SEEMA GHOSH

v.

TATA IRON AND STEEL COMPANY

AUGUST 28, 2006

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Labour Laws—Superannuation—Dispute regarding determination of date of birth of workman—At the time of employment age of workman determined by Medical Officer of the Management—The date of birth accepted by workman—The same was questioned by him after about 25 years by producing a school leaving certificate—The certificate was reported by District Education Officer as not genuine—Constitution of special Medical Board to rectify the age of workman—Age determined by the Board was accepted by workman—After superannuation on the determined date of birth, extension of one year availed by the workman—Industrial dispute raised by workman thereafter—Award by Labour Court in his favour—Writ Petition—Decided in favour of management—Letters Patent appeal dismissed—On appeal, held, Award passed by the Labour Court was perverse and illegal—Workman is estopped from challenging the correctness of the opinion of the Medical Board after his retirement—Evidence—Estoppel.

Constitution of India, 1950—Article 226—Writ Jurisdiction—Scope of—Re-assessment and re-valuation of the weight of evidence recorded by Labour Court—Permissibility—Held: When the judgment of Labour Court is perverse and against the facts and records, High Court is entitled to exercise its jurisdiction under Article 226 to interfere with such finding.

Apellant's husband (the workman) joined the services of the respondent-company in November, 1947. As no documentary evidence in support of his date of birth was produced by the workman, it was recorded as 1.11.1923 based on assssment of his age by the Company's Medical Officer. The said date of birth was entered into Service Card prepared in June 1960, which was accepted by the workman putting his signature thereon. The workman, for the first time in 1972 disputed his age by producing a school leaving certificate purported to have been isssued by the Headmaster of a School. The said certificate was referred to District Education Officer, who informed that the entries in the certificate were not genuine. Workman again produced another

A certificate mentioning his date of birth as 11.8.1929. Enquiry regarding genuineness of the same was made, but no reply was received. The company, referred the matter to its Age Rectification Committee. The Committee referred the matter to Special Medical Board for assessment of his age as a special case. The Medical Board assessed his age and determined the date of B birth as 13.9.1926. The Workman accepted the said rectification and raised no objection thereto. After his superannuation he was also given extension of one year which was accepted by him. He had also signed a declaration on his Personal-cum-Family Verification and Service Card in 1987 accepting his date of birth as 13.9.1926. After his superannuation and after availing extension of one year, the workman raised an industrial dispute, wherein award C was passed by the labour court in his favour, holding that the management was not able to support its case by evidence and discarding the opinion and finding of Medical Board on the ground that the medical officer was not examined. Respondent-management's Writ Petition was allowed by High Court. After death of the workman, his wife preferred a Letters Patent Appeal, which was dismissed by Division Bench of High Court. Hence the present D appeal.

Dismissing the appeal, the Court

HELD: 1.1. The High Court was fully justified in setting aside the Award of the Labour Court as the said Award was perverse and illegal inasmuch as E the judgment of this Court in *Bharat Coking Coal Ltd.* was ignored by the Labour Court. The workman did not challenge the opinion of the Medical Board constituted by the Management for determining his age. Therefore, the workman in the present case is estopped from challenging the correctness of the opinion of the Medical Board after his retirement. This apart, the school F leaving certificate which was produced by the workman was forwarded to the DEO, for verification who informed the Management that the certificate is not genuine. The workman was to superannuate in the year 1986 but on the basis of the assessment of age made by the Apex Medical Board, he was allowed to continue till 13.09.1987. At that stage, the workman did not challenge the decision of the Medical Board. It is only after enjoying the benefits of G extension given to the workman after his retirement, he raised a dispute.

[434-G-H; 435-F-H; 436-A]

Bharat Coking Coal Ltd. v. *Presiding Officer and Anr.*, [1995] Supp 2 SCC 598, relied on.

H *Jiwan Kishore* v. *Delhi Transport Corporation and Anr.*, [1980] Supp.

