

In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata

Case No. 08/2022 u/s. 10(1B)(d)

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal
Kolkata

Sri Baski Ram Applicant
0332 Jaya Shree Textile Teachers Line,
Village & P.O.-Pravasnagar, Rishra,
P.S. Serampore, District-Hooghly,
West Bengal, PIN-712249.

-Vs.-

M/s. Grasim Industries Ltd., OP/Company
Unit – Jaya Shree textiles,
Village & P.O.-Pravasnagar, Rishra,
P.S. Serampore, District-Hooghly,
West Bengal, PIN-712249.

A W A R D

Dated : 20.06.2025

This is a case u/s 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case was filed before this Tribunal on 03.02.2022. According to the Order No.1 dated 03.02.2022, the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 dated 02.02.2022 was received by this Tribunal on 03.02.2022. The applicant/workman on 03.02.2022 filed an application in Form-T coupled with written statement i.e. application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958 containing certificate dated 02.11.2021 issued by the Conciliation Officer and Assistant Labour Commissioner, Serampore, Hooghly was annexed with the Form-T and application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

The instant case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Baski Ram, a resident of 0332 Jaya Shree Textile Teachers Line, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249 against M/s. Grasim Industries Ltd., Unit : Jaya Shree Textiles, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249 raising an industrial dispute. The applicant by filing written statement of the case has stated that he was appointed on 13.03.85 as ‘Creel Boy’ in the Hose Pipe Department by M/s. Indian Rayon Pvt. Ltd. Unit Jaya Shree Textiles, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249. It is stated that presently the Company is known as M/s. Grasim Industries Ltd. Unit Jaya Shree Textiles. It has been mentioned that at the time of joining of service under the ‘Company’, he submitted his bio-data to the ‘Company’ including all relevant documents as per requirement although his employer i.e. the Management of the said ‘Company’ did not issue any appointment letter to him inspite of his repeated request/demand for issuance of appropriate appointment letter to him but his effort went in vain. It is mentioned that at the time of his (applicant) joining in the service of the

'Company', his year of birth was recorded as '1966' and his age was recorded as 19 years in all appointment related documents, such as medical fitness examination report etc. and those documents are lying under the possession and power of the 'Company' since the 'Company' maintains the 'Service File' of each and every workman including him. The applicant has prayed for production of all those documents in connection with his appointment before this Tribunal for proper and effective adjudication. It has been stated that under the direction of competent personnel of the HR Department, he furnished various information required to fill up the declaration of 'Form No.1' as per ESI (General) Regulations 1950 and the said competent personnel of HR Department filled up the said 'Form' as per particulars of information submitted by him and thereafter he put his signature on such Form No.1. It has been stated that his year of birth 1966 was recorded in the said Form No.1. Subsequently, the ESI Corporation issued identity card being Insurance No.9940279 to him in view of the 'declaration' embodied in the Form No.1. It is stated that the competent personnel of the HR Department also prepared the Nomination and Declaration Form under Employees Provident Fund and Employees Pension Scheme as per the particulars submitted by him and he put his signature on the said filled up 'Form'. In the said 'Form' his year of birth was recorded as 1966 but unfortunately when he received the copy of the letter dated 26.11.2020 with annexure, he found that under the Employees' Provident Fund and Employees' Pension Scheme from the Nomination and Declaration Form under the Employees' Provident Fund and Employees' Pension Scheme, his year of birth has been manipulated / altered as his year of birth was shown as 1962 which was written in different hand writing after erasing the earlier / previous year of birth as 1966 and the matter of erasing is evident since earlier recorded date of birth as 1966 is clearly visible. It is stated that as per his year of birth recorded earlier by the Company, he is supposed to retire from the service of the Company on 31.12.2024. It is stated that he had given a meritorious and skillful service with untiring zeal to the satisfaction of the Management of the Company and by which he earned an unblemished record of service. It is stated that the Company used to earn huge profit on each and every year by way of exploiting its workers/employees , and the Management of the Company used to indulge in unfair labour practice of hire and fire without adhering to the provisions of relevant law of the land as well as the principle of natural justice. It has been stated that the workman was under the strong impression that his superannuation would take place on 31.12.2024 and after superannuation he would get various retirement benefits and he would spend the money of such retirement benefits for the purpose of his children's higher education, their marriage and for construction of his new house but unfortunately the Management of the Company illegally and wrongfully terminated his service of the Company as workman on 31.12.2020, which was obviously premature retirement from his service. It is stated that workman in the month of June, 2020 came to know from reliable source that the Management of the Company had started to take steps for his superannuation from the service in the month of December, 2020. On receiving such information, he immediately met with Mr. Somnath Bannerjee, DGM-HR and enquired from him why the Management of the Company decided to give him early superannuation and in his reply Mr. Banerjee stated to him that as per the office record his year of birth was recorded in all Forms as 1966 not 1962 and his ESI identity card was issued showing his year of birth as 1962. It is stated that thereafter the workman sent a mail to the Company on 10.11.2020 clearly mentioning that HR Department had made a mistake about his date of birth in his PF record and requested for correction of such mistake. It is stated that in the month of November, 2020 the 'time office' of the Company asked him to receive the retirement notice but he refused to accept the same. Subsequently, the applicant received the superannuation/retirement notice dated 29.10.2020 through Post on 18.11.2020 and in the

notice it was mentioned that he will be superannuated on 31.12.2020. It has been stated that the applicant received the copy of letter dated 26.11.2020 from the Joint Labour Commissioner, Serampore, along with Annexure-A to D and on receiving the same he categorically denied the contention of the said letter. He confirmed that at the time of joining in his service his year of birth was recorded as 1966 in all service related documents and at that time he was aged 19 years and all those particulars were clearly mentioned in his ESI permanent Identity Card. It has been alleged by the applicant that Annexure-A i.e. PF Nomination and Declaration Form was filled up by the Company on 19.09.2025 i.e. after 10 years of joining in the service by the applicant and in the said PF Nomination and Declaration Form his date of birth was tampered by the Company. It has been stated by him that he came to know about ESIC e-Pehchan Card (Annexure-B), in which his date of birth was wrongly mentioned as 15.07.1962 instead of 1966. It has been mentioned that the ESIC e-Pehchan Card did not contain his family details, family photograph as well as the seal and signature of ESIC Department and that the same was not linked with Aadhar. It has been stated that ESI Corporation by letter dated 16.12.2020 sent the ESI Declaration Form dated 13.03.1985 to him, in which his year of birth was clearly mentioned as 1966. It has been stated that the applicant made several calls to the office of the Company and requested the Management for his reinstatement in the service. It has been stated that due to illegal and wrongful termination of the applicant from his service, he is facing tremendous financial stringency as he has failed to get any employment elsewhere thereafter. Subsequently, he raised an industrial dispute before the Labour Commissioner, Government of West Bengal by a letter dated 12.04.2021 against the OP/Company. The Company submitted their written objection against such industrial dispute raised by him. It has been stated that subsequently he obtained a Certificate dated 02.11.2021 about the pendency of conciliation proceeding and thereafter he has filed this case. It has been stated that per month income of the applicant from his salary prior to the termination was Rs.19,756.51. He has prayed for an order setting aside the termination order and his reinstatement in the service of the Company with full back wages and other incidental benefits.

