

R.C.S.No.20/2013,  
Krushna Singh -Vs-  
G.M., W.C.L. + 3.

**O R D E R Passed Below Exh.5**

( Delivered On 19<sup>th</sup> August 2013 )

01. This is an application U/O. 39 Rule 1 & 2 of Civil Procedure Code, for grant of temporary injunction restraining the non-applicants from retiring the applicant from his services illegally and arbitrarily on the basis of incorrect date of birth i.e. 6-8-1953 and directing the non-applicant to continue the applicant in service till actual attaining the age of his retirement i.e. till 31-8-2021 or till the decision of the suit whichever is earlier.

02. **The factual Matrix of the application are as follows :**

The applicant was initially appointed as wagon loader as he was passed his interview on 31-3-1983 through Employment Exchange and appointed on 6-8-1983 and posed at Sub Area No.1 at Majari Colliery, Post : Shivaji Nagar, Taq. Bhadrawati, Dist. Chandrapur. Thereafter, the services of the applicant was transferred at Kolarpimpri Opencast Mines and thereafter he was again transferred with the non-applicant No.3 at Junad Opencast Mines which was under control of non-applicant No.1.

03. The applicant has provided all the necessary document to his Appointing Authority wherein the date of birth of applicant was mentioned as 16-8-1961. But the same was not recorded and despite of it the presumptive age of applicant was wrongly recorded

by the concerned officer of the Kolarpimpri Opencast Mines as 30 years on 6-8-1983 i.e. on the date of his appointment. But in-fact he was never aged of 30 years when he was appointed i.e. on 6-8-1983. At that time, he was completed his age of 21 years 11 months & 21 days. As actual and correct date of birth was being 16-8-1961 as per the relevant bona fide and considerable record whichever provided by the applicant to his Appointing Authority.

04. As per the Rules & standing order of the non-applicants, the age of retirement by way of superannuation is of 60 years for the employees working in Class-III category. The date of birth of the applicant is 16-8-1961 and for that he has submitted his school leaving certificate as well as other relevant documents to the Appointing Authority at the time of his initial appointment. At the time of recruitment, the applicant was passed 8<sup>th</sup> standard and he had left his further education since 9<sup>th</sup> standard in the year 1975 from the Government High School of Basantpur and thereafter no further education was taken by him anywhere in any school and thus the applicant is being, non matriculated but educated.

05. The non-applicant issued identity card to the applicant in which the date of birth of applicant was never been shown but the age of the applicant was shown as 30 years at the time of initial appointment. The applicant was narrated about his aforesaid wrong date of birth to the non-applicant No.3 from time to time. But the same was never been considered and corrected by way of rectification by the non-applicants. The applicant thereafter made

representation to the non-applicant No.3 but it was orally assured to the applicant that the mistake is clerical in nature and the same will be corrected at any point of time by verifying the documents including the school leaving certificate in view of the directions issued by the Coal India Ltd. as per the Implementation Instruction No.76 of NCWA-III which are made applicable from 25<sup>th</sup> April, 1988, in view of the directions issued by the Member Secretary of Joint Baper tite Committee for the Coal Industry, Coal India Ltd. But it was never done so by the non-applicants. In view of the instructions, the procedure for determination of age of employees and for resolution of disputed cases including the date of birth was laid down and the powers are vested to the said committee for appropriate decision regarding the determination of the age of the employees.

06. According to the applicant, since beginning, on so many occasion he has requested the non-applicant No.3 to rectify his date of birth but the same has not been rectified by the non-applicants. As per the Notification issued by the Chief Manager vide No.1447/2011, dated 18-9-2011, the written proposal for correction of date of birth was called from the concerned employees along with the necessary documents with a direction to submit is with the H.O. till 30-11-2011. In view of the said Notification the applicant again requested in writing for correction of his date of birth on 24-9-2011, but in vain.

