

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 22 OF 2013

PARTIES: Kudus Mia
Vs.
Management of Ghusick Unit of Kalipahari (R) Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 23.12.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/137/2013-IR(CM-II)** dated 04.10.2013 has been pleased to refer the following dispute between the employer, that is the Management of Ghusick Unit of Kalipahari (R) Colliery under Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management to retire Kudus Mia premature, taking his date of birth as 07.02.1951 is fair, proper and justified, while his date of birth in Identity Card, Service Excerpt and School Certificate is 02.01.1956 and he should be retired on January, 2016. If not, so what relief management can provide to him? ”

1. On receiving Order **No. L-22012/137/2013-IR(CM-II)** dated 04.10.2013 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 22 of 2013** was registered on 14.02.2014 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. After registration of the case the President, Koyala Mazdoor Congress filed written statement on 10.06.2015. The management of ECL filed their written statement on 05.07.2016. The fact of the case disclosed in the written statement

of the union is that, Kudus Mia was posted as Boiler Fireman at Ghusick Unit of Kalipahari (R) Colliery under Sripur Area of Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 281649. As per Service Excerpt provided to Kudus Mia in the year 1987 his date of birth was recorded as 02.01.1956. Accordingly, the workman was to superannuate from his service on 31.01.2016. The management of Ghusick Colliery illegally issued a Notice of Superannuation w.e.f. 01.03.2011. It is a case of the union that the date of birth of Kudus Mia was correctly recorded in his Service Record which was communicated to him by supply of Service Record Excerpt. On the basis of Form 'B' Register of the company, the management of Ghusick Unit of Kalipahari (R) Colliery issued Identity Card to the workman where his date of appointment is recorded as 17.03.1981 and his date of birth is recorded as 02.01.1956. The workman is absolutely in dark as to how the management treated his date of birth as 07.02.1951 for the purpose of superannuating him. In the written statement the union prayed that Kudus Mia should be reinstated in his employment by accepting his date of birth as 02.01.1956 and management should be directed to pay back the wages for his forced superannuation, rendering him idle w.e.f. 01.03.2011 till the date of joining.

3. Management contested the case by filing written statement, contending inter-alia that the Industrial Dispute raised by the union is not maintainable and the claim of the applicant is not tenable under the law. It is the case of the management that the applicant is not entitled to get any relief. Furthermore, the Labour Court has no jurisdiction to grant any relief to the petitioner and the Industrial Dispute is liable to be rejected.

4. In order to substantiate their case, the union has examined Kudus Mia as Workman Witness – 1 and filed his affidavit-in-chief. On behalf of the workman following documents have been filed :

- (i) Copy of the Service Record Excerpt of Kudus Mia along with particulars of family in Form PS-3 are collectively marked as Exhibit W-1.
- (ii) Copy of the Identity Card of Kudus Mia, as Exhibit W-2.
- (iii) Copy of the Form PS- 4, as Exhibit W-3.
- (iv) Copy of the Transfer Certificate issued by the Head Master of Primary School, Buddhudih, as Exhibit W-4.

The workman stated that his actual date of birth is 02.01.1956 but he has been prematurely superannuated from service in March, 2011 and he raised this Industrial Dispute in the year 2012.

5. Management examined Mr. Apurba Biswas, Manager (Personnel), Kalipahari Colliery as Management Witness – 1. Affidavit-in-chief has been filed wherein it is stated that the date of birth of Kudus Mia was recorded in the Statutory Form 'B' Register as 07.02.1951 and the workman has been superannuated on 07.02.2011 on his attaining sixty years of age. The witness has relied upon the following documents :

- (i) Copy of the Form 'B' Register of Kudus Mia has been produced as Exhibit M-1.
- (ii) Copy of the Service Record Excerpt of Kudus Mia, as Exhibit M-2.
- (iii) Copy of the Form PS-4, as Exhibit M-3.
- (iv) Copy of the Form PS-3, as Exhibit M-4.
- (v) Copy of the Notice of superannuation of Kudus Mia dated 10/16.12.2010, as Exhibit M-5.

6. The point for consideration before this Tribunal is whether the management of Ghusick Unit of Kalipahari (R) Colliery under Sripur Area of ECL superannuated Kudus Mia in premature manner by treating his date of birth as 07.02.1951 and whether the date of birth of Kudus Mia as per his Identity Card,

Service Record and School Certificate is 02.01.1956 and what relief the workman is entitled to, if any.

