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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.21087 of 2014

In the matter of an Application under
Articles 226 & 227 of the Constitution of India, 1950

* * *

Satnam Singh
Aged about 37 years
Son of Chandan Singh
At present residing in
Quarter No.MQ-84
At/P.O.: Deulbera Colliery, Talcher,
District: Angul, Odisha. ...

Petitioner

-VERSUS-

- 1.** Mahanadi Coalfields Limited,
(A subsidiary of coal India Ltd.)
Represented through its
Chairman-*cum*-Managing
Director, Registered Office
At: Jagriti Vihar, Burla
District: Sambalpur.
- 2.** General Manager (P&IR)
Mahanadi Coalfields Limited
At: Jagriti Vihar, Burla
District: Sambalpur.
- 3.** General Manager,
Central Workshop (EXCV),
Mahanadi Coalfields Limited,
Talcher, District: Angul.



4. General Manager, (Mining)
Balaram OCP
Mahanadi Coalfields Limited
P.O.: Danara, District: Angul.
5. General Manager
Jagannath Area
Mahanadi Coalfields Limited
At/P.O.: Dera, Talcher
District: Angul.
6. Area Personnel Manager
Jagannath Area
Mahanadi Coalfields Limited
At/P.O.: Dera, Talcher
District: Angul.
7. Project Officer, Ananta
Mahanadi Coalfields Limited
P.O.: Dera, Colliery, Talcher
District: Angul. ... Opposite Parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Sachidananda Sahoo,
Advocate

For the Opposite Parties : Mr. Tarun Kanta Pattanayak
Advocate

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 24.03.2025 :: Date of Judgment : 24.03.2025



JUDGMENT

Assailing the legality of Order No.MCL/PD/IR/Court Case/2014/1358, dated 22.08.2014 (Anneuxre-10) passed by the General Manager (P&IR) of Mahanadi Coalfields Limited, Jagriti Vihar, Burla, Sambalpur-opposite party No.2, rejecting the representation purported to be disposed of in compliance of Order dated 21.02.2014 passed in W.P.(C) No.24660 of 2013 by this Court for rectification of date of birth as “29.06.1977” instead of “28.02.1971”, the petitioner has approached this Court by way of filing this writ petition craving to invoke extraordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India with the following prayer(s):

“The petitioner, therefore, prays that this Hon’ble Court may graciously be pleaded to admit the writ application, issue rule nisi to the opposite parties to show cause as to:

(i) The order bearing Ref No.MCL/PD/IR/Court Case/2014/1358, Dt.22/8/2014, vide Annexure-10 shall not be set aside.

And

(ii) Why the opposite parties shall not be directed to make necessary correction in the service records of the petitioner by mentioning correct date of birth i.e. 29.06.1977 for all purpose within stipulated period.

And if the Opp. Parties do not show cause or show insufficient cause, then rule be made absolutely by



issuing appropriate writ/writs, direction/directions and any other order/orders as deemed fit and proper may be passed.

And for this act of kindness the petitioner shall as in duty bound ever pray.”

Facts:

- 2.** Shorn off unnecessary detailed narration, suffice it to refer to relevant factual matrix as outlined in the pleadings.
 - 2.1.** The petitioner, entered into service as Mazdoor Category-1 on 16.11.1999, was issued with medical card by the Mahanadi Coalfields Limited (be referred to as “MCL”) recording the date of birth as “29.06.1977”.
 - 2.2.** The petitioner in the year 2001 was transferred from Central Workshop (EXCV) to Kalinga Area. While transmitting the Last Pay Certificate (LPC), the Deputy Personnel Manager, CWS (X), Talcher mentioned the date of birth as “31.02.1971” in Letter No.GM/CWS(X)/Tal/Bill/LPC/2001/2868, dated 29.10.2001. On subsequent transfer from Kalinga Area to Jagannath Area in the year 2011, while transmitting the LPC *vide* Letter bearing Reference No. PO (BLR OCP) LPC/11/7882, dated 22.12.2011, the date of birth of the petitioner was mentioned as “03.03.1971”.



- 2.3. It is claimed by the petitioner that the Register of Employees maintained in Form-B prescribed under Rules 48(3), 51, 77 and 77-A(2) of the Mines Rules, 1955 (hereinafter referred to “Form-B”) recorded correctly the date of birth as “29.06.1977”.
- 2.4. On detection of discrepancy, the petitioner approached the General Manager, Jagannath Area, Mahanadi Coalfields Limited-opposite party No.5 on 02.02.2012 requesting for effecting necessary correction in his service record. Since no step was taken by the opposite party No.5 to rectify such mistake or resolve the discrepancy in this service record with regard to the date of birth, a writ petition bearing W.P.(C) No.12708 of 2012 was filed, which came to be disposed of *vide* Order dated 07.01.2013, wherein it was directed that the General Manager, Jagannath Area, Talcher is required to look into the grievance of the petitioner and to take a decision by verifying records.
- 2.5. In connection thereto, the Manager (P), Ananta OCP on 05.04.2013 submitted a Report before the Area Personnel Manager, Jagannath Area for taking further needful action in this matter. The Area Personnel Manager, Jagannath Area *vide* his Letter No.GM(JA)/Legal/2013/263-265, dated 15.06.2013 requested General Manager (Min)/Project Officer, Ananta OCP for communication of decision. *Vide* Letter No.PO



(Ananta OCP)/Court Case/13/4249, dated 20.06.2013, the decision of the General Manager (P&IR), MCL was communicated, which contained the following:

“The decision of the Area Medical Board in determining the date of birth of Sri Satnam Singh is 27½ years as on 31.08.1998 (Date of birth 28.02.1971) holds correct, just and in accordance with company policy and directives.”