07. The applicant further submits that earlier on 20-1-2002,

1-4-2004 & 3-3-2005, he requested the non-applicants for rectification of his date of birth and also narrated to the non-applicants No.3 & 4 that his appointment was made through Employment Exchange, therefore he requested the non-applicant No.4 to ask the clarification from the concerned office. Accordingly, the non-applicant No.4 issued letter to the concerned office on 1-7-2004 but nothing was been informed.

08. According to the applicant, as per the oral directions of the non-applicant No.3, he obtained the duplicate school leaving certificate issued by the Head Master, High School, Basantpur on 7-2-2004. According to the applicant, the original certificate has already been provided by him to the Appointing Authority. The applicant further applied for birth certificate from the Registrar, Gram Panchayat, Rajkhedawan of Bhgawanpur Hat, Siwan the actual place of birth from the department of Planning & development issued on 12-4-2010 by the said authority in favor of the applicant in which the date of birth of applicant was specifically mentioned as 16-8-1961. But still, the non-applicants are never rectified his date of birth.

09. In view of the I.I. No.76, no matriculation certificate was required for correction of date of birth in case of illiterate employee. It is to be determined by the Colliery Medical Officer by keeping in view of any documentary evidence as produced by the said employee. In view of the instructions No.76 any middle pass certificate issued by the department by Public Instruction is required

to be treated as correct which was issued prior to the employment and thus in view clause 11 of the said instruction the decision of the age determination committee will be binding to the non-applicants. But the dispute of the applicant was never been referred to the said committee by the non-applicants deliberately and arbitrarily.

10. According to the applicant, he has established strong prima face case for granting relief of temporary injunction for restraining the non-applicants from retiring him from service prior to his actual age of superannuation i.e. till 16-8-2021 or till the decision of the instant suit. The applicant previously tried on so many time by making representation to the non-applicants to get his date of birth rectified but as the non-applicant did not paid any heed to the request of the applicant, therefore again on 27-11-2012 he requested the non-applicant for correction of his date of birth by making representation, but nothing has been done by the non-applicant till 15-1-2013. Therefore, on 16-1-2013 the applicant issued notice to the non-applicants but they neither replied nor acted upon it. Therefore, the applicant has strong apprehension on the part of defendant that he may be retired from his services on 31-8-2013 on the basis of incorrect date of birth i.e. 6-8-1981 and thereby the applicant would suffer the most valuable period of more than 8 years of his services which could not be compensated in terms of money. The applicant therefore constrained to file the suit for declaration & perpetual injunction against the non-applicants along-with the instant application for temporary injunction against them till the disposal of the suit.

11. The non-applicants resisted the application by filing their say at Exh.10. The non-applicants denied all the adverse pleadings of the applicant. They challenged the tenability of the application as the same is based on illegal grounds and untrustworthy documents. According to the non-applicants, the applicant is educated and knows Hindi & English language very well. The documents i. e. Service record of the applicant, filed by the non-applicants on record are mostly in Hindi & English languages and the applicant had countersign those documents in English as a token of acceptance or correctness of date of birth in those documents. Therefore, the plea of applicant that his age is wrongly mentioned by non-applicant in service record is not reliable and convincing, because during the long span of his service, more than 28 years, signature & thumb mark is appearing on several documents on several dates and in different years before different Authorize Officer of non-applicant. The applicant never raised any grievance about the date of birth earlier and for the first time in the year 2001, he has taken a plea that his date of birth was wrongly written by non-applicant on various documents.