SCC 678, distinguished. A

1.2. The Labour Court ignoring all the vital facts decided the issue on conjectures and surmises and erroneously determined the age of the workman. The Labour Court fell in grave error in discarding the opinion and findings of the Medical Board merely on the ground that no medical officer of the Company who assessed the age of workman was examined nor any report of B the Medical Board had been filed. Once the workman himself has accepted the opinion in the finding of the Medical Board and continued to work till 13.09.1986 and one year of extension thereafter, there was no necessity for the Company to examine the Medical officer and/or to produce the report of the Medical Board. Moreover, the Medical Board examined the workman in C 1984 and the Medical Officer who examined the workman may or may not have been in the service of the company. [432-A-B; 434-D-F]

1.3. The Company has not relied upon the report of the District Education Officer, wherein it was written that the entry is in the transfer certificate submitted by the petitioner are not at all genuine. It is only because D of the uncertainty about the date of birth of the workman, the Company constituted a special Medical Board in 1984 to determine the age and hence the date of birth of the workman. [434-H; 435-A-B]

2. Both the Single Judge and the Division Bench are right and within their jurisdiction in re-assessing and re-valuing the weight of the evidence E in the case recorded by the Labour Court by which the High Court came to the conclusion that the workman was not entitled to any relief. When the judgment of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same. [436-B-C] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3725 of 2006.

From the Judgment and Order dated 4.1.2005 of the High Court of Jharkhand at Ranchi in L.P.A. No. 380/2003.

Nandini Sen and Deba Prasad Mukherjee for the Appellant. G

Raju Ramachandran and M.K. Dua for the Respondent.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. H

A The appellant - Seema Ghosh is the wife of late Nani Gopal Ghosh who joined the services of M/s Tata Iron & Steel Company Limited, Jamshedpur. According to the appellant, the workman was born on 11.08.1929 which was duly recorded in the Admission Register of Naba Kumar High English School, Dacca, where he was a student from 23.01.1935 to 19.06.1942.

B At the time of joining in the service, the workman informed the concerned department of the Management that his date of birth as 11.8.1929, but inadvertently the same was recorded as 01.11.1923 which he came to know long after. Subsequently and long after the workman joined the service, the concerned department of the Management obtained the signature of the C workman on a printed proforma of service card. But in the said proforma, no particulars or date of birth was mentioned. This was on 14.04.1960. The workman could know of such error of record in the service record only when a new gate pass was issued to workman in the year 1972, for ingress and egress to and from the work place which for the first time had the date of birth of the workman concerned which, according to the appellant, was purportedly D made on the basis of some erroneous entry made by some assistant/clerk of the Management earlier.

On 25.08.1972, the workman requested the concerned department of the respondent to correct the record and to thereby enter his actual date of birth as 11.08.1929 in place of 01.11.1923. The said workman was thereafter asked E by Chief Personnel Manager of the Management to produce his School Leaving Certificate vide its letter bearing No. DPR/9801/72 by the pen of Chief Personnel Manager of the Management dated 30.10.1972. The workman in compliance of such request submitted the required certificate on 25.11.1972. After a long interval of 8 years of such submission of the School Leaving F Certificate, the Director of Personnel & Industrial Relation of the Management, by his letter dated 20.11.1980 informed the workman that the School Leaving Certificate submitted by him was referred to the District Education Officer, Dacca for verification, who informed the Management that the certificate was not genuine and accordingly, the Management expressed inability to consider the request of the workman for age rectification. Upon fresh request made by G the workman, the Headmaster of the very same school had issued certificate of the even date confirming that the workman - Nani Gopal Ghosh was a student of the Naba Kumar High English School, Dacca from 1935-1942 and that his date of birth as recorded in the School Admission Register was 11.08.1929.

H

The workman thereafter submitted a fresh certificate on 25.06.1984 issued by the Headmaster of Naba Kumar High English School, Dacca confirming the date of birth of workman as recorded in the admission register of the school as 11.08.1929. The said certificate was duly attested and endorsed by the then Ministry of Education and Ministry of Foreign Affairs of the Government of Bangladesh and also the High Commissioner of India posted in Bangladesh at relevant time.

In view of the above circumstances, the workman once again requested the Management to rectify the error in the entry with regard to his service record regarding the date of birth and accordingly requested the Management to enter the correct date of birth of the workman as 11.08.1929. The Management did not respond to the said request of the workman and did not consider the effect of the fresh certificate dated 19.02.1984 and September, 1984. It is the case of the appellant that the entire procedure followed by the Management was clearly in violation of the norms/stipulations in the works standing orders of the Management prepared and approved according to relevant legislation involved, which showed that the Management evidently acted according to its whims and fancies with no relevance to the industrial law.