The OP/Company i.e. M/s. Grasim Industries Ltd. has contested this case by filing Written Statement. The OP/Company by its Written Statement has denied all the material allegations levelled against it by the applicant/workman. The OP/Company by filing written statement has claimed that the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is not maintainable in the eye of the law on the ground that the prerequisite of valid industrial dispute is found totally absent in the 'Application' and the workman had accepted his final dues with regard to Indian Rayon Employees Cooperative Credit Society Limited on the basis of a letter served upon him before two months of his retirement on 01.01.2021 and the workman applied before the Provident Fund Authorities for release of his pension after accepting full and final settlement of his claim from the Indian Rayon Employees Cooperative Credit Society Limited. It has been claimed that Indian Rayon Employees Cooperative Credit Society Limited allows the officers and staffs/employees of the Company to take its membership and the membership ceases after the retirement and/or leaving the service of the OP/Company. It has been stated in the written statement that the workman/applicant after attaining superannuation and accepting his retirement on and from 01.01.2021, took all his terminal benefits according to full and final settlement of his claim but after the lapse of four months of the date of his retirement (01.01.2021) raised a false and frivolous industrial dispute and thereafter obtained a certificate from the Conciliation Officer. It has been stated in the written statement that the workman joined in the service of the Company i.e. Jaya Shree Textiles, Rishra and at that time he declared his year of birth as '1962' and such year of birth was maintained in the record of the Company. It has been

stated that the workman/applicant himself signed in the Form-2 i.e. Declaration and Nomination form in respect of Provident Fund under Employees' Provident Fund and Employees' Pension Scheme. So, it has been claimed that the applicant/workman had clear knowledge about the declaration of his year of birth, which he had made at the time of joining of the service and according to such declaration the Company maintained the record in respect of such applicant/workman. It has been stated that in the year 1995 in the Form-2 i.e. Declaration and Nomination form under the Employees' Provident Fund and Employees' Pension Scheme, the year of birth of the applicant/workman was recorded as 1962 and the applicant/workman signed on the said Form-2 and thus the applicant/workman conceded to or admitted his year of birth as 1966 without any objection and protest. It has been stated that in the ESIC e-Pehchan Card his year of birth was recorded as 1962. It has been claimed that in view of such facts and circumstances the question of a mistake on the part of the OP/Company does not arise whereas the applicant/workman is trying to make out a new case by making false allegations against the OP/Company. It has been claimed that since the year 1995 it was within the full knowledge of the applicant/workman that his year of birth was recorded as 1962 in the service records under the OP/Company and at the fag end of his service career he should not be allowed to change his year of birth after the lapse of 25 years from filling up and submission of Form-2 i.e. Declaration and Nomination Form under Employees' Provident Fund and Employees' Pension Scheme. It has been claimed that since according to the record of the OP/Company the date of retirement of the applicant/workman was on 31.12.2020, the Office/Department served the 'retirement letter' (?) dated 29th October, 2020 upon him but he refused to receive the said 'retirement letter' and thus the OP/Company was compelled to send the said 'retirement letter' through Post, which was served upon him on 18.11.2020. It has been stated that the applicant/workman all of a sudden at the fag end of the service career on receiving the 'retirement letter' dated 29.10.2020, claimed that his date of birth was 30th April, 1966 and in support of his claim he submitted some documents such as Aadhar, PAN card, EPIC and Driving License where his date of birth was mentioned as 30th April, 1966 but previously he never submitted all those documents to the appropriate authority of the OP/Company. It has been mentioned that according to the Employees' Provident Fund Organisation's circular bearing No.WSU/37(1)2019/DOB dated 03rd April, 2020, *the year of birth exceeding plus/minus three years of year of birth recorded earlier, cannot be changed based on the Aadhar/e-Aadhar documents* and thus in view of such 'circular' the claim of the applicant/workman is found inadmissible because the difference of age is more than three years in between the year of birth recorded in the Record of the Company, which was signed and accepted by the applicant/workman, and the date of birth recorded in the Aadhar card. It has been stated that according to the clause 4(b) of the Certified Standing Orders of Jaya Shree Textiles documents such as (i) Matriculation/School Final or School Leaving Certificate granted by the Board of Secondary Education or similar educational authority or University, (ii) a registered and certified copy of the date of birth as recorded in the relevant register of a Municipality or local authority is treated as the document of proof relating to date of birth or year of birth of an employee of the Company but the workman did not submit any Certificate relating to his date of birth/year of birth in appropriate time for making entry of his date of birth/year of birth in the relevant register/record of the Company whereas he produced one purported Certificate of Birth issued by the 'Gram Panchayat Patsanda', Government of Bihar and the said purported 'Certificate of Birth' was issued on 22.12.2020. It has been claimed that the 'date of issue' of the said purported birth certificate calls for a presumption that the said document was either procured or manufactured with the sole intention to tamper or meddle with the entries of the 'year of birth' maintained in various

relevant records, such as Form-2 i.e. Declaration and Nomination form in respect of Provident Fund under Employees' Provident Fund and Employees' Pension Scheme, ESIC e-Pehchan card etc. It has been stated that the applicant/workman at the time of joining in the service of the Company did not produce any document with regards to his date of birth but he himself declared that his year of birth was 1962 and accordingly such year of birth was maintained by the OP/Company in various records. It has been claimed that since the applicant/workman with some ulterior motive on receiving the Notice dated 29.10.2020, issued by the OP/Company, produced photocopies of various documents such as Aadhar Card, EPIC, Driving License, PAN card with a view to claim that his date of birth was 30.04.1966, there is no valid ground for taking cognizance upon those documents. It has been claimed that on a written query of the OP/Company, the Branch Manager of ESI, Rishra Branch clarified that the OP/Company never carried on any rectification/correction of the year of birth of the applicant/workman. Moreover, the said Branch Manager, ESI, Rishra Branch clarified that the year of birth of the applicant/workman was recorded as 1962 in the Employees' State Insurance Corporation's e-Pehchan card vide Registration dated 30.05.2010. It has been claimed that the OP/Company has received one complaint from the Howrah Regional Office of the Employees' Provident Fund to the effect that the pension of the applicant/workman was not disbursed since the applicant/workman deliberately did not settle his account. It has been claimed that if the applicant/workman requests the OP/Company for once, his retiral benefits will be released then and there but the applicant/workman deliberately did not cooperate with the OP/Company and for that reason his provident fund papers could not be forwarded to the appropriate authority. It has been claimed that in the letter dated 29.10.2020, issued by the OP/Company, it was specifically mentioned that the applicant/workman is required to contact with the Time Office for the preparation of his retiral documents, so that all the retiral benefits along with statutory benefits could be released forthwith at the time of superannuation of his service. It has been claimed that the applicant/workman has been running a business of car rental and he is the owner of a house and his children are getting good education because of his good financial condition, inspite of which he has been occupying the quarter No.0332 of the OP/Company and he has been enjoying free electricity, water, security, all other facilities and amenities which are provided by the OP/Company at its own cost.

The OP/Company by filing Written Statement has prayed for dismissal of this case on the ground of non-maintainability of the application as well as on the ground of devoid of merit of the application.

After submission of written statements and list of documents by the parties to this case, exchange of documents took place. Thereafter, the matter was fixed for framing of issues.

On the basis of pleadings of the parties, the following issues were framed in this case by the then Learned Presiding Officer of this Tribunal on 21.07.2022 :

ISSUES

1. Is the instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 maintainable ?
2. Is the termination of service of the applicant Sri Baski Ram by the OP/Company w.e.f. 31.12.2020 in the form of retirement treating his year of birth as 1962 instead of 1966 justified ?
3. What relief, if any, the applicant is entitled to ?

After framing of the issues, the evidence of this case was started.

During evidence stage, applicant/workman Sri Baski Ram examined himself as PW-1.

It is seen that the OP/Company adduced Sri Somnath Banerjee as OPW-1 in support of the case of the OP/Company.

In course of evidence, both the parties proved documents during examination of witnesses.