12. The applicant joined in the services in the year 1983 and for the first time, made an attempt to correct his date of birth after collecting the documents of transfer certificate of nonmatric (9<sup>th</sup>) education from private education institute in the year 2004 which is not recognized by the Government having no registration number, no approval on record and the certificate of birth issued by the Secretary of village G. P. Kheduwa in the year 2010 at the request of

applicant. According to the non-applicants, the applicant admitted that the non-applicant has informed the applicant vide letter dated 13-3-2005 and 23 & 24-6-2006 that the date of birth of applicant cannot be changed as per the norms. But the applicant has not filed the same nature of suit in the year 2005 or 2006 and afterwards immediately. The applicant filed the same nature of claim before Assistant Labour Commissioner at Chandrapur and the same has been rejected by the said Authority. The applicant prima facie failed to prove his correct date of birth as 16-8-1961 instead of 6-8-1953 and also failed to prove that his date of birth mentioned in the statutory register maintained by the non-applicant is wrong and illegal. The applicant also not produced any certificate which is collected or obtained by him prior to date of his appointment. The request of the applicant for grant of temporary injunction cannot be considered because the non-applicants have already issued & served the notice of superannuation to the applicant.

13. According to the non-applicants, the date of birth of workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all the matters pertaining to his service including fixation of the date of his retirement. All formalities regarding recording of the date of birth shall be finalized within 3 months of the appointment. The applicant, at the fag end of his service, after long period i.e. after 28 years, is claiming the correction of his date of birth on the basis of unreliable and untrustworthy documents. Accordingly, the non-applicants have prayed for the rejection of the application.

14. Heard learned advocate Shri J. M. Patil, on behalf of the applicant and learned advocate Shri D. K. Katkade, on behalf of the non-applicants. On rival pleading of the parties, following points arise for my determination and I have given my findings against each of them for the reasons stated below.

<u>P O I N T S</u>	<u>F I N D I N G S</u>
1) Whether the applicant has prima facie case ?	<b>No</b>
2) Whether balance of convenience lies in his favor ?	<b>No</b>
3) Whether irreparable loss will be cause to the applicant, if the temporary injunction is not granted in his favor ?	<b>No</b>
4) What order?	The application is rejected.

15. In order to be entitle to the relief of temporary injunction, it is necessary on the part of the applicant to make out the three cardinal principles required for the purpose. The applicant has not only to prove that he has prima facie case but also that balance of convenience tilts in his favor. If the temporary injunction as sought for is not granted in his favor then he will suffer irreparable loss which cannot be compensated in terms of money.

16. It would also be appropriate to discuss the facts which are no longer in dispute between the parties. It is not in dispute that the applicant was initially appointed as wagon loader as he was passed an interview on dated 31-3-1983 through Employment Exchange by following & adopting all prevailing recruitment

procedure in view of appointment order dated 6-8-1983 and accordingly he was joined with the Appointing Authority and was posed at Sub Area No.1 at Majari Colliery. It is also not in dispute that, as per the Rules & standing order of the non-applicants the age of retirement by way of superannuation is of 60 years for the employees working in Class-III category.

### **REASONS**

17. **As to Points No.1 to 3 :** Learned advocate Mr. Patil on behalf of the applicant vehemently argued that the non-applicants intentionally and arbitrarily mentioned the age of the applicant in his service record and also in the identity card issued in his favor as 30 years as on 16-8-1983 i.e. on the date of initial appointment of the applicant instead of mentioning the date, month & year of birth of the applicant. The applicant brought the said mistake into the knowledge of the non-applicants but the non-applicants time to time avoided the applicant. They have not rectified the same. On the basis of the wrong date of birth they are going to retire the applicant 8 years prior to age of his superannuation. The act on part of the non-applicants is illegal and arbitrary. The applicant is the sole earning member family and his old aged parents are totally dependent on his income. He has no separate source of income except the employment with the non-applicants. Hence, if the applicant is retired prior to his superannuation then in such case the applicant and his family members will be deprived from their daily bread & food including the other requirements.

18. In support of the contentions, the applicant relied on several documents filed below list of documents at Exh.3. viz - implementation instruction No.76 of NCWA-III, copy of letters and the various correspondence made by the applicant with non-applicant No.3 and also by the the non-applicant to the applicant & Employment Exchange, copy of leaving certificate, copy of birth certificate issued by Gram Panchayat, Khendwa, copy of Notification issued by non-applicant No.1, copy of notice issued by applicant to the non-applicants, return envelope, postal receipt & acknowledgment etc...