7. The bone of contention in the case is the disputed date of birth, on the basis of which Kudus Mia has been superannuated from his service. Advancing his argument on behalf of the workman Mr. Rakesh Kumar, Union representative submitted that Kudus Mia was appointed as a loader on 17.03.1981 and at the time of his appointment his date of birth was recorded as 02.01.1956. The said date of birth is mentioned in his original Form 'B' Register and thereafter it was also reflected in the Service Record Excerpt, which was supplied to the workman in the year 1987 and has been produced as Exhibit W-1. It is argued that the important excerpt from Service Record bears the signature of management representative as well as Kudus Mia and no objection was raised by the employee in respect of the entries made therein. Referring to Form PS-3, which is also marked as Exhibit W-1 collectively, Mr. Rakesh Kumar argued that in Column No. (6) date of birth was initially recorded as 02.01.1956 and the form bears the signature of Kudus Mia as well as the Regional Commissioner, CMPF Region – III, Asansol. Subsequently, the entry against Column No. 6 has been cancelled and the date of birth has been recorded as 07.02.1951 without any communication or consent of the workman. It is submitted that Form PS-3 bears the signature of Personnel Manager, Kalipahari (R) Colliery, ECL dated 29.05.1998. Referring to Form PS-4 which is a nomination form for Coal Mines Provident Fund, marked as Exhibit W-3, the date of birth was also recorded as 02.01.1956 which was subsequently cancelled and changed to 07.02.1951 without any information or Notice to the workman. Reliance has also been placed on a copy of Identity Card of the workman which was issued on 17.03.1981, bearing the date of birth of Kudus Mia as 02.01.1956 (Exhibit W-2) and a Transfer Certificate, issued by the Head Master of Primary School, Buddhudih under District Council, Santhal Pargana, Dumka dated 31.12.1962. In the Certificate his date of birth has been

recorded in Hindi as 02.01.1956. The union representative vehemently argued that the workman has been illegally superannuated from his service in a premature manner. Relying upon the provision of Annexure-I of Implementation Instruction No. 76, which is applicable to the workman, it is argued that at the time of appointment of an employee who has passed Matriculation or equivalent examination, the date of birth recorded in the certificate is treated as correct date of birth and the same was not to be altered under any circumstances. In case of non-matriculate but educated person who has pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances. It is submitted that in respect of illiterate candidates when appointees are not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer, keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances. Mr. Rakesh Kumar submitted that the date of birth of Kudus Mia is consistently recorded as 02.01.1956 and the same is also mentioned in his School Transfer Certificate and Service Record but the management acted in arbitrary manner and in violation of natural justice has superannuated Kudus Mia, five years prior to the term of his service, in an unlawful manner. It is submitted that though the Industrial Dispute is raised in the year 2012 the procedure could not be completed prior to his actual date of superannuation in the year 2016. The workman therefore should be granted his back wages for the period during which he was rendered idle by issuance of a wrong order by the management.

8. Mr. P. K. Das, learned advocate for the management of ECL refuted the claim of the union and submitted that after issuance of the Notice of superannuation to the workman on 10/16.12.2010 (Exhibit M-5), disclosing his

date of superannuation as 01.03.2011, the workman raised no objection. It is argued that the date of birth of the workman, recorded in the Service Book, maintained by the company's System Department (Exhibit M-2) appears as 07.02.1951 but the workman did not raise any objection against such entry. Learned advocate drew my attention to the Form PS-3 (Exhibit M-4) and Form PS-4 (Exhibit M-3), where the date of birth of the workman has been recorded as 07.02.1951 and submitted that the forms bear the signature of the workman as well as the Personnel Manager, Kalipahari (R) Colliery, ECL and attested by the Regional Commissioner, CMPF Region – III, Asansol. It is argued that the workman is not entitled to any relief and his superannuation form service is based upon the entries made in the Service Record. Learned advocate urged that the Industrial Dispute is liable to be dismissed.

