

I/42296/2019

Government of West Bengal
Labour Department
I. R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr./ 323. /(LC-IR)/IR/7L-16/11

Date : 26.3.19

ORDER

WHEREAS an industrial dispute existed between M/s Baranagar Jute Factory, PLC, 284 Maharaj Nanda Kumar Road (N), Post – Alambazar, Kolkata – 700 035 and their workman Sri Sarkar Saran, 68/D, S. P. Banerjee Road, Post – Alambazar, Kolkata – 700 035 regarding the issue, being a matter specified in the third schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14of 1947) to the Judge, First Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said First Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUE

1. Whether the retirement of Sarkar Saran from the service of the company on 18.10.2014 is pre-matured and whether the same is justified ?
2. Whether the applicant Sarkar Saran is entitled to get the relief as prayed for ?

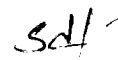
AND WHEREAS the said Judge, First Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor



Deputy Secretary
to the Government of West Bengal

6/2019

: 2 :

No. Labr/323/1(5)/(LC-IR)

Date : 26.3.19

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s Baranagar Jute Factory, PLC, 284 Maharaj Nanda Kumar Road (N), Post – Alambazar, Kolkata – 700 035.
2. Sri Sarkar Saran, 68/D, S. P. Banerjee Road, Post – Alambazar, Kolkata – 700 035.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

No. Labr/323/2(2)/(LC-IR)

Date : 26.3.19

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Kolkata, with respect to his Memo No. 310 – L. T. dated 07.03.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Baranagar Jute Factory, PLC, 284 Maharaj Nanda Kumar Road (N), Post- Alambazar, Kolkata-700 035 and their workman, Shri Sarkar Saran, 68/D, S.P. Banerjee Road, Alam bazar, Kolkata-700 035.

(Case No. 01/15 u/s 10(1B)(d) of I.D.Act,1947)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL, WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant case arose on an application filed by the applicant/ workman, Sarkar Saran, 68/D, S. P. Banerjee Road, Alambazar, Kolkata-700 035 u/s 10(1B)(d) of the Industrial Disputes Act, 1947 against his employer M/s. Baranagar Jute Factory, PLC, 284 Maharaj Nanda Kumar Road (N), Post-Alambazar, Kolkata- 700 035 praying for an award holding that the termination of the applicant/ workman by way of early retirement w.e.f. 18.10.2014 by the management of the opposite party/company is illegal and invalid and for his reinstatement in service with back wages.

On the basis of such application filed by the workman the instant case was registered and notice was issued to the opposite party/company. The company appeared and filed written statement. Both parties also filed documents with a copy to the other side.

In the application/claim petition filed by the workman it is contended that he was appointed by the opposite party/company on 1st April 1981 as a permanent staff by the company and he has been allotted with the E. B. No. 07552 and posted in the preparing department of the factory. At the time of appointment, the management asked the workman to produce the relevant document, namely, address proof, age proof etc. The workman duly submitted the Admit card issued to him by the West Bengal Board of Secondary Education Department and other documents. As per the said admit card the date of birth of the workman is 7th April 1960. The management maintains service book for each employee and the same is filled up by the management and the workman got no access to the same. The opposite party/ company has its own exempted provident fund trust board and as per the date maintain by the said board the date of birth of the workman has been recorded as 7th April