The applicant Sri Baski Ram has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : photocopy of ESI Card of the applicant and his family;
2. Exbt.-2 : photocopy of declaration and nomination form under Employees' Provident Fund and Employees' Pension Scheme;
3. Exbt.-3 : photocopy of e-Pehchan Card in the name of the applicant issued by Employees' State Insurance Corporation;
4. Exbt.-4 : photocopy of collective agreement and certified standing order;
5. Exbt.-5 : photocopy of letter under the subjection 'superannuation/retirement' issued by Sr. Vice President of the Company addressed to the applicant;
6. Exbt.-6 : photo copy of e-mail dated 10.11.2020 issued by the applicant;
7. Exbt.-7 : photocopy of letter dated 26.11.2020;
8. Exbt.-8 : photocopy of letter dated 16.12.2020 issued by Branch Manager, ESI Corporation along with photocopy of declaration form addressed to the applicant;
9. Exbt.-9 : photocopy of Birth Certificate;
10. Exbt.-10 : photocopy of e-mail dated 26.12.2020 sent by the applicant;
11. Photocopy of letter dated 12.04.2021 addressed to the Dy. Labour Commissioner Govt. of West Bengal, Serampore, Hooghly;
12. Photocopy of e-mail dated 14.02.2021 from the applicant to Somenath Banerjee;
13. Photocopy of e-mail dated 22.02.2021 from Jai Singh to the applicant;
14. Photocopy of communication by Mr. M.K. Bharti, Asstt. Director (ICT) to the Branch Officer, CPIO, RO, Kolkata;
15. Photocopy of certificate issued by the Br. Manager, ESIC dated 23.09.2021;
16. Photocopy of letter dated 09.06.2021 issued by Jasvinder Kataria, Chief Manufacturing Officer to Dy. Labour Commissioner (P), Serampore, Hooghly;
17. Photocopy of letter dated 30.06.2021 from the applicant to M/s. Jaya Shree Textiles;
18. Photocopy of letter dated 05.08.2021 from the applicant to M/s. Grasim Industries Ltd.;
19. Photocopy of Aadhar Card of the applicant;

20. Photocopy of PAN Card of the applicant;
21. Photocopy of EPIC of the applicant;
22. Photocopy of Driving License of the applicant.

In course of examination of witness on behalf of the OP/Company, the following documents were identified and proved. The exhibited documents are as follows:-

1. Exbt.-C: photocopy of application for membership refund dated 20.01.2010;
2. Exbt.-B: photocopy of e-mail dated 02.03.2022;
3. Exbt.-C: photocopy of letter dated 29.10.2020 regarding superannuation/retirement addressed to the applicant;
4. Exbt.-D : photocopy of e-Pehchan Card;
5. Exbt.-E: photocopy of e-mail dated 19.11.2020 to Somenath B regarding online request to the change of date of birth of the applicant;
6. Exbt.-F: photocopy of company's letter dated 26.11.2020 to the applicant;
7. Exbt.-G: photocopy of company's letter dated 26.11.2020 to the Joint Labour Commissioner (P), Serampore, Hooghly;
8. Exbt.-H: photocopy of company's letter dated 22.12.2020 to the applicant;
9. Exbt.-I: photocopy of company's letter dated 11.01.2021 to the Branch Manager, Rishra Branch Office, ESI Corporation;
10. Exbt.-J: photocopy of e-mail dated 14.02.2021 from the applicant to Somenath B regarding FFS and gratuity collection;
11. Exbt.-K: photocopy of company's letter dated 11.01.2021 to the Branch Manaer, Rishra Branch, ESI Corporation;
12. Exbt.-M: photocopy of company's letter dated 10.06.2021 to the applicant;
13. Exbt.-O & Q : photocopy of company's letter dated 30.08.2021 to the Dy. Labour Commissioner;
16. Exbt.-T: photocopy of company's letter dated 10.10.2021 to O.C., Serampore P.S.;
17. Exbt.-V: photocopy of Certified Standing Orders of the Company;
18. Exbt.-W: photocopy of company's letter dated 30.03.2022 to P.F. Commissioner;
19. Exbt.-X: photocopy of Bye-Law of the Company;
- 20.Exbt.-Y: photocopy of Notice of Meeting;
- 21.Exbt.-Z: photocopies of salary slips;
- 22.Exbt.-AA: photocopy of Occupational Health Monitoring Procedure of Jaya Shree Textiles;

It is to mention here that Ld. Advocates for the parties to this case submitted written notes of argument after evidence of this case was completed.

Decisions with reasons

Issue Nos. 1 & 2 :

For the sake of brevity and convenience, both the issues are taken together for discussion.

This case has been started on the basis of submission of Form-T coupled with copy of Form-S along with application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant/workman Sri Baski Ram.

After careful reading of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by the applicant/workman Sri Baski Ram and the written statement submitted by the OP/Company M/s. Grasim Industries Ltd. it is realized that the applicant/workman and the OP/Company have engaged themselves in the industrial dispute over the sole issue of date and year of retirement on the backdrop of contradiction of claim between the parties over the year of birth/date of birth of the applicant/workman because the applicant/workman by his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has claimed that the OP/Company actually illegally terminated him from his service of the Company under the garb of premature retirement from his service on 31.12.2020 by way of issuing letter dated 26.11.2020 informing him that his year of birth was recorded as 1962 in the various documents relating to his service whereas at the time of joining in the service of the Company his year of birth was recorded as 1966 in all appointment related documents, which are lying in the power and possession of the Company.

In view of such dispute, arisen out of contradiction in the matter of year of birth/date of birth of the applicant/workman, this Tribunal is tasked with making a just decision regarding such 'contradiction', relying on the available evidence on record.

The applicant/workman Sri Baski Ram examined himself as PW-1 by filing examination-in-chief on affidavit and he was cross-examined by the OP/Company. It is strange to note that the PW-1 at the beginning of his examination-in-chief on affidavit has made statements denying the paragraph wise statements made by the OP/Company in its written statement instead of asserting his own statement of claim as contained in the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. It is found that the examination-in-chief on affidavit of PW-1 was drafted and prepared in an unusual manner because in such examination-in-chief on affidavit, independent assertion of statements of claim of applicant/workman being PW-1 is found absent. It is seen that practically the PW-1 in his examination-in-chief on affidavit in course of denying the paragraph wise statements of OP/Company, as contained in its written statement, has given argumentative reasoning with a view to refute/controvert various claims made by the OP/Company instead of confirming his case.

During cross-examination, the PW-1 has confirmed that he joined in the service on 13.03.1985. He has divulged that during the tenure of his service under the Company, there was no dispute in between him and the Company and he never received any complaint letter from his authority. He has further admitted that he got residential quarters from the Company after joining in the service. He has admitted that according to the 'rule', the serving employees of the Company can enjoy the residential quarters till their retirement. He has divulged that he has no residential unit of himself but his son has a residential unit in his name. He has divulged that the residential quarters of the Company, which he occupies, is situated at Panchugopal Bhaduri Sarani, Rishra, Dist. Hooghly, PIN-712249. He has admitted that the said address is given in his EPIC (Exbt.-21) and Driving License (Exbt.-22). He has admitted that in the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 and in his examination-in-chief on affidavit, he has mentioned his address as Teachers' Lane, Vill. & P.O. Pravasnagar, Rishra, P.S. Serampore, Dist. Hooghly, PIN-712249. He has admitted that he is an owner of an Alto 800 car bearing No.WB-18P-8813. He has divulged that at the time of filing application for job under the Company, no document was required to file. He has claimed that while

his job was terminated by the Company, he was aged about 54 years. He has admitted that he has not filed any document (age proof document) to show that his age was 19 years while he joined in the job of the Company. He has divulged that the appropriate authority / Management / Officials of the OP/Company gave Exbt.-3 to him on 26.11.2020 (*upon perusal of e-Pehchan Card issued by Employees' State Insurance Corporation i.e. Exbt.-3, it is found that the date of registration is mentioned as 30.05.2010 and 'date of birth' is mentioned as 15.07.1962*). He has admitted that in the 2nd page of Exbt.-8 (Declaration Form under Employees' State Insurance Corporation) his year of birth is mentioned as 1966. He has divulged that in Exbt.-1 his year of birth is mentioned as 1966. He has admitted that in the 1st page of Exbt.-2 his year of birth is shown as 1962. He has divulged that E.S.I. Authority declared that they did not issue Exbt.-3 (*It has not been mentioned relying on which document he claimed that E.S.I. Authority did not issue the Exbt.-3*). He has divulged that Exbt.-8 was issued by E.S.I. Authority. He has admitted that he has not filed any document in support of his statement (allegation) that *'the Management of the Company indulges unfair labour practice of hire and fire without caring to abide by the laws of the land and principles of natural justice'*. He has admitted that he was a member of Indian Rayon Employees' Cooperative Credit Society Ltd. and after his retirement from the service of the Company, he on 20.01.2021 submitted an application seeking membership refund to the Secretary, Indian Rayon Employees' Cooperative Credit Society Ltd. and for settlement of his dues as per the Rule. He has identified the photocopy of his application for settlement of dues (filed by the OP/Company and the same has been marked as Exbt.-A). He has admitted that he has received all his dues according to his application (Exbt.-A). He has divulged that once he visited the office of Mr. Somenath Banerjee and handed him over the photocopies of his Aadhar Card, EPIC and ESI Card to show his actual date of birth. He has divulged that before joining in the job of the Company, he filed 'janam patrika' prepared by 'Panditji' to the Management of the Company as a proof of his age. He has denied the suggestion of the OP/Company that he manufactured all the documents which he filed subsequently in this case.