2.6. Challenging such decision *vide* Communication dated 20.06.2013, the petitioner invoked extraordinary jurisdiction of this Court by way of filing writ petition, i.e., W.P.(C) No.24660 of 2013, which came to be disposed of *vide* Order dated 21.02.2014 with the following observation:

“Heard learned counsel for the petitioner.

2. *This writ petition has been filed by the petitioner, who is working as Dumber Operator, Excv. Cat-B, Ananta Open Cast Project of Mahanadi Coalfields Ltd., Dera in the district of Angul challenging the order dated 20.06.2013 under Annexure-9 passed by the General Manager (Min)-opposite party No.7 rejecting the prayer of the petitioner for correction of date of birth in the service records.*
3. *On perusal of records, it appears that the petitioner had entered into service in Mahanadi Coalfields Ltd. as Mazdoor Category-1 on 16.11.1999. The date of birth of the petitioner mentioned in the Identity Card under Annexure-1 issued by opposite party No.3 is 29.06.1977. Thereafter the petitioner was transferred from Central Workshop (EXCV) to*



Kalinga Area in the year, 2001. The Dy, Personal Manager, CWS (X), Talcher of Mahandi Coalfields Limited while transmitting the Last Pay Certificate (LPC) of the petitioner has wrongly mentioned the date of birth of the petitioner as 31.02.1971 under Annexure-2. The petitioner was transferred from Kalinga Area to Jagannath Area in the year 2011. opposite party No.3 while transmitting the LPC of the petitioner has again wrongly mentioned the date of birth of the petitioner as 03.03.1971 under Annexure-3. The Personnel Manager, Balaram OCP while maintaining the register to Employees in Form-B under Annexure-4 has rightly mentioned the date of birth of the petitioner as 29.06.1977 which is tallying with the Identity Card issued in favour of the petitioner under Annexure-1. When the above discrepancy came to the knowledge of the petitioner, he filed a representation before opposite party No.5 on 02.02.2012 under Annexure-5 requesting him to correct his date of birth in the service records as 29.06.1977. As no action was taken, the petitioner approached this Court in W.P.(C) No.12708 of 2012 which was disposed of vide order dated 07.01.2013 directing the General Manager, Jagannath Area, Talcher to look into the grievance of the petitioner and to take a decision thereon by verifying the records within a period of three months from the date of production of certified copy of the order. In pursuance of the aforesaid order, opposite party No.7 by the impugned order dated 20.06.2013 under Annexure-9 intimated the petitioner that the case of the petitioner has been examined by the Management of Mahanadi Coalfields Limited in the light of records available and the following decision has been taken:



'The decision of the Area Medical Board in determining the date of birth of Sri Satnam Singh is 27½ years as on 31.08.1998 (Date of Birth 28.02.1971) holds correct, just and in accordance with Company Policy and directives.'

4. *Learned counsel appearing for the petitioner submitted that at the time of entry into service the petitioner has produced the Transfer Certificate issued by the Head Master, Handidhua High Court, Dhenkanal Circle under Annexure-7 which reflects his date of birth is 29.06.1977. He further submitted that Clause-A(ii) of Implementation Instruction No.76 with regard to the procedure for determination/ verification of age of employees stipulates that 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. It is stated that the said Clause is applicable to the petitioner as he has submitted the Transfer Certificate from a recognized High School in support of his date of birth as the petitioner is a non-matric but educated. However, the opposite parties have considered the case of the petitioner under Clause-A(iv) of Implementation Instruction No.76 which is applicable to illiterate workmen and passed the impugned order dated 20.06.2013.*
5. *After disposal of W.P.(C) No.12708 of 2012 an enquiry was conducted by the Manager (P), Ananta Opencast Project and he has submitted his report on 05.04.2013 under Annexure-8. **From the said enquiry report it reveals that in the service***



sheet the educational qualification of the petitioner is entered as Class-IX passed. One copy of his Transfer Certificate No.0224505 dated 06.08.1993 issued by Headmaster, Handidhua High School, Talcher is also attached in his service sheet, in which his date of birth is mentioned as 29.06.1977. The Opp. Parties had sent a letter to the concerned school for verification of the Transfer Certificate and in reply the Headmaster, Handidhua High School vide letter No.123 dated 26.03.2013 confirmed that the Transfer Certificate is genuine and as per the records of the School, the date of birth of the petitioner is 29.06.1977. However, the said enquiry report has not been considered by the Opposite Parties while passing the impugned order dated 20.06.2013 under Annexure-9.

6. In view of the above and considering the fact that there are discrepancies with regard to date of birth of the petitioner in the service records maintained by Mahanadi Coalfields Ltd. at different mining areas, this Court while quashing the impugned order dated 20.06.2013 under Annexure-9 passed by the General Manager (Min)-opposite party No.7, as the said opposite party has not taken into consideration the materials available on records and not followed the procedure for determination/verification of age of the employees as stated in the above paragraphs, direct opposite party No.2 to determine the date of birth of the petitioner in view of Clause-B and C of Implementation Instruction No.76 regarding procedure for determination/verification of age of employees, as expeditiously as possible, preferably



within a period of two months from the date of production of certified copy of this order.

This writ petition is accordingly disposed of.”