1960. All on a sudden in the month of April 2007 the workman somehow got access to the service book maintained by the management and came to know that the date of birth of the petitioner has been wrongly recorded as 18th October 1956 instead of actual date of birth that is 7th April 1960. The workman then submitted an application on 8th April 2007 to the management of the company for correction of his date of birth in the service book. With the said prayer the workman also annexed the necessary documents as to the proof of his age. The management sit tight over the matter with an intention to terminate the workman by way of early retirement. The workman wrote another letter dated 10th February 2014 to the management with the same prayer enclosing the earlier letter dated 8th April 2007 submitted by him to the management of the company. No steps having been taken by the management of the company on such prayer made by the workman, he instructed his Ld. Advocate to cause a legal notice to the management of the company and accordingly said advocate sent a legal notice on 16th May 2014 through registered post with AD. The such legal notice was returned back with postal remark 'refused'. As per previous mind set, inspite of having knowledge of the fact that the actual date of retirement of the workman is 7th April 2018, the management with the malafide intention to terminate the service of the petitioner by way of early retirement issued a letter dated 1st October 2014 and intimated the workman that he is going to retire w.e.f. 18th October 2014. After receiving the said notice which was issued in violation of the normal rules and procedure, the workman went several times to the office of the management but the management with biased mind did not adhere to the submissions of the petitioner. Ultimately the management succeeded in their ill intention and throw the petitioner out of his employment at an early date and thereby put the workman in an enormous financial crisis. Having no other alternative the petitioner wrote a letter dated 23rd December 2014 to the Labour Commissioner, West Bengal and intimated him all the very facts of victimisation in the hands of the management of the company. Due to adamant attitude of the company the dispute could not be solved. Ultimately the concerned workman prayed for certificate from the Conciliation Officer regarding the pending of the disputes as per statutory provisions under the Industrial Disputes Act and Rules and a certificate was issued by the Conciliation Officer under Rule 12A(3) of the Industrial Disputes Act, 1958 in Form-S on April 2015 and the same was received by the petitioner in the month of May and thereafter he has filed the instant proceedings seeking for an award holding that the termination of the workman by way of early retirement w.e.f. 18.10.2014 by the management of the



company is illegal, invalid and in-operative in the law and for a further award for his reinstatement of the service and other consequential relief.

The management of the company has contested the case by filing a written statement consisting of two (2) parts: **In Part-1** it is contended that the instant application filed by the workman is not maintainable since no dispute has been raised by the workman with the company in order to transform the dispute to be an Industrial Dispute; purported application filed by the workman is not maintainable due to non-observance of the provisions of Section 10(1B)(d) of the Industrial Disputes Act, 1947 and that the workman has been superannuated attaining 58 years of age as per provisions of the certified standing orders of the company. **In Part-2** of the written statement the company has denied and disputed the averments made in paragraph no. 4 to 17 of the claim statements filed by the workman. It is contended by the company that the date of birth of the concerned workman was recorded as 18.10.1956 as per his declaration at the time of joining in the service of the company. Accordingly, the employment book engraving his bio-data was issued to him wherein he has put his signature and the date confirming the statement made therein as true and correct. It is further contended that as per the practice in vogue and the ESI Act the applicant/workman was required to give his bio-data including the date of birth wherein he put his date of birth as 01.07.1959 and according to his declaration the ESI card was issued by the ESI Corporation engraving his date of birth as 01.07.1959. It is then contended that the workman on 28.12.1993 submitted the Provident Fund Nomination Form for declaration of PF nominee wherein he has mentioned his date of birth as 07.04.1960. On that score the opposite party/Company has prayed for dismissing the claim made by the workman.

On the basis of the aforesaid pleadings of the parties following issues were framed for determination.

I S S U E S

1. Whether the retirement of Sarkar Saran from the service of the company on 18.10.2014 is pre-matured and whether the same is justified?
2. Whether the applicant Sarkar Saran is entitled to get the relief as prayed for?

In support of his case the workman examined himself as WW1 by tendering his evidence-in-chief supported by affidavit. He also tendered some



documents in evidence which have been marked as exhibit-1 to exhibit-10. The witness was cross examined by the other side.

The company also examined one witness Md. Hasem Sarkar by tendering his evidence-in-chief who relied on some documents which have been marked as exhibit-1 & 5 collectively for the company. He was cross examined for the workman and discharged.

Before entering into the detailed discussion as to the merits of the case it would be pertinent to mention that after closer of evidence from both sides and while the case was posted for hearing argument the workman (WW1) expired on 12th December 2018 and on his death his widow and the other legal heirs made an application for substituting them in place of the said deceased workman and relevant document (Cremetion certificate) of the said workman issued by the Kolkata Municipal Corporation (Health Department) was filed. No objection was raised by the other side in respect of such application. On hearing both sides this tribunal allowed such application and recorded the name of those legal heirs in the cause title of the claim statement.

