

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**WP(C) No.14256 of 2021**

**Management Committee, CFH** .... **Petitioner**  
**Scheme, Paradip Port**

*-versus-*

**Paradip Port Workers Union and** .... **Opposite Parties**  
**another**

**Advocates appeared in this case :**

**For Petitioner :** Mr. Anand Prakash Das, Advocate  
Mr. P. Panda, Advocate

**For Opposite Parties :** Ms. Sujata Jena, Advocate

**CORAM:**

**JUSTICE ARINDAM SINHA**  
**JUSTICE SANJAY KUMAR MISHRA**

**Date of hearing and Judgment 21.02.2023**

**ARINDAM SINHA, J.**

1. Petitioner is the management. It has challenged award dated 18<sup>th</sup> December, 2020, by which there was finding that date of birth of opposite party no.2 (workman) is 28<sup>th</sup> August, 1958.

2. Mr. Panda, led by Mr. Das, learned advocates appear on behalf of petitioner. Mr. Panda submits, annexure-1 series were documents exhibited

before the Central Government Industrial Tribunal-cum-Labour Court. He draws attention to affidavit sworn by said opposite party on 2<sup>nd</sup> June, 1994, wherein by paragraph 2 he said that his actual date of birth is 28<sup>th</sup> August, 1958 and he had no other document in support of his date of birth except the affidavit. He clarifies, this was when the management had formed a sub-committee and was looking into the age of the mazdoors employed, under the scheme formulated pursuant to directions made by the Supreme Court. The committee found several reasons to doubt said opposite party's claim to have been born on 28<sup>th</sup> August, 1958. In year, 1994 wife of said opposite party was said to be 30 years, when his first son was already 16 years old. In the circumstances, marriage age was doubtful leading to hundred percent doubt regarding age of the workman. Accordingly, the workman was asked to appear before the committee. The workman admitted to have been born two years prior to his claimed date of birth. Hence, the application form for registration of workers, carrying particulars of opposite party workman, were altered in respect of his date of birth and present age. In acknowledgment of the alterations, the workman put his signature and also endorsed the date as 8<sup>th</sup> August, 1994. In those facts, the Tribunal could not have come to any other finding. It having done so, the finding was not based on relevant evidence and, therefore, perverse.

3. Mr. Das takes over and relies on **judgment dated 21<sup>st</sup> September, 2021** of the Supreme Court in, inter alia, **Civil Appeal no.5720 of 2021 (Karnataka Rural Infrastructure Development Limited vs. T.P. Nataraja and others)**, paragraphs 9 series and 10. He submits, clear declaration of law is that even if there is cogent evidence, same cannot be claimed as matter of right and claim can be rejected on ground of delay and laches. There was gross delay in the workman having claimed and thereby raise dispute regarding his recorded date of birth.

4. Ms. Jena, learned advocate appears on behalf of the workman. She submits, her client had pointed out the discrepancy in year, 2007, seven years before her client was to achieve age of superannuation, reckoned on purportedly corrected date of birth. The workman, duly obtained his school leaving certificate, in which there was clear record of his date of birth as 28<sup>th</sup> of August, 1958. This was documentary evidence before the Tribunal. The management though filed written statement but did not thereafter contest. The documentary evidence, produced by her client was, therefore, not even attempted to be impeached at trial. In the circumstances, finding of the Tribunal was based on relevant evidence. There should not be interference.

5. Question for consideration before this Court is whether the workman having consented to the alteration year, 1994, same would be better evidence

than documentary evidence of his school leaving certificate. Facts are that the management upon having filed its written statement did not contest the proceeding in the Tribunal. We reproduce a sentence from paragraph 13 in the written statement.

*“13. xxx xxx xxx. It is clearly understood that the workman in the subsequent stage has managed to obtain the SLC by illegal manner and have submitted same to claim undue benefit and hence the same may kindly be rejected.”*

(emphasis supplied)

It is clear, there was no allegation in the written statement to effect that the school leaving certificate was either forged, fabricated or manufactured. The manner of having obtained it was said to be illegal.