9. I have considered the facts and circumstances of the case, pleadings of parties, evidence adduced by the union as well as management and arguments advanced in support of their respective cases. Instant case is essentially based upon materials on record. Important Service Record Excerpt was issued to the workman and the same bears the seal and signature of management authority as well as the workman. The date of birth of Kudus Mia appearing in Column No. (6) of Service Record Excerpt is 02.01.1956 and his date of appointment is 17.03.1981. The date of birth of the employee was also recorded as 02.01.1956 in the Form PS-3 (Exhibit W-1 collectively). The same was subsequently cancelled and noted as 07.02.1951. The change incorporated in Form PS-3 does not bear initial or signature of the concerned person. Therefore, the subsequent change in the date of birth does not appear to be reliable. The same is the fate with Form PS-4 where the date of birth was initially recorded as 02.01.1956 and subsequently cancelled and changed as 07.02.1951 (Exhibit W-3). In the School Transfer Certificate, the date of birth of Kudus Mia was recorded as 02.01.1956 and at the time of issuance of the Transfer Certificate by the concerned School

(Exhibit W-4) he was studying in Class-IV. No objection was raised against the certificate. I find that the date of birth recorded in the School Transfer Certificate is supporting with the date of birth recorded in the Service Record Excerpt of the workman. The management has produced a copy of Form 'B' Register which has been marked as Exhibit M-1 where the date of birth of the workman was recorded as 07.02.1951. the document does not bear any signature of the workman therefore, it can safely be presumed that such recording has been made by the management without any knowledge to the workman. A copy of Service Book of Kudus Mia has been produced as Exhibit M-2 (in two pages) where his date of birth is recorded as 07.02.1951 in Column No. 11. The document does not bear the signature of the employee and date therefore, the same does not have any binding effect upon the concerned employee.

10. In my foregoing discussion, I have already considered the copies of Form PS-3 and PS-4, where the date of birth of the workman has been subsequently changed. Though the said forms bear the signature of Kudus Mia and other management representative the disputed date of birth cannot be accepted as there is no evidence that the signature of Kudus Mia was obtained after such changes were made. It can be presumed that the changes had been made after signatures were obtained on the documents where date of birth was initially recorded as 02.01.1956. If the changes were necessary after signature were obtained, in such case a fresh form could have been issued for the purpose of recording correct date of birth or the change should have been countersigned and no controversy would have arisen in such case. Learned advocate for the management, in course of his argument admitted that the management did not issue any Notice to Kudus Mia, disputing his date of birth at any point of time after it was recorded as 02.01.1956 nor did Kudus Mia raise any objection against the entries made in the Service Record Excerpt in the year 1987. Under such circumstance there was no occasion for the management of ECL to hold any

assessment of age of the workman for the purpose of changing / recording his date of birth to 07.02.1951. The employer company has not been able to produce any document on the basis of which it arrived at the conclusion that the date of birth of the workman is 07.02.1951. In my considered view the correct date of birth is 02.01.1956, which was initially recorded in the Service Record of Kudus Mia and he attained the age of sixty on 02.01.2016. The Notice of superannuation issued to the workman was contrary to the provisions laid down in Annexure – I of Implementation Instruction No. 76 dated 25.04.1988, relating to determination of age at the time of appointment of the workman. The management of Ghusick Unit of Kalipahari (R) Colliery under Sripur Area of ECL therefore has acted in an arbitrary and illegal manner by issuing Notice of superannuation to the workman, prematurely five years earlier to his actual date of superannuation. From the copy of Notice of superannuation (Exhibit M-5) it appears that the management decided to terminate the service of Kudus Mia on superannuation w.e.f. 01.03.2011. If the management considered his date of birth as 07.02.1951, in such case his date of superannuation would have been 28.02.2011. Therefore, even by conjecture the Notice of Superannuation is not legally tenable. Since, the workman has already attained the age of superannuation in January, 2016 there is no scope for his reinstatement in service. However, the workman is entitled to compensation for the loss suffered by him due to his idleness, on his premature superannuation from service w.e.f. 01.03.2011 (Exhibit M-5). In my considered view it is just and appropriate to grant monetary compensation to the workman, equivalent to his pay for the period from 01.03.2011 to 31.01.2016. The management of ECL shall pay the compensation amount to Kudus Mia within three (3) months from the date of communication of this Award.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest against the management of Ghusick Unit of Kalipahari (R) Colliery under Sripur Area of Eastern Coalfields Limited. The Notice of superannuation issued to Kudus Mia dated 10/16.12.2010 is not found legally tenable and the same is set aside. The management of ECL is directed to compensate Kudus Mia for his premature superannuation, contrary to the date of birth mentioned in his initial Service Record. The management shall pay a compensation equivalent to his monthly salary from 01.03.2011 till the actual date of superannuation i.e., 31.01.2016 within three (3) months from the date of communication of the Award. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.