2.7. In pursuance thereof, the General Manager (P&IR) has passed an Order *vide* Ref. No.MCL/PD/IR/Court Case/2014/1358, dated 22.08.2014 under Anneuxre-10, which is reproduced hereunder:

“Whereas Sri Satnam Singh s/o Sri Chandan @ Chanan Singh, U. Man No.77113637, Dumper Operator, Excavation Gr-B, Ananta OCP, Jagannath Area, Qr No.MQ 84, At/Po: Deulbera Colliery, Talcher, Dist: Angul (hereinafter referred to as petitioner) has filed a writ petition before the Hon’ble High Court of Orissa, Cuttack, W.P.(C) No.24660 of 2013, wherein he has impleaded Mahanadi Coal field Ltd. represented through its Chairman-cum-Managing Director (hereinafter referred to as opposite party No.1), General Manager (P&IR), Mahanadi Coalfields Ltd.(hereinafter referred to as opposite party No.2), General Manager, Central Workshop (Excv), Mahanadi Coalfields Ltd. (hereinafter referred to as opposite party No.3), General Manager (Mining), Balaram OCP, Mahanadi Coal Fields Ltd.(hereinafter referred to as opposite party No.4), General Manager, Jagannath Area, Mahanadi Coal Fields Ltd. (hereinafter referred to as opposite party No.5), Area personnel Manager, Jagannath Area, Mahanadi Coal Fields Ltd. (hereinafter referred to as opposite party No.6) among others as party and wherein he has challenged the order passed by Project Officer, Ananta OCP, MCL (hereinafter referred to as opposite party No.7) in pursuance to Order



dated 07.01.2013 passed by Hon'ble High Court of Orissa in W.P.(C) No.12708 of 2012.

*And whereas the Hon'ble High Court of Orissa, Cuttack while disposing off the writ petition No.24660 of 2013 in its order dated 21.02.2014 has **held that as there are discrepancy with regard to date of birth of the petitioner in service records maintained by Mahanadi Coal Fields Ltd. at different Mining area quashed the impugned order dated 20.06.2013 passed by opposite party No.7, as the said opposite party has not considered the material available on records and not followed the procedures determination/verification of age and directed the opposite party No.2 to determine the date of birth of the petitioner in view of Clause B & C of implementation instruction No.76 regarding procedure for determination/ verification of age of employees, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of the order.***

And whereas after going through the available records, and Clause B&C of Implementation instruction No.76 and letter No.MCL/GM(P)/35/98/347 dated 26 and 28.05.1998 of the then General Manager (P/IR), MCL addressed to all CGMs/GMs of Areas (copy enclosed as Annexure-1), prescribing the determination of age at the time of initial appointment which states,

Quote:

"It has been found that Transfer Certificate which has been issued by the schools in respect of the studies below Board level are being accepted for the purpose of date of birth/age at the time of initial appointment under NCWA,



land losers employment scheme, etc. It has also been found that such certificates are being submitted by the candidate concerned from the schools which are not recognized.

In order to maintain uniformity and also keeping in view the provisions of I.I. No.76 of NCWA III, it has been decided that the age recorded in the matriculation certificate may only be accepted and entered in the service sheet at the time of initial appointment. In all other cases, i.e. below matriculates/literate/illiterate etc. the age as assessed by area medical board at the time of conducting initial medical examination, should only be accepted”.

Unquote

The petitioner being a non-matriculate and appointed on 16.11.1999 that is after issue of the above referred circular, the date of birth of the petitioner should have been the age as assessed by the Area Medical Board at the time of conducting Initial Medical Examination.

And whereas the age assessed by the Area Medical Board at the time of Initial Medical Examination in respect of the petitioner is 27 and $\frac{1}{2}$ years as on 31.08.1998 (copy enclosed as Annexure-II), and the same has been accepted by the petitioner by putting his signature as well as LTI on body of IME report, the date of birth of the petitioner is determined to be 28.02.1971, for all practical purposes.

And whereas the petitioner has relied upon Transfer certificate No.0224505, dated 06.08.1993 issued by Headmaster, Handidhua High School, the same is not



*taken into cognigence **as neither the Clause B & C of I.I. No.76, does specifically mention about the date of birth to be considered as per transfer certificate** nor does the letter No.MCL/GM(P)/35/98/347 dated 26 & 28.05.1998 of the then General Manager (P & IR), MCL addressed to all CGMs/GMs of Areas.*

The representation of the petitioner is accordingly disposed of in compliance to the Order No.2, dated 21.02.2014 of Hon'ble High Court of Orissa, Cuttack in W.P.(C) No.24660 of 2013.”

- 2.8. Dissatisfied thereby, the petitioner has knocked the doors of this Court for the third occasion seeking to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

Counter affidavit filed by the Opposite Parties:

3. In response to the notice issued by this Court *vide* Order dated 03.11.2014, counter affidavit has been filed by the opposite parties contending that the date of birth mentioned in Form-B as “29.06.1977” is erroneous entry and the entry in the LPC with date of birth as 03.03.1971 is also erroneous. It is asserted as follows:

“***

12. *That, in reply to the averments made in para-9 and 10 of the writ petition, this deponent respectfully submits that a perusal of the Implementation Instruction No.76 dated 25.04.1998 would go to show that if any discrepancy arises it will be*



decided terms the Implementation Instruction No.76, Clause B & C of Implementation Instruction No.76 and letter No.MCL/GM(P)/35/95/347 dated 26 & 28.05.1998 of the then General Manager (P/IR), MCL addressed to all CGMs/GMs of Area prescribing the determination of age at the time of initial appointment which states as follows:

'It has been found that Transfer Certificate which has been issued by the schools in respect of the studies below Board of Level are being accepted for the purpose of date of birth/age at the time of initial appointment under NCWA, land losers employment scheme, etc. It has also been found that such certificates are being submitted by the candidate concerned from the schools which are not recognized.

In order to maintain uniformity and also keeping in view the provisions of Implementation Instruction No.76 of NCWA-III, it has been decided that the age recognized in the Matriculation Certificate may only be accepted and entered in the Service Sheet at the time of initial appointment. In all other cases i.e. below matriculate/literate/illiterate etc. the age as assessed by Area medical Board at the time of conducting Initial medical Examination, should only be accepted.'