The workman superannuated on 13.09.1987 on the even date long before the actual date of superannuation. The workman raised an industrial dispute on this issue before the Government of Bihar which, in turn, made the reference to the Labour Court, Jamshedpur with the following terms of reference

> "Whether to retire Shri N.G. Ghosh, T.No. 71937 workman of M/s Tata Iron & Steel Company, Ltd. Jamshedpur from 13.09.1987 is justified. If not, what relief he is entitled?"

The Presiding Officer, Labour Court upon appearance of the parties and after recording the respective statement of the oral evidence etc. considered the submissions and arguments of the workman and of the Management passed an award on 13.03.1995 in favour of the workman. The Labour Court observed in the award that the contentions of the Management were not supported by evidence and no evidence was adduced by the Management which could legitimately substantiate their case.

The Labour Court passed the Award holding that the workman is entitled to full back wages including admissible allowances and other benefits for the period from 13.09.1987 his date of illegal superannuation to 11.08.1990 the actual date of retirement. The payment was directed to be paid within 2

A months failing which the amount could be realized with interest @ 12%.

The respondent Management being aggrieved challenged the Award passed by the Labour Court by moving a writ petition under Articles 226 and 227 of the Constitution of India before the Ranchi Bench of the Patna High Court. After reorganization of the State of Bihar, the Chhotanagpur Division
B of the then State of Bihar became a new State by the name Jharkhand and accordingly Jharkhand High Court was constituted and established at Ranchi. Eventually all matters pending before the earlier Ranchi Bench of Patna High Court automatically stood transferred to Jharkhand High Court.

C The learned Single Judge of the High Court has been pleased to allow the writ petition of the respondent and set aside the Award passed by the Labour Court vide his judgment dated 31.10.2002.

The workman concerned expired after protracted illness on 28.04.2003. On 04.01.2005, Seema Ghosh, the widow of the said workman - Nani Gopal
D Ghosh preferred a Letters Patent Appeal before the Division Bench of the High Court which was dismissed vide judgment and order dated 04.01.2005. Hence, the above civil appeal.

We heard Mr. Deba Prasad Mukherjee ably assisted by Mrs. Nandini Sen, learned counsel for the appellant and Mr. Raju Ramachandran, learned
E senior counsel ably assisted by Mr. M.K. Dua, learned counsel for the respondent.

We had been taken through the pleadings, order passed by the Labour Court and of the Single Judge and the Division Bench and the documents and annexures filed along with the proceedings.

F

Mr. Mukherjee made elaborate submissions and also took us through the Award passed by the Labour Court and of the judgments of the High Court and other documents and certificates produced by him for the appellant. According to him, it was the case of the Management before the learned Court that the age of the workman concerned at the time of joining the
G employment was recorded as 24 years which was allegedly recorded as per assessment of the Medical Officer of the Management. Thereafter, the Management, in 1970, issued an identity card and gate pass was prepared showing the said date of birth of the workman accordingly. The workman disputed such recording of age and such gate pass, only in 1972. He proceeded
H further to submit that a Medical Board was constituted to assess the age of

the workman concerned and thus his age was assessed as 58 years on 13.09.1984 and that such recommendation of the Age Rectification Committee was informed to the workman vide letter dated 28.09.1984 and that according to the Management, the workman accepted his age as 60 years on 13.09.1986 and enjoyed extension of a year upto 13.09.1987. The workman, however, contended that he never accepted the erroneous recording of date of birth but had been contesting the same ever since 1972 when the error was brought to his notice for the first time by the Management as aforesaid.

He would further submit that the Labour Court passed the Award in favour of the workman upon consideration of all the facts, circumstances and the evidences - oral and documentary adduced by both parties to the case and that the Labour Court categorically observed in the Award that the contentions of the Management were not supported by evidence. There was no evidence adduced by the Management which could legitimately substantiate their case. Ultimately, there were categorical findings regarding the following facts:

1. "But Service Card shows that entry of the age in the service Card was not attested by the workman at the time of employment. It goes to show that before 14.04.1960 Service Card was not shown to the workman and entry was not attested by him which is against the provision of the works standing order. The workman has stated that when his signature was obtained in the Service Card on 14.04.1960 entry of his age was not mentioned in the Service Card."