19. According to the applicant, regarding the claim of correction of date of birth the jurisdiction of the Civil Court is not barred by Sec. 2 (A) of Industrial Disputes Act, 1947 and the suit is maintainable in the Civil Court. In support of his contentions, the learned advocate Mr. Patil, on behalf of the applicant placed his reliance on the citations of Hon'ble Apex Court in the case of *Ishar Singh -Vs- National Fertilizers Ltd., 1991 AIR (S.C.) 1546*, and also in the case of *Premier Automobiles Ltd., -Vs- Kamlekar Shantaram Wadke, 1975 AIR (S.C.) 2238*.

20. According to the applicant, the claim of same nature by the employee of non-applicant namely Appala Pocham Lachayya was granted by way of temporary injunction in R.C.S.No.41/2007 by the Civil Judge (Jr.Dn.), Rajura. The order of the Court was confirmed in Misc. Civil Appeal bearing No.59/2007 by the District Court at Chandrapur and both these orders were also confirmed by

the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.32/2008 on dated 18<sup>th</sup> January, 2008. In support of contention, the applicant filed the copy of Judgment passed in Misc. Civil Appeal No.59/2007 by the District Court at Chandrapur and also the Judgment passed in Writ Petition No.32/2008, dated 18-1-2008.

21. As against this learned advocate Mr. D. K. Katkade, vehemently argued that the claim of the applicant is based on the wrong & untrustworthy documents. The applicant is educated and has signed the documents pertaining to his service record, filed by the non-applicants on record as a token of acceptance of his date of birth mentioned in those documents. But still after a long span of service and at the fag end of his service i.e. more than 28 years thereafter, he is taking the plea of his wrong date of birth mentioned in his service record. According to the learned advocate Mr. Katkade, the applicant cannot take the plea and opportunity from the Court to get his date of birth corrected as previously he had an opportunity to ask for the relief, but he was slept over his right for years together, therefore he is not supposed to claim the relief under any law at the fag end of his service. The learned advocate Mr. Katkade, further argued that the temporary injunction as sought for if granted in favor of the applicant, then it will cause prejudice to the employees juniors to the applicant who are waiting for their promotions. Because if temporary injunction is granted and ultimately on merits if the suit of the applicant is dismissed, then the juniors cannot be compensated in terms of money.

22. In support of the contentions he relied on certain documents filed below list of document at Exh.22 they are notice about retirement, form No.B, service register, service book, various other forms, transfer letter, various letters issued to the applicant, birth certificate, order of Assistant Labour Commissioner, II No.76.etc... The learned advocate on behalf of the non-applicants also placed his reliance on the ratio laid down in various citations as follows :

*(1) R.S.E.B. & another -Vs- Judge, Industrial Tribunal, Jaipur & another, 2002, LAB I.C. 1358 (Rajasthan High Court), (2) Secretary & Commissioner -Vs- R. Kurubakaran, AIR 1993 S.C. 2647 (3) State of Tamilnadue -Vs- T. V. Venugopalan and (4) Burn Standard Co. Ltd. & other -Vs- Dinbandhu Majumdar & another, AIR 1995 S.C. 1499.*

23. Heard both the parties at length. Perused the documents filed on record by both the parties and carefully gone through the ratios laid down in the citations as relied on by both the parties. Since the non-applicants did not dispute about the jurisdiction of Court either through their pleadings in their reply (Exh.20) to the application vide Exh.5 or during the course of the argument, therefore with due respects to the ratio laid down by the Hon'ble Apex Court in cited supra on behalf of the applicant are not taken into consideration at this stage.