In view of the above, the petitioner being a non-matriculate and appointed on 16.11.1999 i.e., after issue of the above referred circular, the date of birth of the petitioner should have been age as assessed by the Area medical Board at the time of conducting Initial Medical Examination.



Furthermore, the age assessed by the Area Medical Board at the time of Initial Medical Examination in respect of the petitioner is 27 and ½ years as on 31.08.1998 (copy enclosed) and the same has been accepted by the petitioner without any objection by putting his signature as well as LTI on body of IME report, the date of birth of the petitioner is determined to be 28.02.1971 for all practical purpose. Hence, the date of birth of the petitioner has already mentioned in the service book as 28.02.1971 as per the age assessed during initial medical examination and the petitioner has also accepted the same without any objection since his appointment.

18. *That, with regard to the averments made in para-17 & 18 of the writ petition, this deponent respectfully submits that after disposal of W.P.(C) No.24660/2013, the opposite party No.2 has passed the order dated 22.08.2014 under Annexure-10 in terms of the order dated 21.02.2014 passed by this Hon'ble Court. A perusal of the order dated 22.08.2014 under Annexure-10 it would go to show that the Opp. party No.2 after going through the connected documents has passed the impugned order dated 22.08.2014 under Annexure-1 considering the petitioner is a non-matriculate and the age assessed by Area Medical Board at the time of conducting initial medical examination is to be accepted as date of birth of the employee/petitioner.*

Further, the age assessed by the Area Medical Board at the time of initial medical examination in



respect of the petitioner is 27 and ½ years as on 31.08.1998 and the same has been accepted by the petitioner by putting his signature as well as LTI on the body of the IME report, the date of birth of the petitioner is determined to be 28.02.1971 for all practical purposes. Moreover, though the employee has possessed Transfer Certificate prior to date of joining but not submitted the same at the time of appointment as per Clause-A to Implementation Instruction 76.”

Hearing:

4. Pleadings, being completed and exchanged between the learned counsel for respective parties, on their consent, this matter is taken up for final hearing.
- 4.1. Accordingly, this Court heard Sri Sachidananda Sahoo, learned counsel appearing for the petitioner and Sri Tarun Kanta Pattanayak, learned Counsel appearing for the opposite parties.

Rival contentions and submissions:

5. Sri Sachidanda Sahoo, learned counsel appearing for the petitioner submitted that Form-B— Register of Employees prescribed under the Mines Rules is statutory one, wherein the date of entry and commencement of employment have been correctly reflected as “29.06.1977 and “16.11.1999” respectively. As the petitioner is under-matriculate, by referring to Implementation Instructions he placed heavy reliance on



the Transfer Certificate issued by the Head Master, Handidhua High School, which depicts the date of birth recorded in the Admission Register as “29.06.1977”. Demonstrating correctness of the fact, he has taken this Court to the Report dated 05.04.2013 submitted by the Manager (P), Ananta OCP, wherein it has been clearly mentioned as follows:

“(xi) We had sent letter to the School for verification of his Transfer Certificate and in reply of same, the Headmaster, Handidhua High School vide his letter No.123 dt.26.03.2013 confirmed that his Transfer Certificate is genuine and as per records of the School, the date of birth of Sri Singh is 29.06.1977.”

5.1. He emphatically submitted that since the Transfer Certificate has been affirmed by the Headmaster of the Handidhua High School *vide* his Letter dated 26.03.2013 as genuine and as per records maintained in the School, there could not have been any dispute or cloud of doubt about the date of birth of the petitioner which ought to have been taken as “29.06.1977”.

5.2. Learned counsel appearing for the petitioner stemming on Clause-(A)(ii) of Annexure-I appended to Implementation Instruction No.76 (No.CIL/NCWA-III/I.I.No.76/88/145), dated 25.04.1988, urged that the date of birth recorded in the Transfer Certificate has sanctity and the entries in such certificate is to be treated as correct. Since the petitioner has appeared in



Class IX examination, but failed, he falls within the ambit of “non-matriculate but educated” as categorised in the Implementation Instruction. Therefore, in terms of Clause (B)(ii) of the said Implementation Instruction, there is no scope for the MCL to reopen the issue and having admitted to have erroneously recorded the date of birth at the time of transmission of LPC on account of transfer of the petitioner from one area to the other, the MCL authority could not have stressed solely on the suggestion of the Area Medical Board.

6. Strongly refuting the contentions of Sri Sachidananda Sahoo, learned Advocate, Sri Tarun Kanta Pattanayak, learned counsel appearing for the MCL-opposite parties would submit that the disputed question as to the correctness of “date of birth” is subject matter of civil suit but not amenable to writ jurisdiction. However, he proceeded to argue the matter on merit.

6.1. Referring to Annexure-A/6, *i.e.*, copy of Service Book enclosed to the counter affidavit, he submitted that the number of Transfer Certificate Number, as found reflected therein, does not tally with the number of the Transfer Certificate which is furnished at Annexure-7 of the writ petition.

6.2. Advancing his argument further he urged that the said Service Book has mentioned the approximate age of the



petitioner as per the Medical Examination Report issued by the CMO, Regional Hospital dated 09.11.1999. He, thus, laid emphasis on Letter Reference No. MCL/GM(P)/35/98/347, dated 26.05.1998 issued by the General Manager (Personnel) addressed to the CGM/GM of the areas, which is reproduced hereunder:

“Sub: Determination of age at the time of initial appointment

Dear Sir,

It has been found that Transfer Certificate which has been issued by the Schools in respect of the studies below Board level are being accepted for the purpose of date of birth/age at the time of initial appointment under NCWA and losers employment scheme, etc. It has also been found that such certificates are being submitted by the candidate concerned from the Schools which are not recognised.