“Decision with Reasons”

Let us now decide the issues involved in this case on the basis of oral and documentary evidences as adduced by the respective parties. WW1 Sarkar Saran has stated in his evidence-in-chief that he was appointed by the opposite party/company on 1st April 1981 as a permanent staff member of the company and has been allotted with the E.B. No. 07552 and posted in the Preparing Department of the factory. During his cross examination he has stated that he joined the company on 01.04.1981 as machine man. Such statement of WW1 gets corroboration from the evidence-in-chief of CW1 as appearing in paragraph no. 2 of his evidence-in-chief. Therefore, it has become an admitted position that the WW1 namely, the applicant joined the company on 01.04.1981 in permanent capacity.

The crux of the whole case centres rounds the actual date of birth of the said workman namely, WW1. The WW1, Sarkar Saran has stated in his evidence-in-chief that his date of birth as per his admit card issued to him by the West Bengal Board of Secondary Education is 7th April 1960. He has also stated that in his Aadhar card same date of birth has been recorded on the basis of the said admit card. He has then stated that in the employees Provident Fund Book of the Baranagar Jute Factory, his date of birth has been recorded as 7th April 1960. To substantiate such statements the witness (WW1) has produced the xerox copy of the admit card issued by the West

Bengal Board of Secondary Education, the xerox copy of the Adhaar Card stands in the name of the workman and also the record of employee's provident fund book of Baranagar Jute Factory which have been marked as exhibit-1 to 3 respectively. The authenticity and genuinity of those three documents have not been challenged by the opposite party/company. However, since the said xerox copy of the admit card issued by the West Bengal Board of Secondary Education and some other documents marked as exhibit for the workman having appeared to be not completely legible, later on at the stage of hearing of argument the workman was asked to produce the original of those documents which he produced accordingly. Similarly, the xerox copy of some documents which were marked as exhibit-1 to 5 (subsequently remarked as Exhibit-A to E) for the opposite party/company having found not legible, the opposite party was asked to produce the original of the same but the opposite party has not produced the originals. Amongst those documents relied upon by the opposite party/ company exhibit-1 (remarked as Exhibit-A) is the service book of the workman. The xerox copy of the second page of the service book of the workman found to be illegible. However, the first page of the same appears to be legible. The similar documents have been marked as exhibit-4 for the workman.

During cross examination of WW1, he has stated that at the time of joining in service he was non-matric and he appeared in the Madhyamik examination but could not succeed. During further cross examination of WW1 he has stated that in the admit card issued in respect of the said examination his date of birth was mentioned as 07.04.1960. He has further stated during cross examination that he deposited his admit card to the management at the time of his joining. Amongst the documents filed by the opposite party/company exhibit-1 is the xerox copy of the service record of the workman, exhibit-2 is the temporary identity certificate in respect of the workman, exhibit-3 is the xerox copy of provident fund nomination form in respect of the workman, exhibit-4 is a letter dated 01.10.2014 issued by the management of the company to the workman an exhibit-5 is the xerox copy of certified standing order of the company. Those documents were so marked as exhibit-1 to 5 for the company inadvertently instead of marking as exhibit-A to E. Those documents were remarked as Exhibit-A to E on the latter stage of hearing. So, it appears that in the service record of the workman (exhibit-4) his date of birth has been recorded as 18.10.1956. However in the employee's provident fund book of the workman (exhibit-3) his date of birth has been recorded as 07.04.1960 and in exhibit-2 (remarked as exhibit-B) for the



company which is temporary identity certificate of the workman such date of birth has been recorded as 01.07.1959. Therefore, it is clear that in different documents different date of birth of workman has been recorded. It would be proper to mention that CW1 while admitting that document into evidence has described the same as internet generated copy of ESI Declaration Form in respect of the workman in two sheets and the same has been marked exhibit-2 (remarked as exhibit-B) for the company with objection of the other side. On perusal of the said documents I find that the same has neither been signed by the workman nor by the management of the company. No family photograph of the workman has been affixed therein. That being so, no reliance has been placed on the said document marked as exhibit for the company.