2. "The perusal of the documents adducted by management, particularly Ext. M (Service record) Ext. W (Medical Card of workman) maintained by Labour Bureau of the Management Company reflects recording of two distinct dates of birth viz. 18.08.1924 and 12.04.1923 in the Medical Card itself and as per the service record produced in court, strangely reflected his age as 24 years as on 1.11.1947 whereas quite incredibly 58 years as on 13.09.1984."

The Labour Court also gave observation and finding regarding the management; such as; examination of the workman with regard to his date of birth has been produced. In absence of these evidence the date of birth of workman recorded by the management in service card cannot be relied upon and it cannot

A be accepted to be true."

3. The Labour Court was pleased to also observe on the contention of the management that workman accepted the correctness of record of his age and could not be allowed to challenge the same later was not tenable, as the workman had been challenging the B same ever since the year 1972 when for the first time he came to know about his wrongly recorded date of birth in new gate pass.

4. The certificates issued by the school where he had been a student and situated in Dacca, Bangladesh revealed (Ext W/2) that his date of birth was 11.08.1929, which fact he was consistently C stating from the very beginning. The court observed "*Prima facie* the certificate appears to be genuine. The correctness of this certificate cannot be challenged unless it is proved otherwise."

On the aforesaid conclusion in favour of the workman, the Labour Court passed the following Award:

D

"The workman is entitled to full back wages including admissible allowances and other benefits for the period from 13.09.1987 the date of illegal superannuation to 11.08.1990 the actual date of retirement." The payment was directed to be paid within two months failing which the amount could be realized with interest @ 12%."

E

He would further submit that the learned Single Judge of the High Court has virtually reconsidered and reassessed the evidence of the parties in the case and thereby exercised jurisdiction in the manner which is highly unwarranted in law and exceeded its limited writ jurisdiction and cannot, therefore, be sustained. It was submitted that the judgment of the learned F Single Judge was clearly one-sided and perverse. Learned counsel for the appellant further submitted that the Division Bench also failed to appreciate that in a writ petition arising from an Award in an industrial dispute matter, the findings arrived at by the Labour Court on the basis of the materials and evidence recorded in the case oral and documentary, the Writ Court cannot G set aside the findings of the Labour Court on the basis of alleged non-consideration or ignoring of certain materials by the Labour Court as a Court of appeal. In other words, learned counsel submitted that the Division Bench fell in grave error of jurisdiction in re-assessing and re-valuing the weight of evidence in the case recorded by the Labour Court, by which it came to a conclusion that the workman was illegally and prematurely superannuated, in H the service under the respondent. The respondent failed to produce any

reliable evidence, much less any of the relevant contemporaneous documents relating to their contention in defence and in order to rebut the evidence produced by the workman in support of his case of illegal superannuation. He would further submit that the High Court has wrongly relied upon the one-sided testimony of the Management and arrived at a wrong conclusion regarding the date of birth of the workman by this process, the High Court gave undue credence to the conclusion of the Management said to be based on the unconfirmed and unauthenticated report from the authorities of the school in which the workman happened to be a student; which allegedly indicated that the report submitted by the workman was not genuine. Even though same was without any other communicated and corroborating material, as to when the enquiry was made by the employer, how and by which officer the enquiry was initiated by writing a letter to the said school authorities and what the terms of enquiry was etc. It was further submitted that the workman had further documentary evidence with the Management in counter to such un-authenticated information and relied upon fresh certificate in support of his case which were duly authenticated and certified by the Ministry of Education and Foreign Affairs of Bangladesh as also endorsed by the office of the High Commissioner of Government of India in Dacca, Bangladesh categorically mentioning and referring to the date of birth of the workman as 11.08.1929 as was entered in the admission register of the school in the usual course of business, where the workman studied from 1935 to 1942.

Per contra Mr. Raju Ramachandran, learned senior counsel submitted that the civil appeal is misconceived and the impugned order does not deserve to be interfered with by this Court under Article 136 of the Constitution of India and that the case in hand is fully covered by an order of this Court in *Bharat Coking Coal Ltd.* v. *Presiding Officer and Anr,* [1995] Supp 2 SCC 598 wherein this Court has held that if the workman did not challenge opinion of the Medical Board constituted by the Management, for determining the age of the workman and permitted the workman to work till his attaining the age of retirement, the workman is estopped from challenging the correctness of the opinion of the Medical Board after his retirement. He would submit that the learned Single Judge had relied upon the aforesaid order and observed the Award of the Tribunal cannot be sustained in law.