OPW-1 Somenath Banerjee in his examination-in-chief on affidavit has reiterated the statements contained in the written statement submitted on behalf of the OP/Company. It is to mention here that while the OPW-1 in course of swearing affidavit for the purpose of preparation of the examination-in-chief on affidavit identified some documents which were relied upon by the OP/Company in support of its case but it is seen that all those documents were marked haphazardly i.e. not serially and it is also seen that different kinds of documents were marked with single marking sign as well as single document was marked with different marking signs.

During cross-examination the OPW-1 has divulged that he has been working as the Industrial Relation Manager of 'Jaya Shree Textiles' which is a unit of Grasim Industries Ltd. since 2018. He has disclosed his lack of knowledge about which Company i.e. whether M/s. Grasim Industries Ltd. or Jaya Shree Textiles Ltd., issued the appointment letter to the workman Baski Ram. He has divulged that the OP/Company has not filed the copy of the 'appointment letter' issued to the workman Baski Ram. He has admitted that the 'Certified Standing Orders' in respect of Jaya Shree Textiles existing prior to 05.02.2019 has not been filed in this case as documentary evidence. He has admitted that the workman Baski Ram was appointed by the OP/Company complying the provision of previous 'Certified Standing Orders', which has not been filed in this case. He has clarified that 'Jaya Shree Textiles' is not a limited company but it is a division of Grasim Industries Ltd. The OPW-1 has clarified that one document under the heading 'Collective Agreement and Certified Standing Orders' of Jaya Shree Textiles (Grasim

Industries Ltd.) has been filed and the same has been marked as Exbt.-5. **The OPW-1 in his cross-examination has divulged that according to the ‘Certified Standing Orders’ of the Company, Personal File of each and every workman is maintained but the ‘personal File’ in respect of the workman Baski Ram has not been filed in this case.** He has admitted that while an appointment letter is issued to an employee/workman, his date of birth is entered in the record of the Company as per the provision of ‘Certified Standing Orders’. He has divulged that at the relevant point of time in the year 1985, while Mr. Baski Ram applied for job, he submitted a ‘declaration’ about his date of birth but he failed to produce authentic document in respect of his date of birth. He has admitted that he is unable to say whether such ‘declaration’ was supplied in writing on a paper or by filling up any form. He has admitted that Exbt.-5 was issued in the letter-pad of Aditya Birla – Grasim.

On scrutiny of the exhibited documents on behalf of the workman it is found that Identity Card (**Exbt.-1**) issued by ESI Corporation on 09.09.2002 in favour of Baski Ram contains the date of birth – ‘1966’ and the date of entry – ‘13.03.85’. **Exbt.-8** (in 3 sheets) is the ‘reply’ dated 16.12.2020 by the Branch Manager, Rishra Branch Office of Employees’ State Insurance Corporation to the RTI application by Baski Ram. One of the sheets of the said Exbt.-8 is a photocopy of Declaration Form submitted to the Employees’ State Insurance Corporation in respect of Baski Ram on 13.03.85, contains year of birth – ‘1966’. **Exbt.-9** is the photocopy of Birth Certificate in respect of Baski Ram issued by Grama Panchayat Patsanda, Government of Bihar. **Exbt.-14** is ‘forwarding of information under RTI Act – 2005’ by Astt. Director (ICT) to the Branch Officer, CPIO, RO Kolkata. The Exbt.-14 shows that the date of birth of Sri Baski Ram was updated to 15.07.1962 by M/s. Jaya Shree Textiles on 18.06.2012. **Exbt.-15** is a Certificate dated 23.09.2021 issued by Branch Manager, Rishra Branch Office of ESIC. The said Certificate goes to show that as per Manual Declaration Form dated 13.03.85 submitted by employer M/s. Jaya Shree Textiles Grasim Industries Ltd. duly signed by Baski Ram, his year of birth was mentioned as ‘1966’. The said Certificate (Exbt.-15) also shows that the date of birth of Baski Ram was updated to 15.07.1962 on 18.06.2012 through employer’s login with Code No. 41000050550000199. It is needless to mention here that all those documents were identified and proved by the PW-1 Baski Ram in course of his examination-in-chief before the Tribunal in continuation of his examination-in-chief on affidavit. The fact remains that the OP/Company cross-examined the PW-1 after completion of his examination-in-chief before this Tribunal. During cross-examination on 05.04.2023, the PW-1 stated that he brought his original birth certificate before this Tribunal according to his undertaking given on the previous occasion. It is seen that on 05.04.2023 in course of cross-examination of PW-1 the original Birth Certificate of Baski Ram, issued on 22.12.2020, was handed over to the Ld. Advocate for the OP/Company and thereafter the Ld. Advocate checked the same and returned to the witness. Being cross-examined by the Ld. Advocate for the OP/Company, the PW-1 has divulged that the OP/Company asked him by letter dated 26.11.2020 (Ext.-7) to furnish his birth certificate to the Management in support of his claim and accordingly he obtained a Birth Certificate issued on 22.12.2020. It is obvious that such statement of the PW-1 has come as evidence on record being cross-examined by the OP/Company. It is found that the OP/Company did not dispute/controvert the said statement by putting denial of such statement in the form of suggestion to the PW-1. Apart from that, it is found that the OP/Company in course of cross-examination of PW-1 did not challenge the authenticity of the Birth Certificate (Exbt.-9) as well as the OP/Company did not cross-examine the PW-1 with a view to dispute / controvert the said Birth Certificate (Exbt.-9). It is to mention here that at the fag end of the cross-examination of PW-1 the OP/Company put a general suggestion stating that he (PW-1) manufactured all the

documents which he filed in this case and the PW-1 denied such suggestion. Actually no effective cross-examination was made on the PW-1 with respect to the Birth Certificate (Exbt.-9) by the OP/Company. Considering the fact of not challenging the authenticity of the Birth Certificate (Exbt.-9) or disputing / controverting Exbt.-9 by the OP/Company in course of cross-examination of PW-1, it can be reasonably said that the OP/Company having clear knowledge about the genuineness and validity of Birth Certificate (Exbt.-9) intentionally avoided to cross-examine the PW-1 on that point, resultantly this Tribunal would presume that the OP/Company has accepted the version of the PW-1 on the point of his Birth Certificate. The view of this Tribunal gets sanctity from the decision of the Hon'ble Supreme Court of India in the matter of Muddasani Venkata Narsaiah (Dead) through Legal Representatives vs. Muddasani Sarojana (Civil Appeal No.4816 of 2016) reported in (2016) 12 Supreme Court Cases 288, in which the **Hon'ble Supreme Court of India** has been pleased to observe that – *“Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW-2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440.”*

In view of the above cited observation of the Hon'ble Supreme Court of India, it can be safely opined that the Birth Certificate (Exbt.-9), which was produced and submitted by the workman Baski Ram being asked by the appropriate authority of the Management of the Company after the issuance of notice dated 29.10.2020 (Exbt.-C and Exbt.-5) to him, has become identified as genuine and valid document and thus consequently **the OP/Company is bound to accept that the date of birth of the workman Baski Ram is 30.04.1966 as it is depicted in the Exbt.-9.**