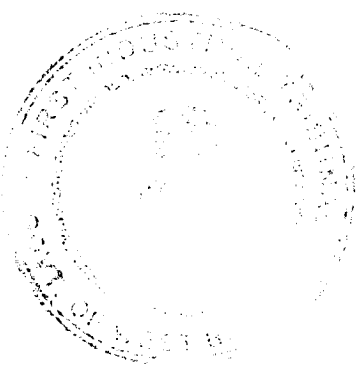
Now admittedly the workman Sarkar Saran (since deceased) joined in the service of the company as a workman on 01.04.1981. The CW1 has stated in his evidence-in-chief that the company terminated the service of workman on his attaining the age superannuation as per Clause 13(c) of certified standing order of the company by its letter dated 01.10.2014 said certified standing order has been marked as exhibit-5. It is not disputed by the workman (since deceased) that as per Clause-13(c) of said standing order the age of retirement of men workers shall be 58 years and of women workers 55 years. It is claimed by the workman (since deceased) that his date of birth was wrongly recorded in the service book as 18.10.1956 and same should have been recorded as 07.04.1960. WW1 has stated in his evidence-in-chief that when it came to his knowledge regarding the wrong record of his date of birth in his service book, he immediately contacted the Personnel Manager to rectify the same whereby the management assured him to do so. He (WW1) has then stated in his evidence-in-chief that he was under impression that the company might have recorded the date of birth inadvertently so he approached verbally for which the management assured him to change it but as he found no action has taken, the same forced him to submit the prayer before the management in writing enclosing the copy of admit card and Madhyamik Pariksha certificate. Such statement of the WW1 has not been challenged during his cross examination by the opposite party/company. On the contrary, I find that on being asked during such cross examination the WW1 has stated that he requested the management of the company to change his date of birth in the service book and the office assured him that the necessary correction would be made. During his further cross examination,



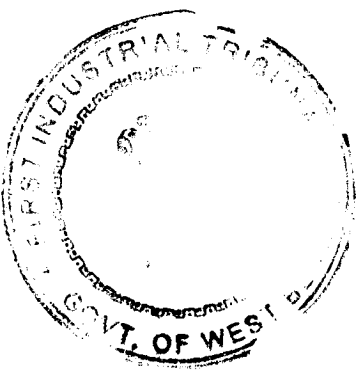
the witness stated that on 10.02.2014 he submitted a written application in the form of reminder.

It is argued by the Ld. Advocate for the company that at the fag end of service career no change or modification of recorded age can be raised, particularly after receiving the letter of superannuation by the applicant workman Sarkar Saran. It is argued that the evidence as adduced by WW1 cannot be accepted and the company is justified in terminating the service of the concerned workman w.e.f 18.10.2018 on his attaining the age of 58 year. In support of his argument the Ld. Advocate for the company has placed reliance on some case laws as reported in 1993(2) SCC 162 (Union of India Vs Hanuman Sing); 2000 (8) SCC 696 (G.M. Bharat Coking Coal Ltd., W.B. Vs Shib Kumar Dushad); 2001(4) SCC 52 (Hindusthan Lever Ltd. Vs S.M. Jadhav and anothers); 2003 AIR (SC)4209 (State of UP Vs Gulaichi) and 2013 (4) CHN (Cal) 161 (Tarapada Dhibar Vs. Coal India Ltd.).

