[2024] 4 S.C.R. 63 : 2024 INSC 264

The General Manager, M/S Barsua Iron Ore Mines
v.
The Vice President United Mines Mazdoor Union and Ors.

(Civil Appeal No. 4686 of 2024)

02 April 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Respondent initially declared his date of birth as 27.12.1948. Later, in descriptive roll, he changed his initially recorded date of birth i.e. 27.12.1948 to 12.03.1955. Based on his declaration at the time of initial employment the Competent Authority of the appellant determined the date of birth of the respondent no.3 as 27.12.1948. The respondent no.3 superannuated from service based on his initially recorded date of birth [27.12.1948]. Whether the respondent no.3 is held to have been rightly retired in terms of his date of birth as 27.12.1948.

Headnotes

Service Law – Superannuation – Discrepancy in date of birth – The CGIT passed its Award and held that the appellant's determination of the respondent no.3's date of birth based on the initial Descriptive Roll (27.12.1948) was unjustified and thus, awarded him 50% back wages from his retirement in 2008 until his supposed date of superannuation in 2015, based on the date of birth disclosed in the STC i.e., 12.03.1955 – Propriety:

Held: The disclosure of the originally-given date of birth (27.12.1948) by the respondent no.3 was a well-thought out plan hatched by him, at the relevant time – His conduct cannot be simply brushed aside on a plea that there was an error on the part of the appellant in recording his date of birth – Examined thus, the following is evincible: (a) the Competent Authority noticed discrepancy in the date of birth in the records of the appellant and, upon due scrutiny, opined that the declaration of date of birth made by the respondent no.3 at the first point of time, i.e., 27.12.1948, should be taken as his date of birth, as till 1998 no documentary proof was given, and; (b) the respondent no.3 would not have

* Author

been able to legally come into employment on 27.12.1972, had he disclosed his date of birth as 12.03.1955 – No fault can be found with the appellant on this score – It is a just and reasonable conclusion by the appellant's Competent Authority – The principles of estoppel would come into play in the present case – The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982) – Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998 – The respondent no.3 is held to have been rightly retired in terms of his date of birth reckoned as 27.12.1948 – The further direction to award 50% back wages to the respondent no.3 from the date he was retired till the (notional) superannuation on 31.03.2015, also stands set aside. [Paras 17 and 19]

Case Law Cited

Bharat Coking Coal Ltd. v. Shib Kumar Dushad [2000] Suppl. 4 SCR 336 **: (2000) 8 SCC 696;** *Union of India v C Rama Swamy* [1997] 3 SCR 760 **: (1997) 4 SCC 647 – relied on.**

Karnataka Rural Infrastructure Development Limited v. T P Nataraja [2021] 7 SCR 634 **: (2021) 12 SCC 27;** *Home Department v. R Kirubakaran* [1993] Suppl. 2 SCR 376 **: (1994) Supp (1) SCC 155;** *State of Madhya Pradesh v. Premlal Shrivas* [2011] 11 SCR 444 **: (2011) 9 SCC 664;** *Life Insurance Corporation of India v. R Basavaraju* **(2016) 15 SCC 781;** *Bharat Coking Coal Limited v. Shyam Kishore Singh* **(2020) 3 SCC 411 – referred to.**

List of Keywords

Service Law; Superannuation; Date of birth; Discrepancy in the date of birth; Principle of estoppel; Back wages.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4686 of 2024

From the Judgment and Order dated 04.02.2021 of the High Court of Orissa at Cuttack in WP(C) No. 9424 of 2019

**The General Manager, M/S Barsua Iron Ore Mines v.
The Vice President United Mines Mazdoor Union and Ors.**

Appearances for Parties

Ranjit Kumar, Sr. Adv., Sunil Kumar Jain, Ms. Rashika Swarup, Advs. for the Appellant.

Ms. Deepanwita Priyanka, Satyalipsu Ray, Ritesh Patil, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

1. Heard Mr. Ranjit Kumar, learned senior counsel for the appellant and Ms. Deepanwita Priyanka, learned counsel for the respondent no.3.

2. Leave granted.

3. The present appeal arises out of the final judgment dated 04.02.2021 (hereinafter referred to as the "impugned judgment"), passed by a Division Bench of the High Court of Orissa at Cuttack (hereinafter referred to as the "High Court") in Writ Petition (Civil) No.9424 of 2019, whereby the petition filed by the appellant was dismissed and the Award dated 24.01.2018 passed by the Central Government Industrial Tribunal-*cum*-Labour Court, Bhubaneswar (hereinafter referred to as the "CGIT") in ID Case No.33 of 2003, was upheld.

