A G.M. BHARAT COKING COAL LTD., WEST BENGAL

v.

SHIB KUMAR DUSHAD AND ORS.

NOVEMBER 2, 2000

B [M.B. SHAH AND D.P. MOHAPATRA, JJ.]

Service Law:

Date of birth–Change of—Employee raised dispute over his date of
C *birth long after joining service—Employer determined the correct date of birth in accordance with procedure prescribed under Service Rules or General Instructions—No arithmetical mistake or typographical errors—Interference with—By High Court—Held : Under such circumstances High Court should not interfere with the decision of employer—Constitution of India, Art 226.*

D **The year of birth of the respondent-employee was recorded as 1932 in the Form B register maintained by the appellant-employer under the Mines Act, 1952. The respondent was to superannuate in 1992 on attaining the age of 60 years.**

In 1973 the respondent acquired a certificate of Gas Testing and Mining
E **Sirdarship and his date of birth was mentioned as 9.2.1936 in the said certificate. In view of the apparent discrepancy in the date of birth of the respondent, the appellant's Medical Board determined the date of birth of the respondent as 13.10.1936 under the relevant Service Rules. Accordingly, the respondent was to superannuate on 13.10.1996.**

F **Thereafter, the respondent filed a writ petition before the High Court for a direction to change his date of birth as 9.2.1936. The High Court allowed the writ petition. Hence his appeal.**

Allowing the appeal, the Court

G **HELD : 1. In a case where controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee**
H **that there has been any arithmetical mistake or typographical error patent**

on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer. [341-F-G]

2. Date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, which will upset the date recorded in the service, records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. In a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employees beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior. The High Court, therefore, erred in interfering with the date of birth/age of the respondent as determined by the appellant. [343-B-F; 349-C]

Secretary and Commissioner, Home Department **v.** *R. Kirubakaran,* **[1994] Supp. 1 SCC 155;** *Burn Standard Co. Ltd.* **v.** *Dinabandhu Majumdar,* **[1995] 4 SCC 172 and** *Union of India* **v.** *C. Ramaswamy,* **[1997] 4 SCC 647, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6142 of 2000.

From the Judgment and Order dated 22.2.99 of the Calcutta High Court in A.P.O.T. No. 587 of 1996.

Anip Sachthey and Ms. Sandhya Rajpal for the Appellant.

A B. Kanta Rao and Sudha Gupta for the Respondent.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

B We have heard learned counsel for the parties.

M/s. Bharat Coking Coal Ltd., which is a Govt. Company and a subsidiary of Coal India Ltd., was the employer of the respondent - Shri Shib Kumar Dushad (hereinafter referred to as 'the respondent'). The company through its General Manager, Chanch Victoria Area, Post Barakar, District Burdwan, C West Bengal has filed the present appeal. The controversy raised in the case centres round the date of birth of the respondent.

The respondent was initially employed in Chirkunda Coal Company which was under private ownership. At the time of entry into service, the year of birth of the said respondent was entered in Form-'B' register maintained D under the Mines Act, 1952 as 1932. On coming into force of the Coal Mines Nationalisation Act, 1973, the ownership of the coal mines in which the respondent was employed, vested absolutely in the Central Govt. and thereafter it was transferred to the appellant, free from all encumbrances. The service of the respondent was taken over and the service records including the Form- E 'B' register relating to the respondent were handed over by the erstwhile management to the appellant. As the year of birth of the respondent was entered in the Form-'B' register as 1932, he was to superannuate in 1992. The said entry of the date of birth was carried over to the Form-'B' register maintained by the appellant.

F In 1973 the respondent acquired certificates of Gas Testing and Mining Sirdarship having come out successfully in the examinations conducted by the Director General of Mines Safety. On the basis of the particulars submitted by the said respondent, 9.2.1946 was mentioned as his date of birth in the certificate. In 1987-88 when the appellant was in the process of preparing G records of the employees whose services had been taken over under the Coal Mines Nationalisation Act, the respondent, relying on the aforementioned certificates claimed his date of birth to be 9.2.1946. In view of the apparent discrepancy in the date of birth of the respondent entered in the Form-'B' register maintained under the Mines Act and the date mentioned in the Gas Testing and Mining Sirdarship certificates , the appellant as per the terms of H the settlement arrived at between the management and the union representing

workmen of the company, requested its Medical Board to determine the correct age of the respondent and asked the said respondent to appear before the Medical Board. The Medical Board, on examining the respondent, determined his age to be 52 years as on 13.10.1988. On the basis of the report of the Medical Board the date of birth of the respondent was taken as 13.10.1936 and the date of his superannuation as 13.10.1996.

