

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 4548 of 2019

Arun Kumar Sharma -**Versus**- South Eastern Coalfields Limited & Ors.

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WPS No. 3210 of 2020

Arun Kumar Sharma -**Versus**- South Eastern Coalfields Limited & Ors.

29.01.2021	Mr. Bidya Nand Mishra, Advocate for the Petitioner. Mr. Vinod Deshmukh, Advocate for the Respondents. <u>WPS No.3210 of 2020</u> Heard on I.A.No.1, Application for interim relief to stay the notice dated 04.07.2020 served to the petitioner whereby he has been directed to be superannuated on 31.01.2021. Learned counsel for the petitioner would submit that the petitioner was initially appointed in the year 1985 as a Loader in the SECL Korba and subsequently he joined his duty at Rajgamar Colliery and promoted at different point of time in the year 2000. Leaving apart the petitioner, the other 17 employees were considered for correction of their date of birth taking into the date of their age at the time of initial appointment to be 18 years and reciprocally the date of retirement was decided. It is stated that though the petitioner has submitted a matriculation certificate wherein the date of birth of the petitioner is shown as 26.03.1969 but the date of birth of the petitioner as of now is considered as 13.01.1961. He would submit that on the basis of school certificate, he was considered for promotion from time to time and the school matriculation certificate is the only document which would conclusively shown the actual date of birth. Therefore, if the petitioner is made to retire by Annexure P-1, he would

lose the considerable period which is otherwise legally he is entitled to serve, resulting into the financial loss and other emoluments. Therefore, till the matter is heard, the retirement notice dated 04.07.2020 be stayed.

Counsel for the petitioner further submits that the issue is about the reversion of the petitioner, therefore, the issue of date of birth was never touched upon, which cannot be said to be illegal as it doesn't find place in the punishment prescribed in the Standing Order. He relies on (2020) 3 SCC 411.

Per contra, learned counsel for the respondents SECL would submit that the issue of date of birth has been adjudicated and has been discussed initially in the notice served to the petitioner in the year 1998 wherein he was reverted and in such reversion order, the following observation as made :

“Further, NO COGNIZANCE WILL BE GIVEN TO THE DATE OF BIRTH MENTIONED IN HIS MATRICULATION CERTIFICATE I.E. 26.03.1969, SINCE IT WOULD HAVE DEBARRED HIM FROM GETTING INITIAL APPOINTMENT IN THE COMPANY. THEREFORE, THE DATE OF BIRTH AS RECORDED IN HIS SERVICE SHEET AS 13.01.61 (THIRTEEN JANUARY NINETEEN SIXTY ONE) WILL REMAIN UNALTERED.”

He further referred to the award dated 28.09.2010 and subsequent confirmation by the Single Bench and Division Bench of this Court. He would submit that therefore this issue has already been dealt upon, therefore, the petitioner as of now cannot claim for correction of date of birth.

Perusal of the record would show that on 25.04.1998, the petitioner was reverted to the post of Clerk Grade-III. In such reversion order, the observation as quoted above was recorded. The said reversion order was subject of challenge before the CGIT and the CGIT in it's award dated

28.09.2010 at para 10 and 11 has elaborately discussed about the date of birth. Though the issue pertains to reversion but the path leading to such reversion was discussed to justify. The said order was further assailed before the Single Bench in WP(L) No.3430 of 2011 wherein on 08.03.2019, this Court has affirmed the order wherein also discussion about the date of birth was also considered about the suppression. This was further subject of challenge before the Division Bench and the Division Bench also took note of the fact that there is difference in date of birth recorded in the matriculation certificate and accordingly the writ appeal was also dismissed. Consequently, it appears that the petitioner was aware of the fact about the finding of date of birth since 1998 and at the fag end when the notice was served to the petitioner for his superannuation, this petition has been filed. Therefore, after going through the judgment passed by the CGIT and thereafter two Courts of this Court, I am not inclined to stay the effect and operation of the order notice dated 04.07.2020.

Accordingly, I.A.No.1, application for interim relief is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Aks