BRIEF FACTS:

4. The respondent no.3 was employed as a Piece Rated Mazdoor at Barsua Iron Ore Mines under Rourkela Steel Plant, a unit of Hindustan Steel Limited (hereinafter referred to as "HSL"), which later merged into Steel Authority of India Limited (hereinafter referred to as "SAIL"). The respondent no.3 was offered employment on a casual basis *vide* letter dated 14.04.1972 as a Piece Rated Mazdoor. On 27.12.1972, he submitted the prescribed form of descriptive roll declaring his age as 24 years but did not provide a specific date or any documentary proof of date of birth. Based on his oral declaration, his date of birth was recorded as 27.12.1948 and this date was accepted and signed on by the respondent no.3 leading to his employment. *Vide* Offer of Appointment dated 22.06.1981, the respondent no.3, initially employed as a casual labourer, was regularized under the appellant and worked as a Piece Rated Mazdoor in mining operations for SAIL following the merger of HSL into SAIL.

5. It appears that on 14.08.1982, the respondent no.3 submitted the prescribed form of Descriptive Roll, wherein he changed his initially recorded date of birth i.e. 27.12.1948 to 12.03.1955, again without providing any documentary proof. *Vide* Office Order dated 20.12.1982, such date of birth, as disclosed by the respondent no.3, was entered in the records of the appellant who effected the change without any scrutiny.

6. On 24.11.1998, the respondent no.3 was requested to submit documentary proof in support of his date of birth, in response to which he submitted a School Transfer Certificate (hereinafter referred to as the "STC") dated 12.01.1972, which made him 17 years and 1 month old at the time when he was offered employment on casual basis on 14.04.1972.

7. On 29.11.2001, based on his declaration at the time of initial employment the Competent Authority of the appellant determined the date of birth of the respondent no.3 as 27.12.1948, which made him come within the statutory employment age limit and above the minimum age i.e., 18 years, required for such employment.

8. On 09.10.2003, a dispute regarding the respondent no.3's date of birth was referred by the "*appropriate Government*"[1] to the CGIT for adjudication.

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1 Section 2(a) of the Industrial Disputes Act, 1947 reads as below:

'(a) "appropriate Government" means,—

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the Banking

9. In the meanwhile, on 31.12.2008, the respondent no.3 superannuated from service, having attained the age of 60 years, based on his initially recorded date of birth [27.12.1948].

10. On 24.01.2018, the CGIT passed its Award and held that the appellant's determination of the respondent no.3's date of birth based on the initial Descriptive Roll was unjustified and thus, awarded him 50% back wages from his retirement in 2008 until his supposed date of superannuation in 2015, based on the date of birth disclosed in the STC i.e., 12.03.1955. The appellant filed a Writ Petition before the High Court of Orissa at Cuttack on 19.05.2019 challenging the Award passed by the CGIT on 24.01.2018. The order of the High Court dismissing the same on 04.02.2021, is impugned in the present appeal.

SUBMISSIONS BY THE APPELLANT:

11. Learned Senior counsel for the appellant submitted that the conduct of the respondent no.3 clearly dis-entitled him to any relief as he could not have been allowed to resile from his initially declared date of birth, that too after 9 years of his initial declaration, on 27.12.1972. It was submitted that the said declaration by the respondent no.3 himself on 27.12.1972, cannot be said to be an inadvertent error or omission for the reason that had the so-called correct date of birth, according to the respondent no.3, i.e., 12.03.1955 been declared, then at the relevant point of time, he would have been only 17 years and 1 month old and could not have been given the employment he had sought, since the minimum age required was 18 years. Thus, it was submitted that it was clear that he had tried to take employment relying on his date of birth as 27.12.1948,

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Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.'

from which he cannot be allowed to backtrack. It was canvassed that the same would amount to taking double advantage; one at the initial stage on the basis of the date of birth as 27.12.1948 and later in service on a different date of birth i.e., 12.03.1955. It was contended that the CGIT reaching the conclusion, that the management could not have determined the date of birth of the respondent no.3 based on the initial Descriptive Roll being unjustified, was totally without any basis and arbitrary and thus, awarding him 50% back wages, is totally misplaced and needs interference by this Court. It was urged that the High Court also failed to take notice of basic factual aspects and more importantly, the conduct of the respondent no.3 and the time-gap of 9 years after which he suddenly woke up and made a representation for change of his date of birth.

SUBMISSIONS OF RESPONDENT NO.3:

12. Per contra, learned counsel for the respondent no.3 submitted that at the time of filling up the Descriptive Roll, the same was based on an oral declaration and apparently the authority, which was noting down the date of birth, had committed an error.

13. It was further submitted that the STC dated 12.01.1972 clearly indicates that his date of birth was 12.03.1955, which required corrections in the records of the appellant and thus the CGIT and the High Court have not committed any error warranting interference by this Court.

14. It was submitted that the respondent no.3 was unaware of the date of birth being recorded as 27.12.1948 and only when he came to know of the same, he had taken steps and the CGIT rightly granted relief to him.

15. Learned counsel submitted that the respondent no.3 cannot be made to suffer for the fault of the appellant itself and more so when later, in its own records it had correctly recorded his date of birth as 12.03.1955, in the year 1982.