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After about three years the respondent filed the writ petition bearing No.3537 of 1991 before the Calcutta High Court seeking *inter alia* a direction to the appellant to enter his date of birth as 9.2.1946. He placed reliance on the certificates of Mining Sirdarship and Overmanship granted by the Director General of Mines Safety. The learned Single Judge of the High Court disposed of the writ petition by the order dated 20.1.1994 directing the appellant to consider the representation of the respondent for correction of his date of birth. On 14th March, 1994 the respondent made an application for correction of his date of birth as 9.2.1946. Considering the said application of the respondent, the appellant, by the order dated 21/25.5.1994, communicated its decision that there was no ground to re-open the question of the date of birth.

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The respondent filed another writ petition, Civil Writ Petition No. 2717 of 1994 before the Calcutta High Court seeking a writ/order for cancellation and withdrawal of the order dated 21/25.5.1994 and to direct correction of his date of birth as 9.2.1946. He also prayed for injuncting the appellant company retiring him with effect from 1.7.1996 and to allow him to work till 9.2.2006.

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The appellant in its counter affidavit contended, *inter alia*, that as per the Implementation Instruction No. 76 issued by the J.B.C.C.I. the decision of the Board is binding and final in the matter and further contended that the claim of the respondent (writ petitioner therein) that his date of birth is 9.2.1946 cannot be accepted for the reason that, according to that date, his age would have been about 14 years when he entered service in 1960 which is against the minimum age, 18 years, prescribed for employment, under the Mines Act, 1952.

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The learned single Judge allowed the writ petition and directed the appellant to correct the date of birth of the respondent as 9.2.1946 and ordered that he was to superannuate from service in the year 2006 holding, *inter alia*, that the genuineness of the certificates in which the date of birth of the respondent was entered as 9.2.1946 could not be questioned. The appellant filed an appeal assailing the judgment of the single Judge. The

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A Division Bench of the High Court modified the judgment of the single Judge to the effect that the respondent is to superannuate in the year 2004 instead of 2006. The reason as stated in the judgment of the Division Bench is as follows:

> "It is ordered that the order made by the Trial Court and dated the
> B twenty fifth day of September, one thousand nine hundred and ninety six be and the same is hereby modified to the extent that since the petitioner joined in the year 1960, he was at that time only 14 (fourteen) years of age and the statutory age limit being 16 (sixteen) years and he should not be allowed to continue up to Two thousand six but he
> C should continue up to Two thousand four and it shall be treated as if he has joined at the age of 16 (sixteen) years. And it is further ordered that in all other respects the order made by the trial court shall remain operative."

The said judgment is under challenge in this appeal.

D The learned counsel for the appellant contended that the dispute raised by the respondent having been determined by the Company following the procedure laid down in the service regulations and his date of superannuation having been calculated on the basis of the report of the medical board, the High Court erred in interfering with the order passed by the employer.

E The learned counsel for the respondent on the other hand contended that the judgment of the single Judge does not suffer from any illegality inasmuch as he based his decision on the Gas Testing and Mining Sirdarship Certificate which was issued in favour of the employee under the provisions of the Mines Act. It was his further contention that the Division Bench
F should not have modified the judgment of the single Judge. He also contended that the respondent has filed a cross objection challenging the modification made by the Division Bench of the judgment of the single Judge which, in the submission of the learned counsel, should be allowed by this Court.

The first question that arises for consideration in the case is whether
G the High Court, in the facts and circumstances of the case, was right in interfering with the date of birth recorded in the service records maintained by the employer, in the proceeding under Article 226 of the Constitution?