Mr. Raju Ramachandran also invited our attention to the events which led to the constitution of the Medical Board for determining the age of the workman. He submitted that the Labour Court fell in grave error in discarding the opinion and findings of the Medical Board merely on the ground that no

A medical officer of the Company, who assessed the age of the workman, was examined nor any report of the Medical Board had been filed. He further submitted that the High Court in its jurisdiction can interfere with the findings of the Labour Court if the findings are perverse.

The Management also filed I.A. No.3 of 2006 for filing additional
B documents on behalf of the Management because according to them all the documents which were filed before the Labour Court were not available with the respondent because the same were not traceable being the old ones and were filed before the Labour Court in 1991. Therefore, they filed additional documents along with I.A.No.3 of 2006 and our attention was also drawn to
C those annexures and we have perused the same. We have carefully perused the entire records.

The case of the Management is that the workman was employed in 1947 and his date of birth was recorded as 24 years based on the assessment of his age by the Company's Medical Officer and that the workman confirmed
D his age by putting his signature on the service record and that the workman did not produce any documentary evidence in support of his age and he, for the first time, disputed his age in 1972 by producing a transfer certificate issued from the Headmaster of Nava Kumar High English School, Dacca which certificate was referred to the District Education Officer, Dacca for verification and it was found that the certificate was not genuine. The further
E case of the Management is that the Age Rectification Committee in its Meeting held on 23.07.1984 decided to refer the case of the respondent No.2 to Special Medical Board and accordingly the workman was sent to the Medical Board for assessment of age and the Medical Board assessed the age of the workman as 58 years on 13.09.1984. The date of birth of the workman was accordingly
F rectified and the same was accepted by the workman. On the basis of the date of birth assessed by the medical board the workman was to superannuate on 30.09.1987. After superannuation the workman illegally raised dispute with regard to his age and the same was referred to the Labour Court for adjudication. The Labour Court after considering the facts of the case and the evidence adduced before him erroneously came to the conclusion that the management
G has failed to prove that the date of birth of the workman is 13.09.1926 as recorded in the service card on the basis of which he was superannuated. The Labour Court further erroneously held that the correct date of birth of the workman is 11.08.1929 and he was entitled to continue in service till 11.08.1990. Consequently the Labour Court by the impugned award directed the
H management to pay full back wages together with interest to the workman

from 13.09.1987 to 11.08.1990. A

It is also seen that in spite of that, the workman was medically examined as per decision of the age rectification committee and the date of birth assessed by the Medical Board was again entered in the service record which was accepted by the workman which was not accepted or appreciated by the Labour Court when the workman attained the age of superannuation he was B given one year's extension and the same was accepted by the workman without raising any objection and it is only after the retirement, the wife of the workman raised an industrial dispute with regard to his age. The admitted facts that emerge from the above are:

(a) the workman was taken in service in 1947; C

(b) the workman was examined by the Medical Board and his age was assessed;

(c) In 1960 a service card was issued to the appellant by the Management wherein the age of the workman was recorded as D 24 years and the same was duly accepted by the workman by putting his signature;

(d) Only in 1972, for the first time, the workman produced a transfer certificate issued from the school and disputed his age;

(e) The said transfer certificate was sent to the District Education E officer who informed the Management that the transfer certificate was not genuine;

(f) It is also not disputed that after the age rectification committee took a decision the workman was examined by a specially constituted Medical Board in 1984 and his age was assessed as F 13.09.1926.

(g) The service record was again corrected and it was made in 1926.

In this way, the service of the workman was increased by 2 years.

G

(h) The workman accepted the age assessed by the Medical Board in 1984 and according to the age so assessed by the Medical Board workman was increased by 2 years.

