

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 6312 of 2014

Manpuran Singh Petitioner

Versus

1. Bharat Coking Coal Limited, through
its General Manager, Munidih Coal
Washery, Dhanbad
2. The Director (Personnel), BCCL, Koyla
Bhawan, Koyla Nagar, Dhanbad.
3. The Deputy General Manager, BCCL, Munidih
Coal Washery, Dhanbad.
4. The Project Officer, BCCL, , Munidih
Coal Washery, Dhanbad. Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. R.R.Tiwari, Advocate
For the Respondents : Mr. Anoop Kr. Mehta, Advocate

C.A.V. On 18.06.2020

Delivered on / /2020.

Heard learned counsel for the parties through V.C.

2. The instant application has been preferred by the petitioner for following reliefs:-

(i) for quashing of the Office order dated 25.05.2014, so far as it relates to the petitioner, whereby and where under it has erroneously been held that the petitioner is going to retire on 30.06.2014, as per the service book and other related documents and as such the impugned order is wholly unjust & unsustainable in the eye of law.

(ii) Further, for quashing of the letter dated 02.06.2014, issued by the Project Officer, Munidih Coal Washery, in consequence of the office order dated 25.05.2014, without considering the fact that as per the service book and other documents the petitioner has to retire on 31.12.2014.

(iii) Further prays for quashing the letter dated 08.10.2014 issued by Project Officer, Munidih Coal Washery, whereby and where under the petitioner has been informed that dispute with regard to age has been considered and as because the date of birth of the petitioner figures differently in different records the petitioner was held but have reached the age of superannuation on 30.06.2014, without considering the fact that as per the relevant documents the petitioner was due to retire on 31.12.2014 and hence the contrary decision is wholly unjust and unsustainable in the eye of law.

(iv) Further prays for a direction upon the respondents to pay the salary for the period 30.06.2014 to 31.12.2014 and

further the respondents be directed to calculate all the retiral benefits considering that the petitioner has retired from service on 31.12.2014 in the facts of this case, as without any fault of the petitioner, the petitioner has been superannuated from the service on 30.06.2014.

3. The case of the petitioner is that he joined the services of the respondent-Company on 30.12.1974 as Conveyor Operator in Munidih Coal Washery and at the time of joining of the petitioner the service book was prepared and in the service book the date of birth of the petitioner was entered as 20 years as on 30.12.1974 and the same date of birth was mentioned in the Last Pay Certificate ('LPC' in short). The further case of the petitioner is that even on the other documents like Identity Card the date of birth of the petitioner has been mentioned as 30.12.1954 as such, the date of retirement of the petitioner comes on 31.12.2014. However, an office order was issued on 25.05.2014 wherein it was indicated that the petitioner is going to retire on 30.06.2014 and on 02.06.2014 the petitioner has received another letter from the respondent No.4-Project Officer, Munidih Coal Washery, for submitting the relevant documents as per "Mission Biswas" for final resolution of petitioner's retirement benefit. The petitioner immediately filed a representation indicating that his date of birth is 30.12.1954 and as such, he should retire on 31.12.2014. However, without providing any opportunity of hearing to substantiate his claim the respondent-authority issued the impugned letter dated 08.10.2014 whereby the petitioner was informed that after

going through all the records regarding date of birth it was found that the date of birth of the petitioner was found differently entered as such, as per the entry in Non-Executive Information System ('NEIS' in short) the petitioner's date of birth was fixed as 30.06.1954 and the petitioner has rightly been retired.

4. A counter affidavit has been filed by the respondent-company stating inter alia that the age of the petitioner has been recorded in the statutory "Form B Register" of Munidih Colliery as 20 years as on 05.06.1970 and the petitioner has also put his signature acknowledging the recording of his age in the said Form 'B' Register. However, since in the LPC the date of birth of the petitioner was wrongly recorded as 20 years as on 30.12.1974 as such, the respondent-company took a decision to rely upon the NEIS where the date of birth of the petitioner has been recorded as on 01.07.1954 and as such the petitioner has attained the age of 60 years on 30.06.2014. A copy of NEIS and Form 'B' Register has been annexed with the counter-affidavit.

5. Mr. R.R.Tiwari, learned counsel for the petitioner submits that it is not the petitioner who is raising the grievance of date of birth at the fag end of his service rather it is the Company who themselves without relying their own documents i.e. the Identity Card as well as LPC which was issued by Munidih Project in which the date of birth of the petitioner was indicated as 20 years as on 30.12.1974, *suo*

moto came to the conclusion and issued the impugned letter whereby they relied upon the NEIS as such it would be incorrect to presume that the petitioner has raised the issue of date of birth at the fag end of his service. As such, the instant writ application should be allowed and the date of birth of the petitioner should be considered as 30.12.1954.

6. *Per contra*, Mr. A.K.Mehta, learned counsel for the respondent-Company submits that "Form B" is a statutory register and maintained under the provisions of Mines Act, 1952 and the Rules made there under; as a matter of fact, it is equivalent to the service book understood in a common parlance wherein the date of birth of the petitioner has been mentioned as 20 years as on 05.06.1970, however, due to the wrong entry in the LPC issued by Munidih Colliery there was in correct mention of the date of birth as 30.12.1974 as such, the respondent-company ignoring the Form 'B' Register relied upon the date of certificate as mentioned in NEIS which is 01.07.1954. He further submits that looking to the Form 'B' Register the petitioner would have retired much earlier. However, since there was a contradiction in Form 'B' Register as well as LPC issued by the Colliery, the management took a decision to rely upon the NEIS which is beneficial for the workman in which the date of birth has been recorded as 01.07.1954 and as such, there is no infirmity in the impugned letter and the petitioner has rightly been directed to retire on 30.06.2014.

7. Having heard learned counsel for the parties and after going through the relevant documents of the case, it appears that admittedly in Form 'B' Register the date of birth of the petitioner is mentioned as '20 years as on 05.06.1970 meaning thereby to say that his date of birth is 05.06.1950, however, in the Identity Card as well as LPC issued by the Colliery the date of birth has been mentioned as 20 years as on 30.12.1974 and in NEIS his date of birth is recorded as 01.07.1954 as such, it is a disputed question of facts which cannot be decided by this Court.

8. Needless to say that since there was a disputed question regarding the date of birth of the petitioner in two different documents the respondent-company decided to rely upon the 3rd document which is also documentary evidence. It is also an admitted fact that Form 'B' was duly admitted by the petitioner as he had put his signature in the said Form 'B', wherein the date of birth is recorded as 20 years as on 05.06.1970.

9. In my considered opinion, since it is a highly disputed question of fact which cannot be decided in the writ Court. There are catenas of judgments which restrict the Court to decide a disputed question of fact in writ jurisdiction. At the cost of repetition, the issue involved in this case is a disputed question of fact and the petitioner can very well raise an industrial dispute regarding fixation of his date of birth, but in no way this Court will have jurisdiction to decide the

disputed question of fact.

10. As a result, the instant writ application is dismissed with a liberty to the petitioner to take alternative remedy enshrined under the Act.

Amardeep/

(Deepak Roshan, J.)