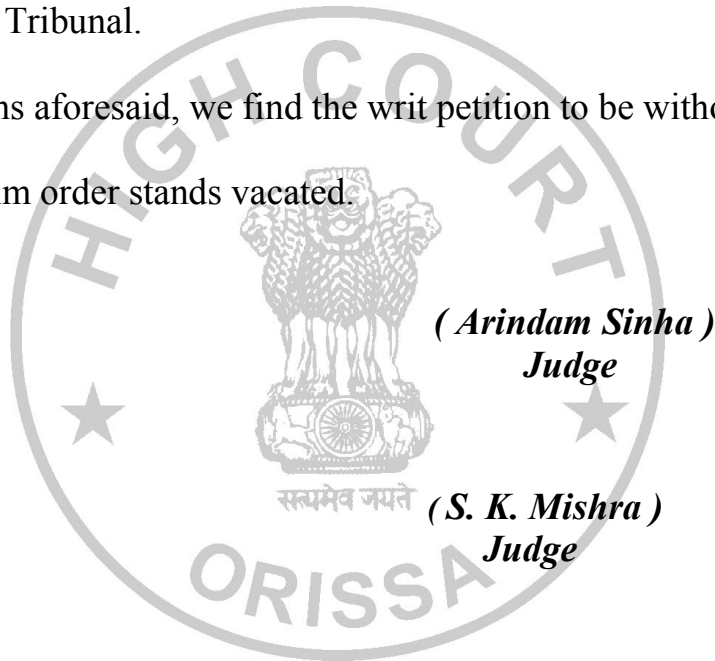
6. In this case we have not been able to find establishment of fact that the workman was born on 28<sup>th</sup> August, 1956. The workman had initially asserted his date of birth as 28<sup>th</sup> August, 1958. Subsequently, he put his signature on the corrections made in initial record of his date of birth. The corrections, accompanied by signature and date put by the workman may at best amount to an admission on his part that he was born on 28<sup>th</sup> August, 1956. This admission cannot stand in face of the documentary evidence, borne out by the school leaving certificate. School leaving certificate is one of the proofs of date of birth. Furthermore, admissions can be explained. Section 31 in Indian

Evidence Act, 1872 says admissions are not conclusive proof but may operate as estoppel under the provisions thereafter contained. The estoppel provisions are those in sections 115 to 117. Section 115 is not applicable to the workman as it is case of the management that he put his signature and date against the corrections, when confronted by the committee on doubts raised by it. The act of the workman cannot be said to have been in pursuance of his intention to cause the management to believe he was born on 28<sup>th</sup> August, 1956. The management already had that belief and made the workman acknowledge it. Sections 116 and 117 do not apply to the workman.

7. **T.P. Nataraja** (supra) is not applicable to this case. This is because the workman had not belatedly claimed correction of age recorded at the time of entry into service. There was originally recorded his date of birth as 28<sup>th</sup> August, 1958. Subsequently, same was corrected. He assailed the correction, presumably upon obtaining his school leaving certificate. This he did before seven years of his retirement reckoned on corrected age and nine years, reckoning his originally recorded age. It is the management, which made the correction and the workman raised dispute against it. Impugned award is dated 18<sup>th</sup> December, 2020. Though judgment in **T. P. Nataraja** (supra) was delivered on 21<sup>st</sup> September, 2021, earlier judgments of the Supreme Court

relied upon therein were delivered long before as reported in years, 1994, 2011, 2016 and 2020 [**Bharat Coking Coal Limited v. Shyam Kishore Singh**, decided on 5<sup>th</sup> February, 2020 and reported in (2020) 3 SCC 411]. It follows, ground of delay and laches was available to the management, for it to have challenged the order of reference. It did not do so and also chose not to contest at trial. Impugned award is accordingly silent on the contention, not raised in the Tribunal.

8. For reasons aforesaid, we find the writ petition to be without merit. It is dismissed. Interim order stands vacated.



*Prasant Sahoo*