Therefore, according to the assessment of the age made by the Medical Board, the workman was to superannuate in 1986 instead of 1984. H

A In 1986, the workman was given one year's extension in service and accepted the said extension without raising any objection and retired on 13.09.1987. The Labour Court, in our opinion, has failed to appreciate the fact that in 1984 the workman was again medically examined and having been found fit one year extension of service was given. The Labour Court ignoring all the above vital facts decided the issue on conjectures and surmises and B erroneously determined the age of the workman.

It is also very useful to notice the events which led to the constitution of the Medical Board for determining the age of the workman which are as under:

C (a) Nani Gopal Ghosh (hereinafter referred to as "workman") joined the Company on 25.11.1947. As no documentary evidence in support of his date of birth was produced by the workman, it was recorded as 1.11.1923 based on the assessment of age of the workman as 24 years by the Company's Medical Officer. A Medical D Card was prepared on 29.11.1947 and in token thereof, the workman put his signatures on it.

(b) The aforementioned date of birth was also entered into Service Card prepared on 14.06.1960 and in that Card too, the age of the workman was recorded as 24yrs as on 01.11.1947 and in token E thereof, the workman again put his signatures on it.

(c) In 1970, fresh identity cards including that of the workman were prepared in respect of each workman and the said identity card also contained the age and date of birth which was also signed by the workman.

F (d) The workman, for the first time on 25.08.1972, disputed his age by producing a transfer certificate, purported to have been issued by the Headmaster of Nabakumar High English School, Dacca. The said certificate was referred to the District Education Officer, Dacca for verification of the entry made therein. It appears that G the District Education Officer made inquiry from the Headmaster of Nabakumar Institution and the Headmaster of the said Institution vide letter dated 29.10.1980 informed the District Education Officer that the entries made in the transfer certificate of Nani Gopal Ghosh are not at all genuine. The company received the said letter after being endorsed by District Education Officer. H A copy of the letter dated 29.10.1980 is annexed as R-1.

Accordingly, the workman was informed vide letter dated 20.11.1980 that the certificate produced by him was not genuine. A

(e) The workman again produced another certificate dated 19.02.1984 purpotedly issued by the Headmaster of the School, *inter alia,* mentioning the date of birth as 11.08.1929. The then Chief Personnel Manager again sought confirmation about the genuineness of the certificate from the District Education Officer, Dacca but no reply was received by the Management. B

(f) The workman would have retired on 31.10.1983 by counting his superannuation from the date of birth i.e. 01.11,1923, as noted at the time of the employment. C

(g) However, the Company, as a special case in the aforesaid circumstances, referred the matter to its Age Rectification Committee. The said Committee met on 23.07.1984 and decided to refer the case of the workman to a special Medical Board for assessment of the age of the workman as a special case. Accordingly, workman was sent to the Medical Board for assessment of his age and the Medical Board assessed the age of the workman as 58 yrs on 13.09.1984 meaning thereby date of birth as 13.09.1926. The said assessment of the Rectification committee was also informed to the workman vide letter dated 28.09.1984. D E

(h) That the workman accepted the said rectification of his date of birth as 13.09.1926 for all purposes and no objection was ever raised.

(i) That, as per the accepted position, the workman was to attain the age of superannuation i.e. 60 yrs on 13.09.1986. F

(j) That before superannuation, the workman was sent for medical examination in which he was found medically fit for extension of his service for one year as per SO 56 of the certified standing orders and thus his service was extended for one year more. G

(k) That, the acceptance for extension of one year after expiry of 60yrs, itself indicates that the workman accepted his date of birth as 13.09.1926, as recommended by the Age Rectification Committee.

(l) The workman accepted the said date of birth and acknowledged H

A the same by signing a declaration on his Personal-cum-Family Verification & Service Card dated 13.03.1987. The said declaration reads as under:-

> "I certify that my date of birth as recorded in the Medical Card and the service Card on the basis of Matriculation
B Certificate/School Leave Certificate/ Medical Examination held on xxxxxxx is (in figure) 13.09.1926 (in words) Thirteen September Nineteen Hundred Twenty Six as per report DPL 5689/84 and the same is correct. I am bound by this and that the same will not be disputed in the future by me.
>
C Sd/-
>
> Signature/ L.T.I. of the Party
>
> Date: 13.03.1987"

D A copy of Personal-cum-Family Verification & Service Card dated 13.03.1987 of the petitioner is annexed as Annx.R-2.

