

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR (M.P.)

NO. CGIT/LC/ R/51/2016

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,
 Rashtriya Colliery Workers Federation,
 Federation Office, Chirmiri,
 Distt. Korea (CG)- 497449,
 Korea (Chattisgarh)

Workman

V/s

The General Manager,
 Chirimirei Area of SECL,
 PO West Chirimiri,
 Distt. Korea (CG)- 497448,
 Korea (Chattisgarh)

Management

(JUDGMENT)

सत्यमेव जयते

(Passed on this 30th day of June, 2026)

As per letter dated **03/06/2016** by the Government of India, Ministry of Labour, New Delhi, the reference has been made to this Tribunal under **Section-10 of Industrial Disputes Act, 1947** (in short the 'Act') as per Notification **No. L-22012/28/2016 (IR(CM-II))** dt. **03/06/2016**. The dispute under reference relates to:-

"Whether the action on the part of the General Manager, SECL Chirmiri Area in not entering the correct date of birth in respect of Sh. Barelal, Assistant Foreman of Kurasia Colliery in Form 'B' Register as recorded in School Transfer Certificate is appropriate and justified? If not, what relief Shri Barelal S/o Khubbu, Asstt. Foreman at present working in Kurasia Colliery espoused by the General Secretary, Rashtriya Colliery Workers Federation, is entitled to?"

The undisputed facts relevant to this dispute are mainly that Barelal was appointed by South Eastern Coalfieldas Limited in Chirmiri Area as a General Mazdoor. He was issued a letter for his interview by the Personnel Manager on 14.09.1983 and was interviewed by the Management before his appointment. He was found eligible for appointment and was offered appointment. He was medically examined before his joining by the doctor appointed by the Management, who recorded his age at the time of his medical examination at 26 years. On the basis of his age, which was recorded 26 years in his medical examination, his date of birth was recorded as 26.09.1957 because his medical examination was conducted on 25.09.1983 and his age 26 years was recorded by the doctor in his medical examination. It is on the basis of this entry in his service register, the other documents namely; PF documents, PS-3 and PS-4, Form-B and service extracts.

It is the case of the workman that he was registered with the Employment Exchange, his name was sponsored by the Employment Exchange for employment. He had produced his School Leaving Certificate with the Employment Exchange at the time of his registration, in which his date of birth is 02.01.1960 was recorded. He had produced his School Leaving Certificate at the time of his joining which was not considered by the Management. He came to know about this discrepancy with respect to his date of birth and filed a representation against this entry requesting the Management to correct his date of birth on the basis of his School Leaving Certificate which was not done by the Management. He preferred a writ petition bearing W.P. No. 12412/2017 before the Hon'ble High Court of M.P. which was decided with an observation that the case before this Tribunal in this respect be decided expeditiously. It was further observed that the dispute was pending before this Tribunal during the pendency of the said writ.

Case of the Management is that no educational qualification was required for the post of General Mazdoor. The workman presented himself as an illiterate person and told his age 26 years to

the doctor at the time of his medical examination. His date of birth was recorded in his service record on the basis of his age recorded by the doctor at the time of his medical examination, workman never objected to this at any time, he raised a dispute in this respect at the fag end of his service hence the dispute is barred by unexpected delay and laches on his part. Management has further pleaded that in the year 1987, service extracts of workman were issued, objections were invited by way of general notice but the workman did not objected regarding his alleged wrong entry with respect to his date of birth at that time. Hence, he shall be deemed to have waived his right to challenge it and is now stopped from raising the dispute . Also, it is the case of the Management that, the so called School Leaving Certificate is not genuine.

Both the sides have filed almost same documents which are; interview letter of the workman, medical certificate by doctor, service register of the workman. The workman has filed and proved his School Leaving Certificate and his application dated 17.04.1992 addressed to the General Manager, Chirmiri Area seeking correction of his date of birth. Management has additionally, filed copy of service extracts said to be issued by Management inviting objections with regards to entries, copy of PS-3 and PS-4.

Workman side has filed affidavit of workman as his Examination-in-chief, he has been cross-examined by the Management.

Management side has filed affidavit of its witnesses as his Examination-in-chief, workman did not avail the opportunity to cross-examine all these witnesses.

I have heard argument of Learned Counsel for the workman, Mr. L. M. Tripathi and Mr. Neeraj Kewat, Learned Counsel for the Management. I have gone through the record as well.

On perusal of record, in the light of rival arguments, the reference itself is the issue for determination.

Learned counsel for the workman has submitted that he was registered with the Employment Exchange and sponsored by

Employment Exchange for employment. His date of birth, 02.01.1960 was recorded in the Employment Exchange on the basis of his School Leaving Certificate produced by him before the Employment Exchange at the time of his registration, which was sent to the management with response to the vacancy circular and he was issued a interview letter. He did produce his School Leaving Certificate with respect to his age at the time of his joining and this fact is corroborated by the workman in his Statement of Oath, is not challenged by the management. Moreover, learned counsel submits that, he filed a representation before the Management within 10 years of his service when he came to know about the discrepancy, which was duly received by Management but no action was taken in this respect.

Learned counsel also submits that, there is nothing on record to prove that, any copy of service extracts was served on the workman in 1987 and invitation were invited, as is the case of Management. Learned counsel has also submitted that when the Management was in receipt of an Application for correction of date of birth, filed by the workman in 1992, it was duty bound to address this application and decided the controversy in light of clause 5 of Implementation Instructions No. 76. By not doing so, the Management has acted against law and this action of Management is unjust and arbitrary.