In order to maintain uniformity and also keeping in view the provisions of I.I. No.76 of NCWA-III, it has been decided that the age recorded in the Matriculation certificate may only be accepted and entered in the service at the time of initial appointment. In all other cases, i.e., below matriculates/literate/illiterate, etc., the age as assessed by the Area Medical Board at the time of conducting initial medical examination, should only be accepted.

This issue with the approval of the competent authority.”



6.3. Therefore, he submitted that the age of the petitioner has been assessed by the Area Medical Board at the time of conducting initial medical examination has been corrected and accepted as the petitioner has not passed the matriculation examination.

Analysis and discussion:

7. At the outset it may be relevant to state that the reliance placed by Sri Tarun Kanta Pattanayak, learned Advocate on Letter Reference No. MCL/GM(P)/35/98/347, dated 26.05.1998 issued by the General Manager (Personnel) addressed to the CGM/GM of the areas is not acceptable inasmuch as the same is not in conformity with the Implementation Instruction.

7.1. Scrutiny of copy of Transfer Certificate dated 06.08.1993 issued by the Headmaster of Handidhua High School as enclosed to the writ petition at Annexure-7 depicts following data:

"Folio No.105/93

TC No. 0224505

Date 06.08.1993

6. *Date of birth as recorded
in the admission register*

(in figure)

:

29.06.77

(in words)

:

*Twenty-ninth June
Seventy Seven*



7. *Date of school leaving* 31.07.1993”

7.2. As it appears from Annexure-8 to the writ petition, the Manager (P), Ananta OCP had submitted before APM, Jagannath Area, along with copies of all relevant records to examine the case of the petitioner and taking needful action, wherein the following information is provided:

(xi) We had sent letter to the School for verification of his Transfer Certificate and in reply of same, the Headmaster, Handidhua High School vide his Letter No.123, dated 26.03.2013 confirmed that his Transfer Certificate is genuine and as records of the school, the date of birth of Sri Singh is 29.06.1977 *** So his date of birth in different records is summarized as below:		
1.	Approval letter for employment communicated by GM (A&R), MCL	27½ years as per Area Medical Board on 31.08.1998
2.	Initial Medical Examination Report	27½ years (Approximate) as on 31.08.1998
3.	Service Record	27½ years (Approx) as on 31.08.1998 as per the Medical Examination Report issued by CMO Regional Hospital, Talcher on 09.11.1999
		31.02.1971 in blue ball pen
		03.03.1971 in red ball pen
4.	LPC of OCS (X) Talcher	31.02.1971
5.	Medical Card of CWS(X) Talcher	29.06.1977
6.	LPC of Balaram OCP	03.03.1971
7.	From 'B' of Balaram OCP	29.06.1977
8.	From 'B' of Bhubaneswari OCP	29.06.1977
9.	Transfer Certificates (Class-IX pass)	29.06.1977
10.	PS-3 and PS-4	29.06.1977



7.3. Careful analysis of aforesaid Report would transpire that data maintained in Form-B prescribed under the Mines Rules, the Transfer Certificate issued by the Handidhua School, PS-3 and PS-4 have unequivocally mentioned the date of birth as “29.06.1977” and as per said Report, the Headmaster of the Handidhua High School confirmed that the Transfer Certificate is genuine. No material is placed on the record by the opposite parties to controvert such certificate and the entries recorded in Form-B. Rather, at paragraph-8 of the counter affidavit, it has been admitted by the opposite parties that erroneous entry has been made mentioning the date of birth as “31.02.1971” at the time of issue of LPC by the Personnel Manager, CWS (Talcher), MCL. It has also been conceded by the opposite parties at paragraph 9 of said counter affidavit that in the year 2011 the authority issued LPC when the petitioner was transferred mentioning wrongly the date of birth as “03.03.1971”.

7.4. Though Sri Tarun Kanta Pattanayak, learned Advocate has referred to copy of Service Book (Annexure-A/6 to the counter affidavit) to buttress his argument that since the number of Transfer Certificate mentioned therein does not match with the number of the Transfer Certificate available at Annexure-7 to the writ petition, which renders such evidence doubtful, on a query from this Court during the course of hearing as to why he has



not corroborated such stance by placing copy of such Transfer Certificate as reflected in the Service Book, he could not substantiate his claim. Thus, the Transfer Certificate at Annexure-7, which the Headmaster of Handidhua High School confirmed as genuinely issued, is to be accepted and the entries reflected therein, being not successfully challenged by the opposite parties, is treated to be correct depiction of factual position.

7.5. From the said Transfer Certificate it is manifest that the petitioner is non-matriculate, but educated as he studied up to Class IX. For determination of age at the time of appointment, procedure has been laid down in Annexure-I appended to Implementation Instruction No.76 *vide* No.CIL/NCWA-III/I.I.No.76/88/145, dated 25.04.1988.

7.6. At this juncture, it is apposite to have reference to relevant portion of Annexure-I appended to Implementation Instruction No.76, dated 25.04.1988 which reads as hereunder:

“6. Procedure for determination/verification of the age of employee:

The earlier Implementation Instruction No.37 dated 5th February, 1981 has been revised and the same is enclosed as Annexure-I.

Annexure-I



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

i) *Matriculates.*

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.***

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

i) (a) ***

i) (b) ***

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. The 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 be constituted by the Management. **In the case of 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.”*

7.7. From the above Implementation Instructions it is unambiguous that for non-matriculates but educated appointees, like the petitioner, who pursued studies in a recognized educational institution, *viz.*, Handidhua High School, the date of birth recorded in the School Leaving Certificate is treated to be correct. The fact of date of birth of the petitioner is “29.06.1977” is fortified by the confirmation of the Headmaster of said High School by issue of Letter No.123, dated 26.03.2013, on the request of the MCL authorities. This remained unimpeached by the opposite parties by laying cogent material.