Now, if we go through the written notes of argument submitted on behalf of the OP/Company, it is found in the page no. 2 (para. no. 7 from the top and para. no. 2 from the bottom) of such written notes of argument that the OP/Company has placed reliance on the statement of PW-1 : *“It is fact that the OP/Company asked me by letter dated 26.11.2020 (Exbt.-7) to furnish my Birth Certificate to the Management in support of my claim and accordingly I obtained the said Birth Certificate issued on 22.12.2020.”* At the time of the argument Ld. Advocate for the OP/Company has confirmed that on receiving the letter dated 29.10.2020 (Exbt.-5 & Exbt.-C) issued by the Senior Vice President – HR & IR of the OP/Company, the workman appeared before the appropriate authority of the OP/Company and claimed that the date (31.12.2020) mentioned in the said letter as the date of his superannuation was premature because his year of birth was recorded as '1966' in various relevant documents such as identity card issued by the ESI Corporation etc. and thus he was supposed to superannuate / retire from the service of the Company on 31.12.2024. In view of such objection raised by the workman, the appropriate authority of the OP/Company asked him to produce satisfactory document complying the clause 4(b) of the Certified Standing Orders (Exbt.-V) of Jaya Shree Textiles. According to the clause 4(b) of the 'Certified Standing Orders' – *“Every workman should, for this purpose, produce the following documents in proof of his age at the time of joining or as and when called for ;*

- i. *Matriculation / School Final or School Leaving granted by a University or Board of Secondary Education or similar educational authority ;*
- ii. *A Registered and Certified copy of the date of his birth as recorded in the Registers of a Municipality or a local authority.”*

Again it is pointed out that the workman Baski Ram claimed that he sent his Birth Certificate (Exbt.-9) along with other documents through e-mail dated 26.12.2020 to the appropriate authority of the Management of the OP/Company in his response to the instruction of the said authority. The workman while deposing before this Tribunal as PW-1 identified the ‘hard copy’ of the e-mail dated 26.12.2020 sent by him to the appropriate authority of the OP/Company and the said ‘hard copy’ of the e-mail was marked as Exbt.-10. It is seen that the OP/Company in course of cross-examination of PW-1 did not deny the matter of such e-mail dated 26.12.2020 sent by the workman Baski Ram to it. It is needless to reiterate that such absence of denial on the part of the OP/Company is reasonably treated as admission of fact. Thus, it has become established as an undisputed fact/claim that the workman Baski Ram had sent the copy of his Birth Certificate on 26.12.2020 issued by Gram Panchayat Patsanda, Government of Bihar, complying the clause 4(b) of the Certified Standing Orders of the OP/Company (Exbt.-V) being instructed by the appropriate authority of the Management of the OP/Company for the purpose of verification of his age as well as for settlement of the dispute over his ‘year of birth’ as raised by the OP/Company.

Accordingly, the OP/Company cannot be allowed to retreat from its principle as set out in the clause 4(b) of the Certified Standing Orders (Exbt.-V) of Jaya Shree Textiles. Consequently, the OP/Company should admit that either the year of birth – ‘1966’ as it is found in the Exbt.-1 or the date of birth – ‘30.04.1966’ as it is found in the Exbt.-9, is correct in respect of the workman Baski Ram.

From the cross-examination of PW-1 it is found that the OP/Company remained silent in respect of Exbt.-1 (identity card issued by ESI Corporation) which was issued on 09.09.02 and in which the ‘date of birth’ of Baski Ram is noted as ‘1966’. This document (Exbt.-1) was issued to the workman Baski Ram earliest after joining in the service on 13.03.85. So, it is evident from the evidence of PW-1 that the OP/Company did not dispute/challenge/controvert the validity of Exbt.-1. Thus, the Exbt.-1 attracts great evidential value and certainly it comes to support the case of the applicant/workman. It is seen that Exbt.-8, Exbt.-14 and Exbt.-15 are relating to same matter. One of the sheets of Exbt.-8 shows that ‘Declaration Form’ under Employees’ State Insurance Corporation in respect of Baski Ram was filled up mentioning his year of birth ‘1966’. Exbt.-14 shows that the date of birth of Baski Ram in the record of ICT Branch was changed to 15.07.62 on 18.06.2012 as updated by M/s. Jaya Shree Textiles. Exbt.-15 shows that the date of birth of Baski Ram was recorded as ‘1966’ in the record of Employees’ State Insurance Corporation as per Declaration Form dated 13.03.85 submitted by M/s. Jaya Shree Textiles Grasim Industries Ltd. but subsequently the said date of birth was changed to 15.07.62 being updated by the employer of Baski Ram. So, it is found that the Exbt.-8, Exbt.-14 and Exbt.-15 are of same nature, which shows the date of birth of Baski Ram recorded in the record of Employees’ State Insurance Corporation. All those exhibited documents go to show that actually the date/year of birth of Baski Ram was recorded in the record of Employees’ State Insurance Corporation as 1966 but subsequently on 18.06.2012 the employer of Baski Ram updated the date of birth of Baski Ram to 15.07.62. It is found that during cross-examination, the OP/Company remained silent to dispute/controvert the version of PW-1 in respect of those three documents whereas the PW-1 during cross-examination has asserted the facts of his date of birth/year of birth as

mentioned in Exbt.-1, Exbt.-3 and Exbt.-8. One of the sheets of Exbt.-8 goes to show that in the Declaration Form under Employees' State Insurance Corporation, Baski Ram on 13.03.85 declared his year of birth as '1966'. Exbt.-14 and Exbt.-15 go to show that the OP/Company unilaterally on their own motion 18.06.2012 updated the date of birth of the workman Baski Ram to 15.07.1962 through employer's login with Code No. 41000050550000199. Exbt.-14 and Exbt.-15 are the documents received by the workman Baski Ram from the end of Employees' State Insurance Corporation. After travelling through the entire cross-examination portion of the evidence of PW-1, it is found that the OP/Company did not cross-examine the PW-1 in the matter of Exbt.-14 and Exbt.-15. The fact remains that OP/Company during cross-examination of PW-1 did not put any question to him with a view to dispute/challenge the validity of Exbt.-14 and Exbt.-15. In absence of such dispute/challenge targeting Exbt.-14 and Exbt.-15 on the part of OP/Company, it can be said that those two documents i.e. Exbt.-14 and Exbt.-15 attract great evidential value being unassailable documents in support of the case of the applicant/workman. Accordingly, Exbt.-14 and Exbt.-15 have emerged as vital documentary evidence and certainly such evidence has caused damage to the case of the OP/Company. Here it is required to mention that keeping in view the materials on record and also diving into the evidence on record, nowhere it is found that the OP/Company drew the attention of the workman Baski Ram by way of issuing 'Notice' to him for giving an opportunity of hearing in the matter of rectification/correction of his date of birth to their (OP/Company) own portal prior to updating his date of birth to 15.07.1962 through Employer's login with Code No.41000050550000199 in respect of ESI Ins No.9940279 under Employees' State Insurance Corporation. Thus, it is quite clear that such unilateral act of updating the date of birth of the workman Baski Ram to their own portal under Employees' State Insurance Corporation by OP/Company on 18.06.2012 (long after more than 27 years & 3 months starting from 13.03.1985 to 18.06.2012) was indeed done in violation of rule of natural justice.

The Hon'ble Supreme Court of India in the matter 'between Sarjoo Prasad and General Manager and another' (Civil Appeal No.377 of 1981), reported in **AIR 1981 SC 1481** has been pleased to observe – *"The short point in this appeal is whether it was open to the respondent to change or alter the birth date of the appellant, being 25th July, 1927, once accepted by the respondent in 1951, without giving an opportunity to him to sustain the same. It is admitted that the alteration in the accepted birth-date of appellant has been made without giving an opportunity of hearing to the appellant. Appellant claimed that his date of birth is July 25th, 1927 and this birth date is entered in his High School Certificate and this birth date was accepted by the respondent in 1951. In State of Orissa v. Dr. (Miss) Binapani Dei and Ors. this Court held that the date of birth without notice and without giving opportunity to the appellant cannot be altered to the disadvantage and prejudice of an employee because an administrative order which involves civil consequences' must be made in conformity with the rule of natural justice which at its lowest minimum requires notice and opportunity to the person effected thereby. That admittedly having not been done, on this short ground, we allow this appeal and set aside the order retiring the appellant from service as well as the order correcting the birth date."*

Thus, it is crystal clear that the opinion of this Tribunal obtains justification from the above noted observation of the Hon'ble Supreme Court of India.