The Ld. Advocate for the workman, on the other hand, argued that from the testimony of W.W. 1 and the documentary evidences as produced by him, it would be evident clearly that the workman (since deceased) approached the management of the company with cogent and convincing documents for correction of his date of birth in his service record immediately when he came to know that his date of birth has wrongly been recorded as 18.10.1956 instead of recording his actual date of birth 07.04.1960. It is argued further that the argument as placed by the Ld. Advocate for the company that no change or modification of recorded age can be raised at the fag end of service cannot be applicable in the instant case because such argument can only be applied in the case where an employee has/had full knowledge about the wrong entry as to his age in his service book and has/had slept over the matter for a prolonged period of time. It is submitted for the workman that in the instant case the concerned workman has come to know about wrong entry as to his age in the service book only when he signed his service book in the year 2005 which would be evident from Exhibit – 4 (for the workman). Accordingly, it is argued that the case laws as cited by the Ld. Advocate for the company are not applicable in the instant case. In support of such argument the Ld. Advocate for the workman has placed reliance on the case laws as reported in (2014) 4 SCC 887 (M/S Bharat Coking Coal Ltd. And Ors. vs. Chhota Birsa Uranw); AIR 1993 SC 2647 (Secretary & Commissioner, Home Department and Ors. vs. R Kirubakaran) and (2009) 1 SCC 80 (Mohd Yunus Khan Vs. Power Corporation Ltd. And Ors. ~~2009~~).



Considered the submissions of both sides. As stated earlier, the workman (since deceased) joined the service of the company on 1st April 1981 as a permanent staff and was posted in the Preparing Department of the factory. The workman (W.W. 1) has stated in his evidence-in-chief that his service book record shows the wrong date of birth i.e. 18.10.1956 for which he becomes four years elder in comparison to his original date of birth i.e. 7th April 1960. He has further stated that when it came to his knowledge regarding wrong record of his date of birth in the service book, he immediately contacted Personnel Manager and verbally approached him to rectify the same whereby the management assured him that the same will be done but when he found that no action was taken he was forced to submit his prayer before the management in writing on 8th April 2007 along with a copy of his admit card issued by the West Bengal Board of Secondary Education. The said letter of the workman submitted to the management on 08.04.2007 has been marked as Exhibit-5. The copy of admit card issued by the West Bengal Board of Secondary Education to the workman has been marked as Exhibit-1. The witness (W.W 1) has then stated that since the submission of such representation (Exhibit-5) to the management of the company whenever he asked the management over the matter he was told that it would be done by the officer and when he visited the said officer, he was asked to go to the other department and sometimes they said that the process has started and assured him that the necessary change as to his date of birth will be done. The witness went on saying further that after waiting for a long time when he found that he has been given some fake assurances, he again submitted a written application on 10th February 2014 to the Personnel Manager as a reminder (Exhibit-6). The witness (W.W. 1) has stated that since no action was taken even thereafter, he took the help of one advocate and a legal notice dated 16th May 2014 was issued to the management of the company by his Ld. Advocate on his behalf under registered post with A/D and the management refused to accept the same. The said letter issued by the Ld. Advocate and the postal receipt has been marked as Exhibit-7 and Exhibit-7/1. All the aforesaid statements which have come out in the evidence-in-chief of WW1 have not been specifically challenged during his cross-examination. During his cross-examination, he has stated that at the time of his joining he was non-matric and he appeared in the Madhyamik examination but could not achieve success. He has further stated during cross-examination that he cannot exactly remember the date of his appearing in the Madhyamik examination. He (W.W.1) has categorically answered during further cross-examination that in the said admit card his date of birth has been mentioned



as 07.04.1960. On a further question put to him (W.W 1) during cross-examination the witness answered that when it came to his notice that his date of birth has wrongly been recorded, he brought it to the notice of authority. He has further stated during cross-examination that he made request to the management for correction of his date of birth as recorded in the service book. He has further stated during cross-examination that he submitted Exhibit-5 to the management on 08.04.2007. He again stated that the officer assured him that the necessary correction will be done. It has further come out during cross-examination of W.W 1 that on 10.02.2014 he submitted a written application in the form of a reminder to the Personnel Manager of the company. The witness has categorically replied during cross-examination that he deposited his admit card to the management of the company at the time of his joining. In my considered view, that all such statements which have come out during the cross-examination of W.W 1 have practically corroborate and justify the stand taken by the workman (since deceased) in the instant case. No contradiction to the statements of the witness (W.W. 1) which has come out in his evidence-in-chief could be taken out during his cross-examination. On the contrary, I find the statements of the witness (W.W 1) which came out during cross-examination practically corroborate the case of the workman put forward in his claim statement. It is necessary to mention another part of the cross-examination of W.W 1. During his cross-examination, a question was put to him by the opposite party company that whether he signed the service book after going through the contents filled in the different columns. The witness answered that when he signed the service book the different columns were kept blank.