From the facts of the case discussed in the foregoing paragraphs the position that emerges is that the respondent was an employee of a private
H colliery (Chirkunda Coal Company) before being absorbed in the service of

the appellant on nationalisation of the colliery under the Nationalisation Act. It was specifically asserted by the appellant that the service records received from the previous employer showed '1932' as the year of birth of the respondent. Our attention has not been drawn to any pleading in which the respondent denied aforementioned assertion nor is any contemporaneous material placed before us to show that the factual position was otherwise. After about 20 years of service under the former employer and under the appellant company, the respondent raised the claim that his date of birth was 9.2.1946 and not 1932. The appellant, following the procedure for determination of the date of birth/age of an employee in such a case, referred the matter to the Medical Board and instructed the respondent to appear before the Board. The Medical Board after examining the respondent determined his age as 52 years in 1988. Accepting the report of the Medical Board, the appellant held the year of birth of the respondent as 1936. Thus the respondent was given the benefit of superannuation in 1996 instead of 1992. Being dissatisfied with the decision of the appellant the respondent carried the matter to the High Court in the writ petition. At the first instance, the High Court disposed of the case with a direction to the appellant to consider the representation which the respondent would make. The representation was considered by the authority concerned and was rejected. The respondent again approached the High Court by filing another writ petition reiterating his claim that his year of birth is 1946 and not 1936 which was dealt with in the manner noted earlier.

Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

In the present case the core question is whether the two certificates subsequently obtained by the respondent on 9.6.1973 and on 3.11.1983 should be accepted and the date of the birth entered therein should be taken as conclusive. This question is essentially one of fact. Determination of the question requires detailed enquiry into relevant factual matters. Without

A intending to be exhaustive it can be said that some of the relevant aspects to be considered in such a matter is whether the certificates have been issued by an authority competent to issue the same under any statute or statutory rules; whether the authority issuing the certificate is required under the statute or rules to inquire into the question of date of birth of the person before issuing the certificate and on such inquiry the authority has found the B date of birth to be as entered in the certificate or the entry has been made merely on the disclosure made by the holder of the certificate. In the former case some sanctity may be attached to the entry regarding date of birth in the certificate though it is not conclusive, in the latter case the entry having been based on a declaration/disclosure made by the holder of the certificate C himself without any enquiry on the part of the authority concerned is of little avail when a dispute regarding the date of birth arises for determination. It is relevant to note here that one of the objections raised on behalf of the appellant against the certificates in question is that the certificates were not issued by the Manager of the colliery who was the competent authority in the matter. If the respondent was basing his case on these documents then D it was incumbent upon him to place evidence on record materials from which a conclusion can be reasonably drawn that the date of birth as entered in the certificate is the correct one. Similar is the position regarding the document purportedly issued by the Head Master of Adarsh Madhya Vidyalaya in which the respondent is alleged to have studied. This document is stated to E be a School Leaving Certificate in which 1946 is entered as the year of birth of the respondent. There is no material on record to show that when this document was issued to the respondent; he had produced a copy of the same when he entered service in the private colliery (Chirkunda Coal Company) in support of his age and if so why was the document not sent with the service records when the service of the respondent was taken over by the appellant. F These are some of the questions consideration of which will depend on the evidence, either oral or documentary to be placed by the parties. The High Court in writ jurisdiction is not the appropriate forum for undertaking such enquiry into disputed questions of fact. At this stage it is relevant to state that if the respondent's date of birth is taken to be 9.2.1946 then he would G have been 14 years of age when he joined service in 1960. No material is available on record that the industrial undertaking in which the respondent joined service was legally permitted to employ a minor. Indeed this fact has been taken note of by the Division Bench of the High Court in its judgment and on that basis the Division Bench modified the judgment of the learned single Judge and held that the respondent's date of birth should be so H determined as to fit it with the position that the respondent was 16 years of

age at the time of joining service. Unfortunately, the judgment of the Division Bench does not discuss any material on the basis of which the court took such a view. Where from the court got 16 years as the minimum prescribed age for joining service is not indicated in the judgment. A

The date of birth of an employee is not only important for employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration, should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been lead to believe will be his due on the retirement of the senior. B C D E F