7.8. Furthermore, Form-B maintained by the opposite parties as required under the Mines Rules, 1955, being not varied, in view of item (ii) of Clause (B) of Annexure-I of the Implementation Instruction, there is no scope for reopening issue. Under such premise, there was no scope for accepting the approximate age assessed through Medical Board. Question of determination of age through Medical Board would arise only when the date of birth is not ascertainable. The assertion of the



opposite parties that the Area Medical Board has assessed the age of the petitioner as “27½ years (Approximate) as on 31.08.1998” is to be accepted cannot be acceded to inasmuch as the Medical Board has not assessed the “date of birth”, but approximate age. Such approximation of age by the Area Medical Board, in absence of any material to establish falsity of the entries made in the Transfer Certificate/School Leaving Certificate, cannot be taken cognizance of in view of item (ii) of Clause (B) read with item (ii) of Clause (A) of Annexure-I of the Implementation Instruction.

7.9. The expression “the same will not be altered under any circumstances” employed in item (ii) of Clause (A) *ibid.* leads to say that the opposite parties have misdirected themselves by being swayed away by approximation of age assessed by the Area Medical Board, particularly when they have admitted that error has been perpetuated while issuing LPC on the transfer of the petitioner from one area to the other.

7.10. In view of aforesaid analysis, there is no occasion for the opposite parties to rely on the Area Medical Board Report for the purpose of determination of “date of birth”. It is pertinent to refer the Report dated 05.04.2013 submitted by the Manager (P), Ananta OCP to APM, Jagannath Area, which reveals that the Headmaster of Handidhwa High School in his Letter



No.123, dated 26.03.2013 confirmed that “transfer certificate is genuine and as per records of the School, the date of birth of Sri Singh is 29.06.1977”.

7.11.Emphasis may be laid on the following observation made by a Division Bench of this Court in the case of *Michael Nayak Vrs. State of Odisha, 2022 (III) ILR-CUT 657*:

“7. As far as the documentary evidence is concerned, the School Register showed the Appellant to be a ‘Pana Hindu’. In this context, it may be noted that in *Kumari Madhuri Patil Vrs. Additional Commissioner, AIR 1995 SC 94*, the Supreme Court observed as under:

‘The entries in the school register preceding the Constitution do furnish great probative value to the declaration of status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as they then census rules insisted upon.’

8. *There appears to be no credible evidence either oral or documentary to show that the appellant was not in fact a ‘Pana Hindu’ but a ‘Pana Christian’. However, the impugned order of the SLSC throughout proceeds on conjectures and surmises to come to such conclusion.”*

7.12.In the case of *Madan Mohan Singh Vrs. Rajni Kant, (2010) 9 SCC 209* the following are the observations with respect to probative value of document issued by School:



“17. *In State of Bihar Vrs. Radha Krishna Singh, (1983) 3 SCC 118 this Court dealt with a similar contention and held as under:*

‘40. *** *Admissibility of a document is one thing and its probative value quite another— these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.*

53. *** *where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight.*

145.(4) *The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.’*

18. *Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in Ram Prasad Sharma Vrs. State of Bihar, (1969) 2 SCC 359 = AIR 1970 SC 326, Ram Murti Vrs. State of Haryana, (1970) 3 SCC 21 = AIR 1970 SC 1029, Dayaram Vrs.*



Dawalatshah, (1971) 1 SCC 358 = AIR 1971 SC 681, Harpal Singh Vrs. State of H.P., (1981) 1 SCC 560 = AIR 1981 SC 361, Ravinder Singh Gorkhi Vrs. State of U.P., (2006) 5 SCC 584, Babloo Pasi Vrs. State of Jharkhand, (2008) 13 SCC 133, Desh Raj Vrs. Bodh Raj, (2008) 2 SCC 186 = AIR 2008 SC 632 and Ram Suresh Singh Vrs. Prabhat Singh, (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.

19. *Such entries may be in any public document i.e. school register, voters' list or family register prepared under the Rules and Regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in Mohd. Ikram Hussain Vrs. State of U.P., AIR 1964 SC 1625 and Santenu Mitra Vrs. State of W.B., (1998) 5 SCC 697 = AIR 1999 SC 1587*
20. *So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to*



be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

- 21 *For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. (Vide Brij Mohan Singh Vrs. Priya Brat Narain Sinha, AIR 1965 SC 282, Birad Mal Singhvi Vrs. Anand Purohit, 1988 Supp SCC 604 = AIR 1988 SC 1796, Vishnu Vrs. State of Maharashtra, (2006) 1 SCC 283 and Satpal Singh Vrs. State of Haryana, (2010) 8 SCC 714.)*
22. *If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time, etc. mentioned therein. (Vide Updesh Kumar Vrs. Prithvi Singh, (2001) 2 SCC 524 and State of Punjab Vrs. Mohinder Singh, (2005) 3 SCC 702 = AIR 2005 SC 1868.)”*

7.13. In *State of Punjab Vrs. Mohinder Singh*, (2005) 3 SCC 702 it has been held,



- “10. In terms of Section 32 clause (5) of the Evidence Act, 1872 (in short “the Evidence Act”), the evidentiary value of a horoscope has to be considered. No evidence was led by the respondent to prove authenticity of the same. **In any event the same was not to be given primacy over the school leaving certificate. It was not shown as to how the entry therein was wrong. The onus was on the respondent to prove that the same was not correct, which was not discharged.** Two photostat copies of the school leaving certificate were produced before the enquiry officer. He compared them and found that even to the naked eye change of figure “31” to “34” was visible. Interestingly in the said copies the date of birth was indicated even after the change to be 25.11.1934 and not 01.10.1934 as claimed.
11. Horoscope is a very weak piece of material to prove age of a person. In most cases, the maker of it may not be available to prove that it was made immediately after the birth. A heavy onus lies on the person who wants to press it into service to prove its authenticity. In fact, a horoscope to be treated as evidence in terms of Section 32 clause (5) must be proved to have been made by a person having special means of knowledge as regards authenticity of a date, time, etc. mentioned therein. In that context horoscopes have been held to be inadmissible in proof of age. (See Ramnarain Kallia Vrs. Monee Bibee, ILR (1883) 9 Cal 613, Biro Vrs. Atma Ram, AIR 1937 PC 101 = 1937 All LJ 462 and Satish Chandra Mukhopadhyaya Vrs. Mohendra Lal Pathak, ILR 97 Cal 849.)



