That, this Hon'ble Court be
pleased to quash and set-aside the
impugned order/communication
dated 01.07.2021 (Annexure P-1)
and allow the petitioner to continue
in service till he attains the age of
62 years.

7.2 Any other writ which this
Hon'ble Court deems fit and proper
may also be granted to the
petitioner".

2. It is submitted by the counsel for the petitioner that the age of the
Class-IV Employees in Mining Corporation is 62 years but he has been
retired on attaining the age of 60 years and secondly, even otherwise,
he has not attained the age of 60 years and he has been wrongly retired
by projecting that he has attained the age of 60 years.

3. *Per contra*, it is submitted by the counsel for the respondent No.2 that so far as the age of superannuation of Class-IV Employees of State Mining Corporation is concerned, the said question is no more *res-integra*. The Co-ordinate Bench of this Court in the case of **Hira Ahirwar Vs. State of M.P. and Others** by order dated 08.02.2023 passed in W.P.No.16880/2022 has held that the age of Class-IV Employees working in the Madhya Pradesh State Mining Corporation is 60 years and not 62 years. So far as the dispute with regard to the age of the petitioner is concerned, it is submitted by the counsel for the respondent that no specific relief has been prayed in that regard.

4. Heard the learned counsel for the parties.

5. Whether the age of superannuation of a Class-IV Employee working in the Madhya Pradesh State Mining Corporation is 60 years or 62 years is no more *res-integra*. The coordinate Bench of this Court in the case of **Hira Ahirwar (supra)** has passed the following orders:-

"After hearing learned counsel for rival parties, this Court is of the considered view that petition deserves to be dismissed for reasons infra: (i) Petitioner appears to be labouring under the misconception that age of superannuation which was enhanced from 60 to 62 years for civil post holders automatically applies to daily wagers; (ii) Daily wage Class IV employees are not governed by any statutory provision but their services are governed by the Standing

Orders; (iii) Enhancement in the age of superannuation applicable to civil post holders is inapplicable to daily wagers. (iv) The provision of Standing Orders clearly provide that age of superannuation would be 60 years and; therefore, daily wagers who do not hold any civil post will invariably retire on attaining the age of 60 years. (v) In the instant case, petitioner attained the age of 60 years on 03.08.2022 (Annexure P/1) and has been rightly retired on attaining the age of superannuation on the said date vide Annexure P/1."

6. Accordingly, it is held that the age of Class-IV Employee working in the Madhya Pradesh State Mining Corporation Limited is 60 years and not 62 years.

7. So far as the dispute with regard to the actual age of the petitioner is concerned, it is submitted by the counsel for the petitioner that "B Register" is the only document which is maintained by the respondent for the age of the employee. The petitioner has obtained a copy of the "B Register" under the Right to Information Act and according to which, on 01.02.1991, the petitioner was 25 years of age and therefore, he had not attained the age of 60 years on 01.08.2021. Thus it is submitted that the impugned order dated 01.07.2021 by which the petitioner has been retired from service on attaining the age of 60 years is bad in law.

8. *Per contra*, it is fairly conceded by the counsel for the respondent No.2 that no service book of a Labourer is maintained in the State Mining Corporation Limited and "B Register" is the only document to show the age of the Labourer.

9. Although, this Court was inclined to remand the matter but in the light of the facts mentioned in the paragraph 5.4 of the Writ Petition, it is difficult for this Court to even remand the matter to the respondents for reconsideration.

10.Paragraph 5.4 of the writ petition is read as under:-

It is relevant to point out that on 16.06.2021, i.e. 15 days prior to passing of the impugned communication/order dated 01.07.2021, the petitioner who is uneducated mine laborer was taken to the Aadhar Centre by the management staff to the Respondent Corporation and was forced to change his year of birth from 1966 to 1961 in the Aadhar Card as well as Birth Certificate by misleading and threatening the petitioner that his Salary, PF and pension will be withheld if he fails to change his date of birth. Copy of the undated Aadhar Card as well as Birth Certificate dated 16.06.2021 are cumulatively annexed herewith as **ANNEXURE P-6.**

11. Thus, it is clear that in the Aadhar Card the date of birth of the petitioner is mentioned as 01.08.1961. The only contention of the petitioner is that the said change of date of Birth in the Aadhar Card was got done by the management by putting undue pressure on the

petitioner. Thus, it is clear that the petitioner has leveled serious allegations against the management but none of the authority has been impleaded as a party in its personal capacity.

12. It is well established principle of law that no one can be criticized in his absence and in case if the grounds raised by the petitioner in Paragraph-5.4 are answered in favour of the petitioner, then it would amount to criticizing the officer(s) of management without giving an opportunity of hearing to them.

13. The Supreme Court in the case of *State of Bihar and Another Vs. P.P. Sharma*, reported in **1992 Supp (1) Supreme Court Cases 222**

has held as under:-

55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.....

14. The Supreme Court in the case of **Federation of Railway Officers Association Vs. Union of India** reported in **AIR 2003 SC 1344** has held as under :

20.....Allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be

involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

15. The Supreme Court in the case of **J.N. Banavalikar Vs. Municipal Corporation of Delhi**, reported in **AIR 1996 SC 326** has held as under:

21......Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

16. The Supreme Court in the case of **A.I.S.B. Officers Federation and others Vs. Union of India and others**, reported in **JT 1996 (8) S.C. 550** in para 23, has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under: -

"The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit." (Emphasis Added) this Court is of the considered opinion, that the submissions made by the Counsel for the Petitioner, that the impugned order has been passed on vague grounds resulting in denial of opportunity to the petitioner to rebut the same is misconceived.

17. It is true that in the impugned order has been passed on the basis of the entry made in the "B Register" but in view of the fact that in the subsequent Aadhar Card of the petitioner his date of birth has been mentioned as 01.08.1961 and this Court in exercise of power under Article 226 of the Constitution of India as well as in absence of the authorities in their personal capacity cannot adjudicate the date of birth of the petitioner.

18. Under these circumstances, no case is made out warranting interference.

19. The petition fails and is hereby **dismissed**.

20. However, liberty is granted to the petitioner to file a civil suit for declaration of his date of birth by including the allegations made in paragraph 5.4 of the writ petition. If any civil suit is filed, then this order shall not come in the way of trial Court to decide the same.

(G.S. AHLUWALIA)
JUDGE

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