24. It is the admitted position on record that the applicant was initially appointed as wagon loader as he was passed his

interview on 31-3-1983 through Employment Exchange and in view of appointment order dated 6-8-1983 he was joined with the non-applicants. The main dispute, according to the applicant is that he has provided all the necessary required documents to his Appointing Authority regarding his date of birth as 16-8-1961, but still the non-applicants wrongly recorded his date of birth as 30 years as on 6-8-1983 by assumption that his date of birth as 6-8-1953. The applicant therefore made so many efforts by making representation with the non-applicants to get his date of birth corrected in the service record, but the non-applicants did not paid any heed to his request. In this regard, the applicant is relied on number of documents in support of his contention as aforesaid. On perusal of the document at Sr.No.2 filed below list of document Exh.3, it reveals that the non-applicant Sub Area Manager, Kolarpimpri made correspondence with the existing employer of the applicant i.e. Sub Area Manager, Junad on 7-10-2001 in respect of asking the details about the date of birth of the applicant. On perusal of document at Sr.No.4 which is a letter issued by the applicant to the non-applicant on 20-1-2002, another letter dated 1-4-2004 at Sr.No.8 , letter at Sr.No.10 dated 3-3-2005, it reveals that the applicant requested the non-applicants regarding the correction of his date of birth in his service record.

25. Both the parties are also relied on the document filed on record which is National Coal Wage Agreement–III, Implementation Instruction No.76 in respect of the procedure laid down in the said Instruction for the purpose of determining the age of the employee.

The relevant text of the said instruction is reproduced on which the parties are placing their reliance as follows :

**DETERMINATION/VERIFICATION OF AGE OF EMPLOYEES**

**(A) Determination of the age at the time of appointment :**

i) 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 alter under any circumstances.

ii) **Non matriculation 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 : .....

iv) Illiterate : .....

**(B) Review/determination of date of birth in respect of existing employees :**

(i) (a) In the case of 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 Institution 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.**

26. I have carefully gone through the procedure for determination of age of employee as laid down in the Implementation No.76 as aforesaid. The applicant is claiming that his case falls under the Category (ii) of Rule (A) as mentioned in the aforesaid instruction as he is **non matriculated but educated.**

Therefore, 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. But according to the non-applicants the said implementation Instruction No.76 were issued on 15-4-1988. At that time the applicant was the existing employee of non-applicant, therefore his case would fall under the Category (i) (a) of Rule (B) i.e. the Rule laid down for determination of date of birth in respect of existing employee. According to the said Rule, in the case of the **existing employee** Matriculation Certificate or Higher Secondary Certificate issued by the **recognized universities** or Board or Middle Pass issued by the Board of Education and/or Department of Public Institution 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.**

27. In this regard, having considered the argument advanced by both the parties and after going through the Rules laid down in that regard, it makes crystal clear that, Rule laid down under the heading (A) are not applicable to the instant applicant, as the Rules are framed for the determination of the age of the employee **at the time of his appointment.** The applicant is the existing employee of the non-applicant therefore his case falls under the Rule (B) (i) (a) and according to which it is made obligatory to consider the certificate issued by the concerned bodies to be treated as correct provided they were issued by the said recognized Universities/Boards **prior to the date of employment.**

28. On perusal of the documents filed on behalf of the non-applicants on record below list of document Exh.22 i.e. document at Sr.No.2-Form No.B, document at Sr.No.3-Service Register, document at Sr.No.5-Service Book, document at Sr.No.8-Form No.B, document at Sr.No.9-Form PS-3 i.e. the particulars of family, document at Sr.No.10-Form PS-4 i.e. nomination form, document at Sr.No.11-Particulars of family for Coal Mines Family Pension Scheme, it reveals that the date of birth of the applicant mentioned in the aforesaid documents as 30 years as on 6-8-1983 and more particularly described as 6-8-1953. The perusal of documents as aforesaid also reveals that, the applicant had countersign those documents, which clearly shows that at that time, he had no grievance about the date of birth as mentioned in the documents as aforesaid. On perusal of the pleadings of applicant, it seems that, it is not the case of the applicant that, the documents as aforesaid are forged one or the signatures of applicant thereon, according to him, were obtained by the non-applicants on the blank documents and later on filled the wrong contents. For the first time, in the year 2001 i.e. since after 18 years of his service, the applicant put his grievance with the non-applicants about the correction of his date of birth in the service record as the same according to him, was wrongly mentioned. The applicant could not give satisfactory explanation as to why the objection could not been raised by him at an earlier stage.