13. As observed by this Court in *Umesh Chandra Vrs. State of Rajasthan*, (1982) 2 SCC 202 ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. **Entries in the school register and admission form regarding date of birth constitute good proof of age.** There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam.
14. Therefore, the school records have more probative value than a horoscope. Where no other material is available, the horoscope may be considered but subject to its authenticity being established. These aspects were not considered by the first appellate court and the High Court.”

7.14. The opposite parties have not put forth on record any tangible material to disbelieve the authenticity of entries made in the Transfer Certificate, which is confirmed by the Headmaster of Handidhwa High School to have been issued genuinely. Such information was supplied by the Headmaster at the request of the MCL.



7.15. Therefore, the claim of the petitioner is required to be acceded to.

8. Register of Employees in Form-B prescribed in the Mines Rules, 1955, maintained by the MCL depicts the date of birth as “29.06.1977” with the date of commencement of the employment as “16.11.1999”. As has already observed, from aforesaid Implementation Instruction read with Form-B does not indicate occasion for the opposite parties to go for determination of age by the Area Medical Board, which has assessed the age on approximation. In absence of strong corroborative evidence brought on record by the opposite parties, the entries in the Form B and the Transfer Certificate cannot be said to be erroneous and cannot be discarded lightly.

8.1. Reading of the counter affidavit of the opposite parties, it is manifest that MCL has erroneously recorded the date of birth in LPC at the time of transfer of the petitioner from one area to the other. There could be no dispute set up by the opposite parties with regard to entries made in Form-B— Register of Employees in the face of such admission in the counter affidavit.

8.2. With such factual background, this leads to irresistible conclusion that erroneous recording in the LPC does not confer any authority on the MCL to accept the approximate age as suggested by the Area Medical



Board. The Order dated 22.08.2014 passed by the General Manager (P&IR) is not in conformity with the provisions laid down in Clause B(ii) read with Clause A(ii) of Annexure-I appended to Implementation Instruction No.76, and, hence, this Court is inclined to interfere with said order.

8.3. With respect to the probative value of Transfer Certificate and the sanctity of Form-B— Register of Employees prescribed under the Mines Rules, 1955, the Hon'ble Supreme Court of India had the occasion to deal with the same in *Bharat Cooking Coal Limited and others Vrs. Chhota Birsa Uranw*, (2014) 12 SCC 570, wherein the following observations were made:

“8. *In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far-reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Home Deptt. Vrs. R. Kirubakaran, 1994 Supp (1) SCC 155, which is as under:*

‘7. *An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him*



for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. **As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible.** Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to



approach the court 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.'

9. *Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organisation. **Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum.***
10. *As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form B register which is a statutory document in which the date of birth has been verified by the respondent*



himself twice, other non-statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in Mohd. Yunus Khan Vrs. U.P. Power Corpn. Ltd., (2009) 1 SCC 80, that:

‘14. ... An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.’

Thus, the case of the respondent should not be barred on account of unreasonable delay.

- 11. Admittedly, the appellant as the employer in view of its own regulations being Implementation Instruction 76 contained in National Coal Wage Agreement III, gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records. This initiative of the appellants clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify the same. Against this backdrop, the stance of the appellant that the records in the Form-B register must be relied upon does not hold good as it is admitted by the appellant that errors existed in the same. Even a perusal of the nominee form exhibits the ambiguity regarding the date of birth and date of joining. It was due to the discrepancies which subsisted that the*



appellants gave all its employees a chance to rectify the same. In such circumstances, the appellants are bound by their actions and their attempt to deny the claims of the respondent is incorrect. The respondent in this case duly followed the procedure available and the attempt of the appellant to deny the claim of the respondent on the basis of technicality is incorrect. We, therefore, feel that the learned Single Judge has correctly held that: (Chhota Birsa Uranw Vrs. Bharat Coking Coal Ltd., (2010) 2 AIR Jhar R 410, AIR Jhar R p. 413, para 11)

‘11. Having given the petitioner, like all other employees, the benefit of seeking correction of the entries contained in their respective service records including their date of birth, the petitioner's claim cannot be denied, merely because he had signed upon the Form B register at the time of its opening and containing the entry of date of birth as recorded therein.’

12. The appellant in the present case should have followed the procedure as laid down by Implementation Instruction 76 to determine the date of birth of an existing employee. The provisions of which read as follows:

13. In another case, being Bharat Coking Coal Ltd. Vrs. Shib Kumar Dushad, (2000) 8 SCC 696 where the date of birth of an employee of Bharat Coking Coal was in dispute and the same set of instructions were applicable, this Court referring to the implementation instruction held that:



- ‘20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/ Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board.’
14. We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in Home Deptt. Vrs. R. Kirubakaran, 1994 Supp (1) SCC 155. However, with an aim to prevent the cascading inconveniences caused by a change of date of birth, a wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in-house mechanisms. Public corporations/departments should not benefit from their own omission of duty. In the present case, the appellant Company failed to follow the procedure as laid down in the implementation instruction. It is the appellant's omission and not the inaction of the respondent which led to the dispute being raised in the courts at such a delayed stage. **The attitude of such corporations wherein to avoid the rectification of a date of birth, litigation is unnecessarily prolonged just because they have number of resources at their command, goes against the grain of equity and duty towards society at large.**
15. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in



his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the appellant Company on 6-9-2010 before the High Court. **It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction 76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment.** The question of interpreting the words “were issued” was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. **The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy thereof also can be obtained where a student misplaces his said**



school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.”