The company examined one Mr. Hasem Sarkar working as General Manager (P&A) in the factory of the opposite party. He has admitted that the workman joined the company on 01.04.1981 and at the time of his joining his date of birth was recorded as 18.10.1956 as shown in the service record of the company. The Xerox copy of the said service record has been marked as Exhibit-1 (remarked as exhibit-A) containing two sheets for the company. The second sheet having found to be illegible the company was asked to produce the original of the same subsequently during course of hearing of argument but the company has not produced the same. The C.W. 1 has stated in his evidence-in-chief that the company issued an identity card wherein the date of birth of the workman has been recorded as 18.10.1956. Curiously, to substantiate such contention nothing could be produced by the company. No question was even put by the company on such point during cross-



examination to W.W 1. In the next line of his evidence-in-chief the C.W. 1 has stated that, "I say that the concerned workman Sri Saran has put his signature in the identity card and date as 11.01.2005 which are to be marked as Ext." It is not understandable what the C.W. 1 actually intended to say. No document has also been produced to substantiate such statements. The management of the company filed some documents before this Tribunal on 29.07.2016 on which the company intends to rely upon and on the date of recording evidence of the company witness (C.W. 1) on 20.07.2017 those documents were admitted into evidence for the company through the said witness. Those documents are Xerox copy of the service book (2 sheets) of the workman, internet-generated copy E.S.I. Declaration Form (2 sheets) in respect of the workman, Xerox copy of PF Nomination Form of the workman, the Xerox copy of the letter dated 01.10.2014 issued by the General Manager of the company to the workman and the Xerox copy of the Certified Standing Order issued by the Labour Department, Government of West Bengal. All those documents have been marked as Exhibit 1-5 for the company with an objection of the other side in respect of Exhibit-2. The numbering of such exhibited documents for the company was inadvertently put as Exhibit 1-5 and the same was remarked as Exhibit A-E at the subsequent stage of hearing of the case to avoid any inconveniences.

It would be pertinent to mention that during his cross-examination the C.W. 1 has admitted that he joined the opposite party/company on 01.11.2008 and he discontinued the said service voluntarily after the expiry of approximately one and a half months and thereafter he again joined the company in the capacity of Head of the Personnel within two months and subsequently he got promotion in the present rank. So, it is clear that the said witness was not attached with the company when the concerned workman joined there. That being so, the said witness (C.W. 1) cannot have any direct knowledge regarding any matter relating to the concerned workman prior to the joining of the witness (C.W. 1) in the company.

As stated earlier that the documents which have been admitted into evidence for the workman being marked as Exhibit 1-10 the authenticity and the genuineness of the same have not been challenged by the other side. Amongst those documents Exhibit-1 is the admit card of the workman issued by the West Bengal Board of Secondary Examination. It appears from the said documents that the workman Sarkar Saran was allowed to appear in the secondary examination, 1977 as a Continuing Candidate without having to appear for the last examination in 1976 syllabus for Regular Candidate.