29. The applicant relied on document at Sr.No.11 vide Exh.3 which is a letter dated 13-3-2005 issued by the non-applicants to the

applicant informing that his date of birth cannot be changed in view of the N.C.W.A.-III, Implementation Instruction No.76 and he was further informed not to claim on the same basis in future also. The non-applicants also relied on the same documents filed by them at Sr.No.14 below Exh.22. Non only this, the non-applicants informed by letter dated 23-6-2006 to the Coal Labour Association informing it that no sort of change can be done regarding the date of birth of the applicant.

30. In this connection, during the course of argument the learned advocate on behalf of the non-applicants Mr. Katkade, vehemently submitted that, the claim of the applicant is not according to the Implementation Instructions No.76. He did not produce the required documents for the correction of his date of birth, therefore, his request was not considered in the year 2005 itself and it was accordingly informed to him. The fact is also admitted to the applicant but still at the fag end of the service, he approached the Court just to remain in service anyhow after the age of his superannuation. The interim relief as sought for if granted then it will cause prejudice and monetary loss to those undisclosed persons who may be aspirant for the post which has to be vacated by the applicant. The learned advocate for non-applicants further urged that, the applicant relied on the case of the employee of the non-applicant namely *Appala Pocham Lachhaya* who filed the claim of same nature in the Civil Court at Rajura. Though, said Appala succeeded in getting the temporary relief from the Court which was been confirmed by the Appellate Authority, but

ultimately the entire suit of the Appala came to be rejected finally on merits. Therefore, he urged that, the ratio laid down in the case of Appala Pocham cannot be taken into consideration.

31. In this regard, the learned advocate also drawn my attention to the ratio laid down in the case of ***R.S.E.B. & another -Vs- Judge, Industrial Tribunal, Jaipur & another, 2002, LAB I.C. 1358 (Rajasthan High Court)***. The highlighted portion in Para No.16 of the aforesaid Judgment is reproduced below :

16) *From the Judgment of the Apex Court which has been relied upon by the learned counsel for the petitioners himself it is clear that it is not a rule or law that in the matter of the dispute related to date of birth, stay has to be granted. In the matter of grant of stay/interim injunction or interim award by the Court or by the Tribunal/Labour Court pending final adjudication of the dispute Re-date of birth, the principles which are to be followed in grant of temporary injunction under Order 39 Rule 1 & 2 C.P.C. are to be followed. The Tribunal of the Labor Court or the Court as the case may be while considering the application filed by the litigant concerned has to consider that he has a strong prima facie case in his favour. The Court or the Tribunal has to consider that if interim relief / stay is not granted in his favour it will result in causing him an irreparable injury which cannot be compensated in terms of money and lastly that the balance of convenience also favours grant of stay/ interim relief or interim award. Unless the Court or Tribunal is satisfied on all the aforesaid three ingredients, no interim relief, stay or interim award can be ordered. However, strong a litigant may have a prima facie case but in case when the Court is satisfied that non grant of injunction or stay or interim award will not result in causing injury to the litigant concerned, which can be compensated in terms of money certainly it can legitimately decline to grant relief. Even where the Court/Tribunal finds in the case in favour of the litigant concerned on the ingredients of prima facie case and irreparable injury but it is satisfied that balance of convenience does not favour grant of interim relief it can legally decline to grant any interim relief in the matter. Here in this case as observed by their Lordships in the case of Secretary & Home Commission (AIR 1993 S.C. 2647) [Supra], a matter of grant of interim relief in the case Re dispute of correction of date of birth, the Court or the Tribunal has not only concerned to irreparable injury which may be caused to the litigant but has to see that the other persons who are not before it or public at large may not suffer by this grant*