Learned counsel for the management has submitted that the dispute has been raised by the workman at fag end of his service. He was given an opportunity in 1987 to get his date of birth corrected, which he did not avail hence he cannot be permitted to agitate again. Learned counsel has referred to ***Judgment of Hon'ble High Court of M.P. in the case of Surendra Singh v/s State of M.P. 2007 (1) MPLJ 286***, in this case the employee entered in service on 01.01.1972. He filed application seeking correction of his date of birth on 25.04.2004 i.e., after 32 years. The claim to alteration of his date of birth made at the fag end of his service was held to have been rightly rejected. In another case, ***The Hon'ble Supreme Court, in the case of, State of Tamil Nadu vs. T.V. Venugopalan 1994 (6) SCC 302***, held the rules provided that any correction in the recorded date of birth could be entertained only within five years after entering into service, application made after laps of this period, the application was held to have been rightly rejected.

Learned counsel for workman has relied on ***Judgment of Hon'ble High Court of Chhattisgarh, in the case of, South Eastern Coalfields Ltd. And Ors v/s Sampat Kumar Chouhan, 2015 (1) CGLJ 54***, in this case the date of birth of the workman as recorded in his matriculation certificate was not recorded in his service record, Hon'ble High Court directed that the date of birth be corrected in light of matriculation certificate.

Management has not denied specifically that no application in the year 1992, as alleged by the workman was served by him with Management. The workman has filed and proved the copy of this Application as Ex-W/5, which discloses that, it was served on Management on 17.04.1992. It was prayed that his date of birth was wrongly recorded in his service record and requested that it be corrected as 02.01.2960. It should be considered in light of the fact that, it is the case of Management that the date of birth of workman was recorded in light of age mentioned in the medical certificate (Ex-W/2).

Learned counsel has submitted that this age was recorded by Medical Officer on the disclosure of the workman. Workman has specifically denied that he made any disclosure to the doctor with respect to his age. Entry with respect to date of birth in other documents namely; Form-B and service extracts are consequential to with his first service document which is service register entry in this respect. Since, the workman made a representation with nine years of his service, seeking correction with respect to his date of birth, it cannot be said that he made this prayer at the fag end of his service hence, the judgment in the case of ***Surendra Singh (supra)*** can be distinguished from the case in hand on facts. Furthermore, since Management could not show any prescribed time limit for correction of date of birth, hence the second judgment in the case of ***T.V. Venugopalan (supra)*** referred by Management in this respect will also not be applicable in the present case.

That the **IMPLEMENTATION INSTRUCTION NO. 76**, requires to be reproduced, and is being reproduced as follows:-

**PROCEDURE FOR DETERMINATION/
VERIFICATION OF AGE OF EMPLOYEES**

(A) Determination of the age at the time of appointment;

i) Matriculates

In the case of appointees who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

ii) Non-matriculates but educated.

In the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.

iii) Ex-servicemen.

In the case of Ex-servicemen who are not matriculates, the date of birth recorded in the Army Discharge Certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. In the case of Ex-servicemen who have passed Matriculation examination, the date of birth recorded in the Matriculation certificate will be treated as correct date of birth, provided they have passed the Matriculation examination before entering the Defence Services; otherwise the date of birth recorded in Army Discharge Certificate will be taken as correct date of birth.

iv) In the cases of appointees not covered under the foregoing causes, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances.

(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 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. Management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board.

(C) Age Determination Committee/Medical Board for the above will In the case of be constituted by the Management. 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 register, CMPF Records and Identity Cards (untampered) 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 the Management for determination of age.

- (D) *For determination of the age, the Committee/Medical Board referred to above may consider the evidences, available with the Colliery Management and/or adduced before 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 identity cards and the apparent age of the employee, the cases may be referred to the Apex Medical Board located at Headquarters of the company for determination of age.*
- (H) *After the assessment of the age by the Age Determination Committee/Medical Board the same will be computerized and print out of the same will be given to be employee concerned and the unit from the reference was received within a month. If age is not however, computerized, 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.*

It was incumbent of Management to decide his representation filed on 1992 adopting the procedure as reproduced above, with respect to age dispute of illiterate persons, Management did not do so hence the Management is held to have acted arbitrarily in not disposing the representation of 1992 filed by the workman before it and insisting on date of birth recorded in his service records.

As regards to relief admissible, the workman has been superannuated by Management, on the date of birth recorded in his service records and this action has been held against law.

Before proceeding, *Judgment of Hon'ble Supreme Court* in the case of *Deepali Gundu Surwase, (2013) 10 SCC 324* require to be reproduced hereunder:-

“The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act,

1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/ illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can

avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

Hence, in light of the aforesaid proposition of law, the workman is held entitled to be deemed in service from the date of his appointment till the date of his superannuation, on the basis of his date of birth i.e., 02.01.1960 and is also held liable to all consequential in service and post retiral benefits including back-wages, payable to him within 90 days from the date of Award, failing which interest @6% p.a., from the date of Award till payment.

AWARD

"Holding the action of the General Manager, S.E.C.L., Chirmiri Area in not entering the correct date of birth in respect of Sh. Barelal, in Form 'B' Register as recorded in School Transfer Certificate, illegal, arbitrary and unjustified. He is entitled to all consequential in service and post retiral benefits including back-wages, payable to him within 90 days from the date of Award, failing which interest @6% p.a., from the date of Award till payment, the Reference stands answered accordingly."

No order as to cost.

DATE:- 30-06-2026

**(P.K.SRIVASTAVA)
PRESIDING OFFICER**