8.4. *Meena Kumari @ Meena Kumari Rout Vrs. State of Odisha and others, 2023 (III) ILR-CUT 1115*, has been relied on by Sri Sachidananda Sahoo, learned Advocate for the petitioner, wherein the following observations of this Court are noteworthy:

- “9. *In this aspect, a Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State, in exercise of its powers regulating conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age.*
10. *It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction*



of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on the grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is, nonetheless, competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained.

- 11. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by the Apex Court in State of Assam & Anr. Vrs. Daksha Prasad Deka & Ors, (1971) 2 SCR 687, a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. In the present case, even if the petitioner has approached several times to the authority, the said authority has given deaf ear to such representation.”*



8.5. It is undisputed fact that the Transfer Certificate was issued prior to taking up employment by the petitioner and the genuineness of its issue has been confirmed by the issuing authority. The first objection of the opposite parties that the disputed fact with respect to date of birth cannot be entertained in the writ jurisdiction is repelled inasmuch as there being clear case on the basis of materials which is relied on by the petitioner read with relevant procedure laid down in Implementation Instructions. The entry in Transfer Certificate being not successfully controverted by the opposite parties by leading cogent evidence, the same can be held to be conclusive in nature and this Court in view of legal position enunciated in *Bharat Cooking Coal Limited and others Vrs. Chhota Birsa Uranu*, (2014) 12 SCC 570 considers the materials which formed the basis for the petitioner to claim correction of date of birth as plausible.

8.6. In the case of *Ranjeet Goswami Vrs. State of Jharkhand*, (2013) 9 SCR 497, it has been clearly laid down as follows:

“9. We are of the view that no cogent reasons have been stated by the High court to discard the school leaving certificate which was issued on 10.04.2004 by the then Principal of the school. **The certificate reveals the date of birth of the accused as 10.05.1991. The school leaving certificate was**



proved by examining the head mistress of the school. She has recognized the signatures of the principal who issued the school leaving certificate. ***The evidence adduced by the head mistress was not challenged.*** Consequently, there is no reason to discard that document. Further, we notice that there was some confusion as to whether the appellant, whose name is Ranjeet Goswami is the same person Rajiv Ranjan Goswami. The investigating officer's report indicates that they are different persons. Consequently we have to take it that the school leaving certificate produced was in respect of the appellant which has been proved.

10. We, therefore, find no reason to reject the school leaving certificate. If that be so, as per the ratio laid down in *Ashwani Kumar Saxena Vrs. State of M.P.*, (2012) 9 SCC 750 there is no question of subjecting the accused to a medical examination by a medical board.”

8.7. In view of aforesaid delineated legal perspective with respect to sanctity of Transfer Certificate/School Leaving Certificate and Form-B— Register of Employees maintained by the MCL under the Mines Rules, 1955, and in absence of any contrary material placed by the opposite parties to disbelieve the veracity of such document (especially when the opposite party has admitted to have mistaken in recording the date of birth while transmitting LPC on transfer of the petitioner), this Court taking into account the entry as regards date of birth reflected in Medical Examination Card, Form-B



maintained under the Mines Rules, Transfer Certificate issued by the Headmaster of Handidhua High School and Clause A(ii) and B(ii) of Annexure-I appended to the Implementation Instruction No.76, is of the considered opinion that the impugned Order dated 22.08.2024 passed by the General Manager (P&IR) (Annexure-10) does warrant intervention.

Conclusion:

9. On the factual matrix along with the discussion made *supra* and analysis of provisions contained in the Implementation Instructions, for the reasons ascribed to in foregoing paragraphs supported by conspectus of decisions of Courts as referred to and relied on, the finding returned by the General Manager (P&IR), that “the petitioner being a non-matriculate and appointed on 16.11.1999 that is after issue of the above referred circular, the date of birth of the petitioner should have been the age as assessed by the Area Medical Board at the time of conducting initial Medical Examination” cannot be countenanced in law.

9.1. The finding recorded in said impugned order that “the petitioner has relied upon Transfer Certificate No.0224505, dated 06.08.1993 issued by Headmaster, Handidhua High School, the same is not taken into cognigence as neither the Clause B and C of I.I. No.76,



does specifically mention about the date of birth to be considered as per Transfer Certificate nor does the letter No.MCL/GM(P)/35/98/347 dated 26 and 28.05.1998 of the then General Manager (P&IR), MCL addressed to all CGMs/GMs of Areas” runs counter to what has been spelt out in the Implementation Instructions as discussed in foregoing paragraphs.

10. Hence, the Order dated 22.08.2014 passed by the General Manager (P&IR), MCL, being not tenable in the eye of law, is liable to be set aside and, this Court, hence, does so.

10.1. Having set aside the said Order in Annexure-10, it is apt to direct that the opposite parties shall carry out necessary changes in the Service Book of the petitioner taking into consideration the date of birth as “29.06.1977” within a period of eight weeks from date.

10.2. Needless to observe that all consequential service and financial benefit shall be extended to the petitioner as is entitled and admissible in law.

11. In the result, the writ petition is allowed, but in the circumstances there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

Signature Not Verified

Digitally Signed
Signed by: LAXMIKANT
MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa,
Cuttack
Date: 26-Mar-2025 16:09:41

High Court of Orissa, Cuttack
The 24th March, 2025//Laxmikant

W.P.(C) No.21087 of 2014

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