At this stage we may take note of certain instructions which were issued by the appellant laying down the procedure for determination/ modification of date of birth of employee. The document is styled as:

"*Implementation Instruction No. 76*"

"Procedure for Determination"

"Verification of Age of Employees". G

Its authenticity is not disputed by the parties. Indeed the respondent employee has filed this document as Annexure R-7 to the counter affidavit filed in this court. Under paragraph 'A' the manner of determination of age H

A *at the time of appointment* is laid down. Under paragraph 'B' are laid down the procedures to be followed in cases of determination of date of birth in respect of existing employees. Under sub-paragraph (i) of Paragraph 'B' the case of the existing employee having a Matriculation Certificate or Higher Secondary Certificate issued by the recognised University or Board or Middle Form Certificate issued by the Board of Education and/or Department of B Public Instruction should be treated as the correct date of birth provided the documents are issued by the University/Board prior to the date of the employment. Under sub-paragraph (i)(b) of paragraph B it is provided that mining sirdarship, wind up engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic.

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Provided that where both the documents mentioned in (i)(a) and (i)(b) above are available the date of birth in (i)(a) will be treated as authentic. In clause (ii) of para B it is specifically stated that where ever there is no variation in records such cases will not be re-opened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. D The Management, after being satisfied on the merit of the case will take appropriate steps for corrections through the *Age Determination Committee/ Medical Board.* In 'C', 'D' and 'E' the procedures to be followed by the Age Determination Committee/Medical Board for determination of age of an employee are laid down. The provisions read as follows:

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> "(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 Record F and Identify Cards (untempered) will be treated as final, provided that where there is a nomination 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.
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> G (D) Age determination of the age, Committee/Medical Board referred to above may consider their evidence available with the colliery management and/or
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> (E) Medical Board constituted for determination of Age will be required to manage the age in accordance with the requirement of Medical H Jurisprudence and the Medical Board will as far as possible indicate

the accurate age assessed and not approximately." A

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. B Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to Medical Board. The Medical Board as laid down in the Instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board C determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of Mandamus that the date as claimed by the employee (the respondent herein) should be accepted.

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In the case of *Secretary and Commissioner, Home Department & Ors.* v. *R. Kirubakaran,* [1994] Supp. 1 SCC 155, this Court indicated the approach to be made by the Tribunal or the High Court in a dispute regarding correction of age/date of birth, made the following observations:

> "An application for correction of the date of birth should not be dealt E 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 F 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. G 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 H

A 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 B 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 C 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 D 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 E compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior." [para 7]

In the case of *Burn Standard Co. Ltd. & Ors.* v. *Dinabandhu Majumdar & Anr.*, [1995] 4 SCC 172, this Court sounded a caution regarding entertaining F writ petitions by High Courts for correction of date of births. This Court observed:

"Entertaining by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their G services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement H to the other employees to make similar applications at the fag end of

their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so- called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement. [para 10]

Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well-settled legal position governing such correction of date of birth, which precisely stated, is the following: [para 11]

When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is

the minimum age of entry prescribed depending on the functional requirements of the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such a sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he

continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief." [para 12] A

In the case of *Union of India* v. *C. Ramaswamy & Ors.*, [1997] 4 SCC 647, interpreting Rule 16-A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, this Court held that the date of birth as recorded in the service book and the date as declared by an officer in the application for recruitment has to be accepted as correct by the Central Govt. and this can be altered only if under sub-rule (4) it is established that a *bona fide* clerical mistake had been committed in accepting the date of birth (See para 12). B

On the analysis and the discussions in the foregoing paragraphs, we have no hesitation to hold that the High Court erred in interfering with the date of birth/age of the respondent as determined by the appellant. Accordingly, the appeal is allowed. The judgment of the single Judge in writ petition No.2717 of 1994 and the judgment of the Division Bench, confirming the judgment of the single Judge with a modification, are set aside. Writ petition stands dismissed. Consequentially the respondent shall not be entitled to any service benefit on the basis of the service beyond the date/year of superannuation as determined by the appellant, except the salary/wage already received by him. No costs. C D

V.S.S. Appeal allowed.