The OP/Company has examined Somenath Banerjee as OPW-1. According to his version he has been working as the Industrial Relation Manager of Jaya Shree Textiles, a Unit of Grasim Industries Ltd. It is found that the OPW-1 in his cross-examination has admitted that the OP/Company has not filed 'appointment letter' issued to the workman

Baski Ram. It is seen that the OPW-1 in his cross-examination has admitted and clarified that Certified Standing Orders (Exbt.-V) of Jaya Shree Textiles was certified by the Certifying Officer, Government of West Bengal on 05.02.2019 and prior to 05.02.2019 there was another 'Certified Standing Orders' in respect of Jaya Shree Textiles but the OP/Company has not filed the erstwhile/previous Certified Standing Orders of Jaya Shree Textiles as documentary evidence. The OPW-1 has also made it clear that the workman Baski Ram was appointed by the OP/Company complying the provision of previous 'Certified Standing Orders', which has not been filed in this case. It is found that the OPW-1 has divulged in his cross-examination that according to the 'Certified Standing Orders' of the OP/Company, Personal File of each and every workman is maintained. He has also clarified that 'Personal File' in respect of the workman Baski Ram has not been filed in this case. The OPW-1 during his cross-examination divulged that while an appointment letter is issued to an employee/workman, his date of birth is entered in the record of the Company as per the provision of 'Certified Standing Orders'. Again, he has divulged that at the relevant point of time in the year 1985, while Mr. Baski Ram applied for job, he submitted a declaration about his date of birth as he failed to produce authentic document in respect of his date of birth. During cross-examination the PW-1 has divulged that the Management of the Company maintains 'office records' with detailed information regarding all workmen and such detailed information are regarding date of birth, family members, etc. Again he has divulged that all those information have similarity with the information kept in ESI Card and the documents of EPF and EPS. It is important to note that the OPW-1 in his cross-examination has divulged that the employer (Management of the Company) settles the date of retirement of any employee/workman on the basis of information kept in the record of Employees' Provident Fund.

So, from the statements made by the OPW-1 in his cross-examination, we have got that the OP/Company did not file the 'Certified Standing Orders' which was effective prior to 05.02.2019. His statement makes it clear that the workman Baski Ram was appointed according to the provision of previous 'Certified Standing Orders' of Jaya Shree Textiles but the said previous 'Certified Standing Orders' has not come in this regard as exhibited document. The OPW-1 being a responsible managerial staff of Jaya Shree Textiles has made it clear that the OP/Company according to the provision of 'Certified Standing Orders' maintains 'Personal File' in respect of each and every workman but the 'Personal File' in respect of workman Baski Ram has not filed in this case. Moreover, we have got from the statement of OPW-1 that while the OP/Company issues an 'appointment letter' to any employee/workman, his date of birth is entered in the 'record' of the Company as per the provision of 'Certified Standing Orders' and further Baski Ram in the year 1985 while applied for his job submitted a 'declaration' about his date of birth. Apart from that we have got from the evidence of OPW-1 that Management of the Company maintains 'office records' with detailed information regarding all the workmen and such detailed information are regarding date of birth, number of family members etc. On scrutiny of the exhibited documents on the part of the OP/Company, it is found that the OP/Company did not file the documents such as – (i) previous 'Certified Standing Orders' which was in effect prior to 05.02.2019, (ii) 'Personal File', (iii) 'office records', (iv) 'appointment letter' and (v) 'declaration' regarding date of birth of Baski Ram submitted by him along with his application for job in support of its case with a view to refute/rebut the claim of the applicant/workman. In view of evidence of OPW-1 all those documents were in the possession and control of OP/Company but the OP/Company did not produce all those documents in this case as documentary evidence. Thus, unhesitatingly it can be opined that non-production of vital documents lying in the possession and control of OP/Company, attracts the provision of

Section 114(g) of the Indian Evidence Act [presently, section 119(g) of The Bharatiya Sakshya Adhiniyam, 2023]. Clause (g) of Section 119 of The Bharatiya Sakshya Adhiniyam, 2023 reads as follows – “*evidence which could be and is not produced, if produced, be unfavourable to the person who withholds it;*”. This clause allows the court to draw an adverse inference against a party who does not produce evidence that is in their possession and could be material to the case. This clause discourages parties from withholding or hiding important evidence. For the purpose of attracting the presumption u/s. 119(g) of The Bharatiya Sakshya Adhiniyam, 2023, the court should come to the conclusion that – (i) the party must have control over the evidence, (ii) the evidence is relevant to the case and (iii) the act of non-production of vital evidence by a party without satisfactory explanation. The Section 119(g) of The Bharatiya Sakshya Adhiniyam, 2023 allows court to presume the existence of certain facts based on natural events, human conduct and public and private business practices. Thus, such fact of non-production of various documents, as stated above, which are under the possession and control of the OP/Company creates an adverse presumption and such adverse presumption goes against the OP/Company and eventually the applicant/workman is entitled to get benefit of such adverse presumption. At the cost of repetition, it is reiterated that the core of the dispute of the present industrial dispute in between the workman Baski Ram and the OP/Company M/s. Grasim Industries Ltd. is the issue of ‘year of birth / date of birth’ of the workman Baski Ram. In view of the above discussion, it can be said that had the OP/Company produced all those documents, which are lying under its possession and control, would be unfavourable to it (OP/Company) in the matter of ascertaining the actual date, month and year of superannuation of the workman Baski Ram on the basis of his actual year of birth / date of birth noted either in ‘Personal File’ or in ‘office records’ etc.

In the written notes of argument in support of his contention, Ld. Advocate for the OP/Company has relied upon the following judgments reported in :

- (i) (1995) 4 Supreme Court Cases 172;
- (ii) (2005) 11 Supreme Court Cases 465;
- (iii) (2001) 4 Supreme Court Cases 52;
- (iv) (2010) 14 Supreme Court Cases 423;
- (v) (2021) 12 Supreme Court Cases 27;
- (vi) 2024 SCC Online SC 3038
- (vii) (1996) 2 Supreme Court Cases 81;
- (viii) 1996 (1) LLN. 376.

I have carefully gone through the contents of all the judgments referred in this case by the Ld. Advocate for the OP/Company.

Upon perusal of the judgment of the Hon’ble Supreme Court of India in the matter of Burn Standard Co. Ltd. & Others versus Dinabandhu Majumdar & Another, reported in (1995) 4 Supreme Court Cases 172, it is found that the Hon’ble Supreme Court of India has been pleased to observe – “*A question of general importance which is raised for our decision in this appeal is: When the High Court's extra- ordinary writ jurisdiction under Article 226 of the Constitution is sought to be availed of by an employee of the Government or its instrumentality, to prevent either of them, as the case may be, from retiring him on superannuation according to the date of his birth declared at the time of his appointment and entered in his 'Service and Leave Record', by its*

acceptance by the Government or its instrumentality, as correct, can such jurisdiction be exercised in favour of such employee, as a matter of course?"