Naturally, from the said endorsement appearing in the said admit card it is clear that the same was issued prior to the date of joining in service by the workman in the company on 01.04.1981. At the cost of repetition, it is to be mentioned that during the cross-examination of W.W. 1 it has come out that he deposited his admit card to the management at the time of joining in the service. Such statement can surely be admitted to be correct as no prudent man will believe that a person will not submit such document with the management at the time when he joined the service. More so, the management of a company is expected to ask the workman to produce any document in support of his age before allowing him to join in service. The W.W. 1 has categorically replied during his cross-examination as stated earlier that when he signed the service book the different columns were kept blank. Such statement of the witness (W.W. 1) can be said to be genuine in view of the other aspects of the evidences on record. The management of the company has made attempt to negate the claim of the workman taking the plea that the workman by signing in the service book admitted his date of birth as 18.10.1956. I fail to understand when the workman joined the company on 01.04.1991, then why his signature was taken in the service book on 11.01.2005 and why not on the self-same date when the workman joined in the company or immediately thereafter. Curiously, the C.W. 1 has stated during his cross-examination that the Labour Officer signed the said service book on 30.12.2004. No explanation has been put forward by the said witness as to what prompted the labour officer to put such signature in the service book on a date long after the joining of the workman in the service. The C.W. 1 in the last part of his examination-in-chief has stated that after preparation of the service book the original was kept with the workman. Such statement cannot be accepted to be correct because the original service book always remains with the management of a company and at best a duplicate copy of the same can be provided to the workman/employee. All the aforesaid materials on record clearly suggests that the management of the company prepared the service book in a very unusual manner. The W.W. 1 has stated in his evidence-in-chief that when it came to his knowledge regarding the wrong record of his date of birth in the service book he immediately contacted the management of the company verbally and the management assured him that necessary correction will be done and when the same was not done he submitted a representation to the management on 8th April 2017 making annexure of his admit card of Madhyamik pariksha for necessary correction in his service record as to his date of birth. Xerox copy of the said application has been marked as Exhibit-5. It appears therefrom that there is an

endorsement that the management of the company received the same but the contents of the same was not verified. Naturally the question comes as to what prompted the management of the company to sit tight over the matter and no action was taken in that regard. It appears that the Xerox copy of the admit card of Madhyamik pariksha held in 1977 was annexed with the said application submitted to the management. Had there been any doubt in the mind of the management of the company regarding the authenticity of the said admit card, it could have very well verify it with the concerned authority issued such admit card. Then again from Exhibit-6 it appears that on 10.02.2014 the workman again approached the management of the company to correct his date of birth in the service record as per his date of birth recorded in the said admit card as 7th April 1960. Exhibit-2 the Aadhar card stands in the name of the workman reveals that therein also his date of birth has been recorded as 07.04.1960. In Exhibit-3 which is the Employees' Provident Fund book maintained by the employer, therein also the date of birth of the workman has been recorded as 07.04.1960. All such aspects of the evidences and materials on record absolutely justify the case put forward by the workman in his claim statement.

In the reported cases, as relied upon by the Ld. Advocate for the company, it has been held by the Hon'ble Courts that disputes raised by the employee as to his/her correction of date of birth in the service record long after joining the service is not permissible. In the case as relied upon by the company as reported in 2000 (8) SCC 696, it has been observed by the Hon'ble Apex Court in paragraph no. 20 of the internet-generated copy of the judgement quoting therein some observations as made by the Hon'ble Apex Court in the case of Secretary & Commissioner, Home Department & Ors. Vs. R. Kirubakaran on which reliance is placed by the Ld. Advocate for the workman that — “..... 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 limit 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 a time, which can be held to be reasonable.....”



In the instant case before us, the workman joined in service on 1st April 1981. He has claimed that immediately after when it came to his knowledge regarding the incorrect entry of his date of birth in the service book, he approached the management verbally to correct the same and when the same was not done he submitted a representation on 8th April 2007 to the management annexing therewith the admit card of his Madhyamik pariksha. From the service book of the workman (Exhibit-4) it appears that his signature was obtained therein on 11.01.2005 i.e. long after his joining in service admittedly on 01.04.1981. That being so, it is quite natural that the knowledge of the workman regarding his date of birth in the service book gathered on the said date i.e. on 11.01.2005 when he signed the service book. The workman claimed that he immediately brought to the notice of the company to correct the said date of birth as made in the service record by changing it from 18.10.1956 to 07.04.1960. The workman has produced a number of documents to substantiate the fact that he constantly approached the management of the company to correct his date of birth wrongly recorded in the service book (Exhibit-4). In the case as reported in (2014) 4 S.C.R. 887 (M/S Bharat Coking Coal Ltd. And Ors. vs. Chhota Birsa Uranw), it has been observed by the Hon'ble Apex Court in paragraph no. 13 of the judgement that — "We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in R. Kirubakaran Case (supra.). 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 mechanism. 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."

