

XVI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14324/2004

(From the judgement and order dated 06/04/2004 in APO No. 569/2000 of
The HIGH COURT OF CALCUTTA)

COAL INDIA LTD. & ANR.

Petitioner

(s)

VERSUS

ARDHENDU BIKAS BHATTACHARJEE & ORS.

Respondent

(s)

(With prayer for interim relief and office report)

Date: 04/04/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner(s) Mr. Janaranjan Das,Adv.

Mr. Swetaretu Mishra, Adv.

Ms. Moushumi Gahlot, Adv.

Ms. Smruti Mohanty, Adv.

For Respondent(s) Mr. Manoj Chatterjee, Adv.

Ms. K. Iyer, Adv.

Mr. K.K. Rai, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(SUKHBIR PAUL KAUR)

COURT MASTER

(VIJAY DHAWAN)

COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2376 OF 2005

(Arising out of SLP(C) NO.14324 of 2004)

COAL INDIA LTD. & ANR.

.....APPELLANT(S)

VERSUS

ARDHENDU BIKAS BHATTACHARJEE & ORS.

.....RESPONDENT(S)

O R D E R

We have heard counsel for the parties.

Special Leave granted.

The appellant-Coal India Limited has impugned the Judgment and Order of the High Court of Calcutta dated April 6, 2004 whereby the appeal preferred by the appellant herein against the judgment of the learned Single Judge was dismissed. As a consequence the appellant was directed to change the date of birth of the respondent in their record from 31.12.1938 to 26.1.1943. This was done in the year 1995 when in normal course on the basis of date of birth declared by the respondent earlier he would have retired in December, 1996.

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The facts of the case not in dispute are that the respondent passed his matriculation examination in the year 1957 while studying in (what is now Bangladesh). Later on he shifted to Calcutta and did his graduation from Calcutta. He joined the service of the appellant in July, 1957. It appears from the record that at the time of joining the service he submitted his matriculation certificate in proof of date of birth and the said certificate showed his date of birth to be 31.12.1938.

In the year 1995, the respondent obtained a duplicate matriculation certificate declaring his date of birth as 26.1.1943. He applied to the appellant to change the date of birth recorded in its record. According to the respondent there was some mistake committed by his father while declaring the date of

birth and therefore, it had become necessary to get the date of birth corrected. The case of the appellant is that he was in correspondence with the authorities at Dhaka for change of date of birth. From the material placed on record it is seen that till 1969, some correspondence was exchanged though it is not clear as to what was the mistake

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committed by the father of the appellant, nor could counsel appearing on behalf of the respondent tell us as to exactly what was the mistake committed by his father. However, after 1969 there appears to be no exchange of correspondence. In the year 1995, the respondent went to Bangladesh and only thereafter, a duplicate matriculation certificate giving his changed date of birth was issued.

The appellant-Coal India Limited did not agree to change the date of birth, because according to the relevant rules of the Company the date of birth to be recorded is the one declared at the time of entering into service, and in the instant case it was based on the matriculation certificate furnished by the respondent himself. Moreover, it is their case that if correction of the date of birth was to be made, the respondent should have applied for such correction within five years of his joining service, and not thereafter.

Counsel for the respondent contended that the aforesaid Rule prescribing a time limit for changing the date of birth came into force only in the year 1992 for the first time and therefore, not applicable to the respondent. Assuming it to be so, it cannot be disputed

that while entering service the respondent declared his date of birth as 31.12.1938 based on the matriculation certificate furnished by him.

Thereafter, in the year 1995 he applied to the Company to change the date of birth on the basis of duplicate matriculation certificate obtained by him. It is well settled that an employee will not be permitted to apply for change of date of birth at the fag end of his service career. In the instant case we do not know on what basis after 38 years the Secondary Education Board in Bangladesh corrected the matriculation certificate. This is essentially a question of fact, and in any case the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth. We are of the view that the High Court was in error in allowing the writ petition filed by the

respondent and directing the Coal India Limited, the
appellant herein, to change the date of birth of the
respondent from 31.12.1938 to 26.1.1943. We,
accordingly, set aside the impugned order of the High
Court of Calcutta.

It is, however, stated that during this period
the respondent has worked as an employee of the
appellant

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Company and has superannuated from service on attaining
the requisite age on the basis of the duplicate
matriculation certificate. He has been paid his salary
and allowances in accordance with Rules. It would be
harsh to direct the respondent to refund the pay and
allowances paid to him during this period, particularly
when he has actually worked pursuant to orders of the
Court. However, we direct that for service benefits

including post retirement benefits, the service rendered by the respondent shall be reckoned on the basis of the certificate originally submitted by him disclosing his date of birth as 31.12.1938. His date of retirement shall be determined on the basis of the aforesaid date of birth. For the additional service rendered by the respondent, after such retirement, apart from pay and allowances already paid to him, no other service benefit shall be given to him.

This appeal is, accordingly, allowed.

.....J.

(B.P.SINGH)

.....J.

(ARUN KUMAR)

NEW DELHI;

APRIL 4, 2005