After going through the said judgment, it is found that the following is the crux of the conflict between the parties – *"'Service and Leave Record' of respondents with the Indian Standard Wagon Company Ltd., which had been opened at the time of his appointment, became his 'Service and Leave Record' with the appellant. That 'Service and Leave Record' of respondent 1, where his age had been entered on the basis of his declaration, voluntarily made at the time of his appointment also contained his authentication made therefore by affixture of his left thumb mark. That declared age, which indicated the date of birth of respondent- 1 as 25.4.193 1, was to be the basis for his retirement from service, on attaining the age of superan- nuation at 60 years. However, respondent-1 who had continued in employment with the appellant for over 36 years, without any demur as to his age entered in his 'Service and Leave Record', made an application to the appellant on 1.2.1989, at a time close to the date of his retirement, seeking correction of his date of birth as 7.7.1934 in his 'Service and Leave Record'. But, appellant- 1, which considered that application, by its letter dated 10.3.1989, informed respondent 1 that his age recorded in his 'Service and Leave Record' as per his own declaration and duly authenticated by him at the time of his appointment, since constituted the sole evidence of his age in all matters relating to his service, according to its Standing Orders, the same could not be corrected as sought for."*

In the said judgment, the Hon'ble Supreme Court of India has been pleased to observe as follows :-

"The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be necessarily regulated according to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employer the only way in which the employer, Government or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold inquiry into the matter by affording an opportunity to the employee concerned to have his say in the matter."

"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 for 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."

I have no hesitation to mention here that the observation / decision of the Hon'ble Supreme Court of India in the above cited judgment does not favour the case of the OP/Company but the observation of the Hon'ble Supreme Court of India in the above two paragraphs surely go against the case of the OP/Company.

After going through the decision of the Hon'ble Supreme Court of India in the matter of U.P. Madhyamik Shiksha Parishad and Others versus Rajkumar Agnihotri, reported in (2005) 11 Supreme Court Cases 465, it appears to me that the 'Civil Appeal' before the Hon'ble Supreme Court was originated from a 'Civil Suit' disposed of by the Court of Learned Civil Judge (Junior Division), Sitapur. In the present Civil Appeal No.2798 of 2005, disposed of by the Hon'ble Supreme Court of India, the Respondent Rajkumar Agnihotri was working as SDI in the Education Department and he was a Government servant. Being a government servant, there was 'Service Book' in respect of his service under the government. It is found that in the present judgment of the Hon'ble Supreme Court of India, a 'Notification' dated 28.05.1974 of the 'State of UP, Niyukti Vibhag Anubhag – 4' as well as U.P Recruitment to services (Determination of Date of Birth) Rules, 1974 were taken into consideration for discussion and making decision. In the aforementioned judgment of the Hon'ble Supreme Court of India, it has been echoed that entry made in the Service Book shall be deemed to be the correct date of birth. In my humble submission, the *ratio* of the judgment does not come to fortify the case of the OP/Company.

I have gone through the decision of the Hon'ble Supreme Court of India in the matter of **Hindustan Lever Ltd. versus S.M. Jadhav & Another**, reported in **(2001) 4 Supreme Court Cases 52**, a fact is narrated as follows :-

".....on 16th of November, 1981 there was a settlement between the management of M/s. Brooke Bond Lipton India Ltd. and the All India Brooke Bond Employees Federation. By this it was, inter alia, agreed that the age of the employees would be decided on the basis of the birth certificate and school or university certificate. It was agreed that in future no fresh cases would be brought up for consideration about the date of birth of an employee. The 1st Respondent raised no dispute in respect of his date of birth at this time."

According to the fact of the said case, the Respondent S.M. Jadhav was working with M/s. Brook Bond Lipton India Ltd. till his retirement and his 'service record', at all times, showed the date of birth as 12.06.1927. The Provident Fund Booklet showed his date of birth as 12.06.1927. The Annual Report published by the Company under Section 217 of the Companies Act showed his date of birth as 12.06.1927 but on receiving the notice dated 11.11.1986 sent to him intimating that his retirement was due on 01.04.1987, he by his Advocate's letter dated 14.11.1986 for the first time raised a contention that his date of birth was 29.08.1930. In the said matter the Hon'ble Supreme Court has been pleased to observe as follows :-

"It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. The case of the 1st Respondent that he had intimated the Company in 1953 itself is not believable. In the application, which had been filed by the 1st Respondent he himself had given his date of birth as 12th of June, 1927 and also mentioned that his age as 25 years. On the basis of this application and the Matriculation Certificate the Manager had issued a certificate. Thereafter his service

record, Provident Fund Booklet and even the Annual Reports contained the 1st Respondent's date of birth as 12th June, 1927. It is impossible to believe that for all these years the 1st Respondent was not aware of the date of birth in his service record or the Provident Fund Booklet. It is impossible to believe that he has not read a single Annual Report in all these years. If, as claimed by him, he had informed the Company in 1953, he would surely have made some enquiry whether the service record was corrected. This would have been done, if not earlier, at least at the time when the settlement took place between the Union and the Company. That was the time when other employees were getting their age corrected and therefore it is impossible to believe that the 1st Respondent would not have at that time ascertained what his date of birth was in the service record."

In my considered opinion, the case of the OP/Company is found as not relevant to get any support from the above cited judgment of the Hon'ble Supreme Court of India.

I have gone through the decision of the Hon'ble Supreme Court of India in the matter of State of Maharashtra and Another versus Gorakhnath Sitaram Kamble and Others, reported in (2010) 14 Supreme Court Cases 423. The fact of the said matter was Respondent No. 1 Gorakhnath Sitaram Kamble was appointed as Assistant Teacher on 13.02.1978. He filed a Secondary School Leaving Certificate indicating 02.06.1949 as proof of his date of birth. In the 'Service Record' also consequently the same date of birth was recorded. On 23.05.2004 the Respondent No.1 filed an application to the Education Officer (Primary), Zilla Parishad, District-Sangli complaining that though in the school leaving certificate his date of birth is 02.06.1949 whereas, in fact, the date of birth in the record of Tahsildar is 03.05.1951, so the date of birth be corrected in the 'Service Record' of the Respondent according to the record of the Tahsildar. Such application was rejected by the Block Education Officer on the ground that – *"the same is time barred and was not filed within five years from the date of joining i.e. 13.02.1978. He referred to Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions) Rules, 1981 (for short 'the Maharashtra Rules, 1981') and the notification issued by the State. Relevant rule reads as under :*

"38(2)(f): When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error."

After going through the entire above cited judgment, I am of the humble opinion that the observation made therein does not fortify the case of the OP/Company.

I have gone through the decision of the Hon'ble Supreme Court of India in the matter of State of Uttaranchal and Others versus Pitamber Dutt Semwal, reported in (2005) 11 Supreme Court Cases 477. In this matter the Respondent Pitamber Dutt Semwal was employed as Class IV employee by the Collector, Uttarkashi. In the Service Book his date of birth was recorded as 10.04.1936 but subsequently on receiving the notice of his retirement he claimed that his date of birth was 06.07.1942. In this matter also Rule 2 of the U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 was discussed likely in the case of U.P. Madhyamik Shiksha Parishad and Others versus Rajkumar Agnihotri, reported in (2005) 11 Supreme Court Cases 465. In my view this decision also does not come to help the case of the OP/Company.

I have gone through the decision of the Hon'ble Supreme Court of India reported in (2021) 12 Supreme Court Cases 27. In this judgment, the Hon'ble Supreme Court of India has been pleased to observe –

“The dispute is with respect to change of date of birth in the service record. The employees of the State Government for the determination of the age are governed by the Karnataka State Servant (Determination of Age) Act, 1974; Section 4 of the Act, 1974 provides for bar of alteration of age except under the Act, 1974; Section 5 of the Act, 1974 provides alteration of age or date of birth of State servants which provides that subject to Subsection (2), the State Government may, at any time, after an inquiry, alter the age and date of birth of a State servant as recorded or deemed to have been recorded in his service register or book or any other record of service. Subsection (2) of Section 5 further provides that no such alteration to the advantage of a State servant shall be made, unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of Act, 1974, whichever is later. Section 6 of the Act, 1974 further provides that no court shall have jurisdiction to settle, decide or deal with any question which is required to be decided under the Act, 1974. It also further provides that no decision under Act, 1974 shall be questioned in any court of law.”