*of relief. In case an interim relief/stay or interim award has been made, it may result in causing prejudice and monetary loss and other manifold losses to those undisclosed person who may be aspirant for promotion on the post which has to be vacated by the employee/officer concerned. Not only this, looking to the wholesale unemployment in the country the unemployed person will deprived of this benefit of employment where by grant of interim relief stay or interim award the workman is ordered to continue as such in the service. In the case where ultimately the litigant lost in the matter Re date of birth dispute those unclosed persons will suffer and for their sufferance the Court cannot compensate them. Further in a case where the interim relief or stay or interim award is not made in such case and ultimately the litigant succeeds in the case, the Court/Tribunal has all powers to compensate him for the loss suffered by him.....*

The learned advocate also placed his reliance on the citation of Hon'ble Apex Court in the case of **Secretary & Commissioner -Vs- R. Kurubakaran, AIR 1993 S.C. 2647**. The highlighted portion in Para No.5 of the aforesaid Judgment is reproduced below :

*5) ..... In many cases it is part of the strategy on the part of such public servants to approach the Cort or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.*

32. I have carefully gone through the aforesaid cited supra and the ratio laid down in it. The applicant, for the purpose of correcting the date of birth, is required to follow the instructions laid down in NCWA-III / I.I. No.76 norms applicable to the non-applicant company. To substantiate the claim, as sought for by the

claimant / applicant for the correction of his date of birth in the concerned record, the detailed evidence is yet to be come on record. But for the purpose of right decision of this application, the applicant is prima facie required to produce the documents pertaining to his date of birth which should be issued by the recognized Universities/Boards/Institutions **prior to his date of employment**. The applicant, though filed documents i.e. school leaving certificate issued by the Head Master, High School, Basantpur on **7-2-2004** and also birth certificate issued by the Directorate of Statistic & Evaluation on the basis of information collected from Gram Panchayat, Rajkhedawan of Bhgawanpur Hat, Siwan issued on **12-4-2010** by the said authority, in which the date of birth of applicant was specifically mentioned as 16-8-1961. But on perusal of the documents as aforesaid, it reveals that they are not issued **prior to the date of the employment** of the applicant. Moreover, the applicant could not placed any document at the stage for the satisfaction of the Court about the recognition of the school which issued the certificate in his favor.

33. Thus, in the light of above discussion, I am of the view that the applicant did not produce the prima facie evidence of unimpeachable character on record and accordingly, failed in establishing that he has prima facie case, so also balance of convenience tilts in his favor. Accordingly, the applicant also failed to establish that he will suffer irreparable loss which can not be compensated in terms of money, if the temporary injunction as sought for is not granted in his favor. On the contrary considering

the ratio, laid down by the Hon'ble Apex Court in the case of Secretary & Commissioner -Vs- R. Kurubakaran, I am of the view that, the temporary relief as sought for, if not granted to the applicant by allowing this application, and if he succeeds in the suit finally on merits, in such situation, he can be compensated for the loss suffered by him. Hence, I answered Points No.1 to 3 in the negative.

34. **As to Point No.4 :** For grant of temporary injunction, it is necessary for the applicant to establish the three cardinal principles required for the purpose as discussed aforesaid. Absence of any of the three necessary principles entails rejection of the application. As discussed above, the applicant has prima facie, failed to make out the three cardinal principles. Hence, I answered Point No.4 in the negative. In the sequel, I pass the following order.

**ORDER**

- 1) The application at Exh.5 is rejected.
- 2) Parties to bear their own costs.

Dated : 19-8-2013.

( N. V. Agrawal )  
2<sup>nd</sup> Jt. Civil Judge(Jr.Dn.),  
Wani, Dist. Yavatmal.