In the instant case before us, the workman is not a public servant and he joined the company on 1st April 1981. The evidences and materials as produced by the workman which practically remain uncontroverted clearly suggest that he approached the management of the company regarding wrong recording of his date of birth in the service record as 18.10.1956 immediately when the same came to his knowledge on 11.01.2005 i.e. the date when he signed the service book and constantly he requested the management of the company to record his date of birth as 7th April 1960 on the basis of the admit card issued to him by the West Bengal Board of Secondary Examination. But the management did not care and bother to pay any heed to such request of

the workman and ultimately issued a letter dated 01.10.2014 (Exhibit-5) intimating the workman that he will retire from the service w.e.f. 18.10.2014. Such attitude and actions taken by the management of the company cannot be said to be fair. Nothing could be explained or produced by the company/opposite party that there is any rules or regulations mentioning therein the time limit to approach by the workman for correction of his date of birth in the service record. Be that as it may, the materials on record clearly establish that the workman constantly approached the management of the company from the date when he came to know about the wrong entry in his service book as to his date of birth. In my considered view, the management of the company purposely and with some oblique motive did not correct the date of birth of the workman as recorded in his service book as approached by the workman and wanted to see an early superannuation of the workman from the service of the company. The evidences and materials abundantly suggest that the actual date of birth of the workman is 7th April 1960 and not 18th October 1956 as recorded in his service book. That being so, following the observations as made by the Hon'ble Apex Court as relied upon by the workman, I am of the view that the opposite party company should not be allowed to take any benefit of its own wrong and thereby forced the concerned workman to superannuate from his service on an early date taking into consideration of his wrong entry in the service record as to his date of birth as 18th October 1956. All the facts and circumstances which are available before us there cannot be any manner of doubt to come to a conclusion that the date of superannuation of the concerned workman should have been 7th April 2018 taking into account his actual date of birth on 7th April 1960.

On giving an anxious consideration of all aspects of the evidences and materials on record, I have no other option but to come to an irresistible conclusion that the management of the company/opposite party has committed a gross wrong/error in superannuating the service of the workman from the company w.e.f. 18.10.2014 as mentioned in Exhibit-8 and the date of such superannuation should have been 7th April 2018. On careful consideration of entire evidences on record both oral and documentary I hold that the decision of the company to superannuate the service of the workman w.e.f. 18.10.2014 is premature and such decision of the management of the company is absolutely unjustified.

The concerned workman Sarkar Saran has met with an unfortunate death during fag end of the instant proceedings. Consequently, the widow, one son and three daughters of the workman have appeared before this



Tribunal to substitute them in place of the deceased workman and to continue with the instant proceedings. The management of the company/opposite party is directed to pay to the legal heirs of the deceased workman his due salary treating his date of superannuation as 7th April 2018 and other consequential benefits.

The issues taken up for consideration are thus decided and disposed of accordingly.

This is my Award.

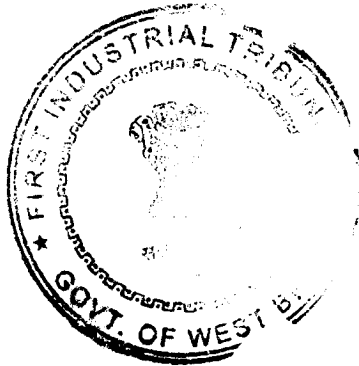
Dictated & corrected by me.

Sd/- T. Gupta

Judge

Sd/-
T. Gupta

Judge
First Industrial Tribunal
Kolkata
25.02.2019



JUDGE
25.02.2019