After going through the above cited judgment, it is realized that the fact of this instant case does not find any consistency with the fact of the above cited matter of Karnataka Rural Infrastructure Development Ltd. vs. T.P. Nataraja and Others and the decision of the said matter does not come to help the case of the OP/Company.

I have gone through the decision of the Hon’ble Supreme Court of India in the matter of Union of India and Others versus Sarojbala (Mrs.) reported in (1996) 2 Supreme Court Cases 81. It is found that the decision of this matter has no relevancy and applicability in this present case.

I have gone through the decision of the Hon’ble Supreme Court of India reported in 2024 SCC Online SC 3038.

In my view, the Ld. Advocate for the OP/Company was not required to cite the above decision of the Hon’ble Supreme Court of India.

I have gone through the decision of the Hon’ble High Court at Calcutta in the matter in between National Textile Corporation (West Bengal A. Branch) Ltd. and Sudhanya Biswas, reported in 1996 (1) L.L.N. 376. In the said judgment the Hon’ble High Court, Calcutta has been pleased to observe – *“In the identity card or E.S.I. record no such procedure is there to find out and/or determine the date of birth and accordingly such recording of the date of birth is wholly irrelevant for the purpose of correction of the date of birth which could only be made on the basis of some cogent evidence and/or unimpeachable piece of evidence. The Provident Fund authorities were present in Court with record but we are not inclined to admit this piece of evidence even though that appears to be against the writ petitioner respondent, in view of the fact that recording of age by Provident Fund authorities may be relevant for the purpose of Provident Fund but the age recorded by the Provident Fund or E.S.I. authorities **cannot overwrite the age recorded in the service records.**”*

In this present case, we have already discussed that the OP/Company did not produce the ‘Service Record’ in the form of *Personal File / Office Records* in respect of the workman Baski Ram. In view of the discussion made in the above in the matter of withholding vital documentary evidence and the consequent adverse effect of non-production of vital documentary evidence u/s. 119(g) of the Bharatiya Sakshya Adhiniyam 2023 against the OP/Company, the above cited decision of the Hon’ble High Court, Calcutta does not lend any support to the case of the OP/Company.

In view of the above detailed discussion it is now evident that the instant application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is well maintainable.

Thus, the Issue No.1 is decided in affirmative in favour of the applicant/workman.

According to the fact of the case the service of the applicant/workman was made discontinued on and from 31.12.2020 under the disguise of superannuation / retirement assigning the reason that his year of birth was recorded as 1962, more specifically his date of birth was recorded as 15.07.1962. But from the above discussion it has become evident that the 'date of birth' of the workman was updated unilaterally by the OP/Company without giving any notice to the workman Baski Ram informing the necessity of updation of his date of birth / year of birth in the 'Record' of E.S.I.C. violating the rule of natural justice. By way of reasoned discussion, we have been able to come to the conclusion that year of birth of the workman Baski Ram was '1966' and according to his Birth Certificate (Exbt.-9) his date of birth is '30.04.1966'.

After going through the materials on record including the evidence on record, it is reasonably realized that in this matter the defense case of the OP/Company is like 'building castles in the air'.

In view of the discussion made in above there should not be any hesitation to hold that the termination of service of the applicant/workman Baski Ram by the OP/Company w.e.f. 31.12.2020 in the form of retirement treating his year of birth as 1962 instead of 1966 is not justified at all.

Thus, the Issue No.2 is decided in negative but in favour of the applicant/workman.

Issue No. 3 :

In view of the decision made in respect of the Issue No.2, it is now obvious that the retirement / superannuation given to the applicant/workman from his service by the OP/Company 'on the close of working hours of 31st December, 2020' was certainly premature and untimely. Since it has been decided and held that the actual year of birth of the applicant/workman Baski Ram is 1966 and more particularly, as his date of birth is 30.04.1966, he was supposed to get retirement / superannuation in the year 2024. Thus, the particular date of his retirement / superannuation was certainly 'on the close of working hours of 31st December, 2024' if the OP/Company would not give premature retirement / superannuation to him (Baski Ram). Here it is clarified that according to the case of the OP/Company the date of birth of the applicant/workman Baski Ram was updated to 15.07.1962 and considering such date of birth, the OP/Company put the date of his retirement / superannuation 'on the close of working hours of 31st December, 2020'. So, it seems that irrespective of the 'month' in the 'date - month - year' of the birth of the workman, the end point of the tenure of service of the workman was fixed on the last day of the month of a particular year i.e. 2020. Thus, applying the same logic, the actual date of retirement / superannuation of the workman Baski Ram was 'on the close of working hours of 31st December, 2024' So, we have got that the Management of the OP/Company by their unilateral and whimsical act deprived the applicant/workman to continue in his service under the Company for clear 4 (four) years i.e. 48 (forty-eight) months and consequently the applicant/workman has been deprived to earn his salary, allowances and other benefits from his employer i.e. M/s. Grasim Industries Ltd., Unit Jaya Shree Textiles for those 48 (forty-eight) months on and from 01.01.2021 to 31.12.2024.

In view of the above observation the applicant/workman is reinstated in his existing post as on 31.12.2020 till his retirement / superannuation 'on the close of working hours of 31st December, 2024' with full back wages for clear 48 (forty-eight) months and all other incidental or consequential benefits. The OP/Company shall pay the workman Baski Ram the salary of 48 (forty-eight) months i.e. from the month of January, 2021 to December, 2024 at the rate of his last drawn salary along with subsequent increment, if any, according to his entitlement and other benefits.

Thus, the Issue No.3 is disposed of accordingly.

Hence,

it is

ORDERED

that the termination of the applicant/workman Baski Ram from his service under M/s. Grasim Industries Ltd. Unit Jaya Shree Textiles in the form of retirement treating his year of birth as 1962 instead of 1966 is found as illegal and unjustified and thus he is reinstated to his existing post as on 31.12.2020 till his retirement / superannuation 'on the close of working hours of 31st December, 2024'.

Since the applicant/workman Baski Ram was given premature retirement / superannuation 'on the close of working hours of 31st December, 2020', he was made deprived to earn his salary, allowances and other benefits from the OP/Company as its workman, and so he is entitled to get full back wages for clear 48 (forty-eight) months and all other incidental or consequential benefits.

The OP/Company is directed to pay the workman Baski Ram the salary of 48 (forty-eight) months i.e. from the month of January, 2021 to December, 2024 at the rate of his last drawn salary along with subsequent increment, if any, according to his entitlement and other benefits.

This is the award of this Industrial Tribunal in this case.

In view of letter No. Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated and corrected
sd/-
Judge

sd/-
(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
20.06.2025

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

No. Labr/ 754 /(LC-IR)/ 22021/18/2019

Date : 02/07/2025

ORDER

WHEREAS an industrial dispute existed between M/s. Grasim Industries Ltd., Unit – Jaya Shree textiles, Village & P.O.-Pravasnagar, Rishra P.S. Serampore, District-Hooghly, West Bengal, PIN-712249 and their workman Sri Baski Ram, 0332 Jaya Shree Textile Teachers Line, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249. regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 3rd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 20.06.2025 in Case No. 08/2022u/s.10(1B(d) on the said Industrial Dispute Vide e-mail dated 26.06.2025 in compliance of section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e wblabour.gov.in

By order of the Governor,


Assistant Secretary

to the Government of West Bengal

No. Labr/ 754 /1(5)/(LC-IR)/ 22021/18/2019

Date: 02/07/2025

Copy forwarded for information and necessary action to :-

1. M/s. Grasim Industries Ltd., Unit – Jaya Shree textiles, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249.
2. Sri Baski Ram, 0332 Jaya Shree Textile Teachers Line, Village & P.O.-Pravasnagar, Rishra, P.S. Serampore, District-Hooghly, West Bengal, PIN-712249.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D & E.O Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.


Assistant Secretary

to the Government of West Bengal

No. Labr/ 754 /2(3)/(LC-IR)/ 22021/18/2019

Date: 02/07/2025

Copy forwarded for information to:

1. The Judge, 3rd Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to his e-mail dated 26.06.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

to the Government of West Bengal