ANALYSIS, CONCLUSION AND REASONING:

16. Having considered the matter in its entirety and the submissions made, this Court is of the opinion that the Award of the CGIT as well as the impugned judgment rendered by the High Court cannot be

sustained. It is not in dispute that while submitting the Descriptive Roll, the respondent no.3 had himself declared his age as 24 years without any documentary proof and since the date of submission of such Descriptive Roll was 27.12.1972, his date of birth was recorded by the appellant as 27.12.1948. This position continued for almost a decade viz. till 1982, when the respondent no.3 submitted a declaration, on the merger of HSL with SAIL, wherein his date of birth was disclosed as 12.03.1955, though even at such time, again, no documentary proof was furnished by him. The respondent no.3 submitted the so-called proof, which was the STC dated 12.01.1972, only after the issuance of letter dated 24.11.1998, whereby he was required to submit documentary proof of his date of birth. Pausing here, the Court would note that by reckoning his date of birth as 12.03.1955, the respondent no.3 would be much below the age of 18 years at the time of initial employment, which was the minimum requirement in law. Thus, it is clear that had the respondent no.3 declared his so-called correct date of birth, obviously he would not have been given the employment.

17. From this point of view, it is clear that the disclosure of the originally-given date of birth by the respondent no.3 was a well-thought out plan hatched by him, at the relevant time. His conduct cannot be simply brushed aside on a plea that there was an error on the part of the appellant in recording his date of birth. Another doubt cast on the conduct of the respondent no.3 is him not acting on time, which raises a question about the bonafides of his claim of having been born on 12.03.1955. In fact, even after giving a declaration on 14.08.1982, on the merger of HSL with SAIL, the copy of the STC was never provided to the appellant, which was done only in response to the letter dated 24.11.1998, requiring him to submit documentary proof of his date of birth. Examined thus, the following is evincible: (a) the Competent Authority noticed discrepancy in the date of birth in the records of the appellant and, upon due scrutiny, opined that the declaration of date of birth made by the respondent no.3 at the first point of time, i.e., 27.12.1948, should be taken as his date of birth, as till 1998 no documentary proof was given, and; (b) the respondent no.3 would not have been able to legally come into employment on 27.12.1972, had he disclosed his date of birth as 12.03.1955. No fault can be found with the appellant on this score. It is a just and reasonable conclusion by the appellant's Competent

Authority. Moreover, reckoning his date of birth as 27.12.1948, the respondent no.3 has been permitted to work for 36 years, which by itself is a sufficient period of employment. Hence, on this count too, we are unable to show any indulgence to the respondent no.3.

18. Undoubtedly, a decision on the issue of date of birth is as important for the employer as it is for the employee. Reference in this regard can be made to ***Bharat Coking Coal Ltd. v Shib Kumar Dushad*, *(2000) 8 SCC 696. As expressed in Union of India v C Rama Swamy*, *(1997) 4 SCC 647***, "… the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. …".

19. Moreover, the principles of estoppel would come into play in the present case. The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982). Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998.

20. Although, we have examined the matter from the lens of fraud as well, in view of our discussions hereinabove, the said aspect does not merit deeper probe. We leave it at that. For the present, it would suffice to refer to a pronouncement of recent vintage by this Court in ***Karnataka Rural Infrastructure Development Limited v T P Nataraja*, (2021) 12 SCC 27,** where earlier precedents in ***Home Department v R Kirubakaran*, 1994 Supp (1) SCC 155; *State of Madhya Pradesh v Premlal Shrivas*, (2011) 9 SCC 664; *Life Insurance Corporation of India v R Basavaraju,* (2016) 15 SCC 781** and ***Bharat Coking Coal Limited v Shyam Kishore Singh,* (2020) 3 SCC 411** were considered. Although this Court in ***T P Nataraja*** *(supra)* was looking at the facts therein, in the context of the Karnataka State Servants (Determination of Age) Act, 1974, the principle of law laid down would equally apply insofar as change of date of birth in service records is concerned, with which we concur:

> **"11.** Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation."

21. In view of the aforesaid, this Court finds that the much-delayed disclosure of the date of birth as 12.03.1955 by the respondent no.3, coupled with his initial declaration and the admitted position that based on such initial declaration, he had received employment, as otherwise based on 12.03.1955, he could not have been legally appointed due to being under-age, there is no manner of doubt that the respondent no.3, irrespective of his real date of birth, for the purpose of employment under the appellant, cannot be allowed the purported rectification/correction of date of birth to 12.03.1955. He would have to, necessarily, be content with his service and benefits accounted taking his date of birth as 27.12.1948.

22. For reasons aforesaid, the appeal stands allowed. The Award of the CGIT dated 24.01.2018 and the impugned judgment stand set aside. The respondent no.3 is held to have been rightly retired in terms of his date of birth reckoned as 27.12.1948. Needless to state that the further direction to award 50% back wages to the respondent no.3 from the date he was retired till the (notional) superannuation on 31.03.2015, also stands set aside.

23. There shall be no order as to costs. Pending applications [IA Nos.51644/2021 and 54844/2021] are closed upon ceasing to subsist for consideration. The amount deposited by the appellant with the interest accrued thereon be released by the Registry in its favour.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.