(m) That, accordingly, the workman retired from service w.e.f. 13.09.1987 even after enjoying one year's extension."

E The Labour Court, in our opinion, fell in grave error in discarding the opinion and findings of the Medical Board merely on the ground that no medical officer of the Company who assessed the age of workman was examined nor any report of the Medical Board had been filed. Once the workman himself has accepted the opinion in the finding of the Medical Board and continued to work till 13.09.1986 and one year of extension thereafter
F there was no necessity for the Company to examine the Medical officer and/ or to produce the report of the Medical Board. Moreover, the Medical Board examined the workman in 1984 and the Medical Officer who examined the workman may or may not have been in the service of the company.

Learned Single Judge of the High Court allowed the writ petition by the
G Management keeping in view of the law laid down by this Court in *Bharat Coking Coal Ltd.* (supra) case. The High Court, in our view, was fully justified in setting aside the Award of the Labour Court as the said Award was perverse and illegal inasmuch as the judgment of this Court in *Bharat Coking Coal Ltd.* (supra) was ignored by the Labour Court.

H It is also to be noticed that the Company has not relied upon the report

of the District Education Officer, Dacca, wherein it was written that the entry is in the transfer certificate submitted by the petitioner are not at all genuine. It is only because of the uncertainty about the date of birth of the workman, the Company constituted a special Medical Board in 1984 to determine the age and hence the date of birth of the workman.

Mr. Mukherjee relied on *Jiwan Kishore* v. *Delhi Transport Corporation and Anr.*, [1980] Supp SCC 678 which is a short judgment rendered by this Court. The sole question raised in that appeal is as to the age of the employee-appellant. There was a discrepancy, which was rather wide since the year of birth, according to one record was 1917 and according to another record 1927. In view of this considerable discrepancy, the employer, the Delhi Transport Corporation, appointed its Medical Board to fix the age of the appellant and according to the assessment of the age by the Medical Board, it is seen that he was 51 on June 13, 1975. This Court has observed that there was no reason to ignore the scientific fixation of age when the Court have records which are flagrantly conflicting. Therefore, the Court fixed the age of the appellant in partial allowance of his appeal at 51 on June 13, 1975 which means he will retire at the age of 58 on June 12, 1982. A reading of the judgment would also go to show that the Bench was not going into the vires in this case as both sides agree that if the court fixes the age as per the Medical Board's determination, they will accept and abide by it. On this footing, the Bench disposed of the appeal in partial allowance and set aside the order of retirement and further directed that the appellant be continued in service with all the consequential benefits as a regular employee until June 12, 1982.

The above judgment is not only distinguishable on facts as well as on law. We have elaborately dealt with the events which led to the constitution of the Medical Board for determining the age of the workman. The workman did not challenge the opinion of the Medical Board constituted by the Management for determining the age of the workman and permitted the workman to work till his attaining the age of retirement. Therefore, the workman in the present case is estopped from challenging the correctness of the opinion of the Medical Board after his retirement. This apart, school leaving certificate which was produced by the workman was forwarded to the DEO, Dacca for verification who informed the Management that the certificate is not genuine. The workman was to superannuate in the year 1986 but on the basis of the assessment of age made by the Apex Medical Board, he was allowed to continue till 13.09.1987. At that stage, the workman did not challenge the decision of the Medical Board. It is only after enjoying the benefits given to

A the workman and after availing the benefits, the workman raised a dispute after his retirement in pursuance of which the Labour Court has passed the Award. The High Court has not given any undue credence to the evidence of the Management or wrongly relied upon the one-sided testimony of the Management as alleged by the appellant. We have already noticed that the findings arrived at by the Labour Court is nothing but perverse against the B facts and passed the award in favour of the workman on totally mis-placed sympathy. In our opinion, both the learned Single Judge and of the Division Bench are right and within their jurisdiction in re-assessing and re-valuing the weight of the evidence in the case recorded by the Labour Court by which the High Court came to the conclusion that the workman was not entitled to C any relief. When the judgment of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same.

For the foregoing reasons, the appeal filed by the wife of the workman D has no force and merit or substance and, therefore, is liable to be dismissed and accordingly we do so by affirming the well-considered judgment of the learned Single Judge of the High Court and as affirmed by the Division Bench. No costs.

K.K.T. Appeal dismissed.

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