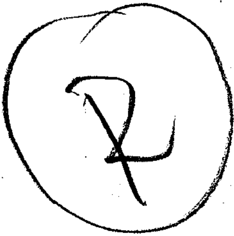


IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF AUGUST 2001

BEFORE

THE HON'BLE MR.JUSTICE N.KUMAR

WRIT PETITION No. 21998 OF 2001

BETWEEN

1 THE MYSORE SUGAR CO LTD
SUGAR TOWN, MANDYA-571 402
REP BY ITS CHIEF ADMINISTRATIVE
OFFICER

...PETITIONER

(By Sri B C PRABHAKAR)

AND

1 SRI MOHANRAJ
S/O SRI MUNISWAMY NAIDU
NO.G-1, SUGAR TOWN
MANDYA-571 402

...RESPONDENT

(By Sri D LELAKRISHANAN)

THIS W.P. FILED PRAYING TO QUASH THE AWARD DT. 14.9.2000 PASSED BY THE LABOUR COURT, MYSORE, IN I.D. NO.50/93.

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING :

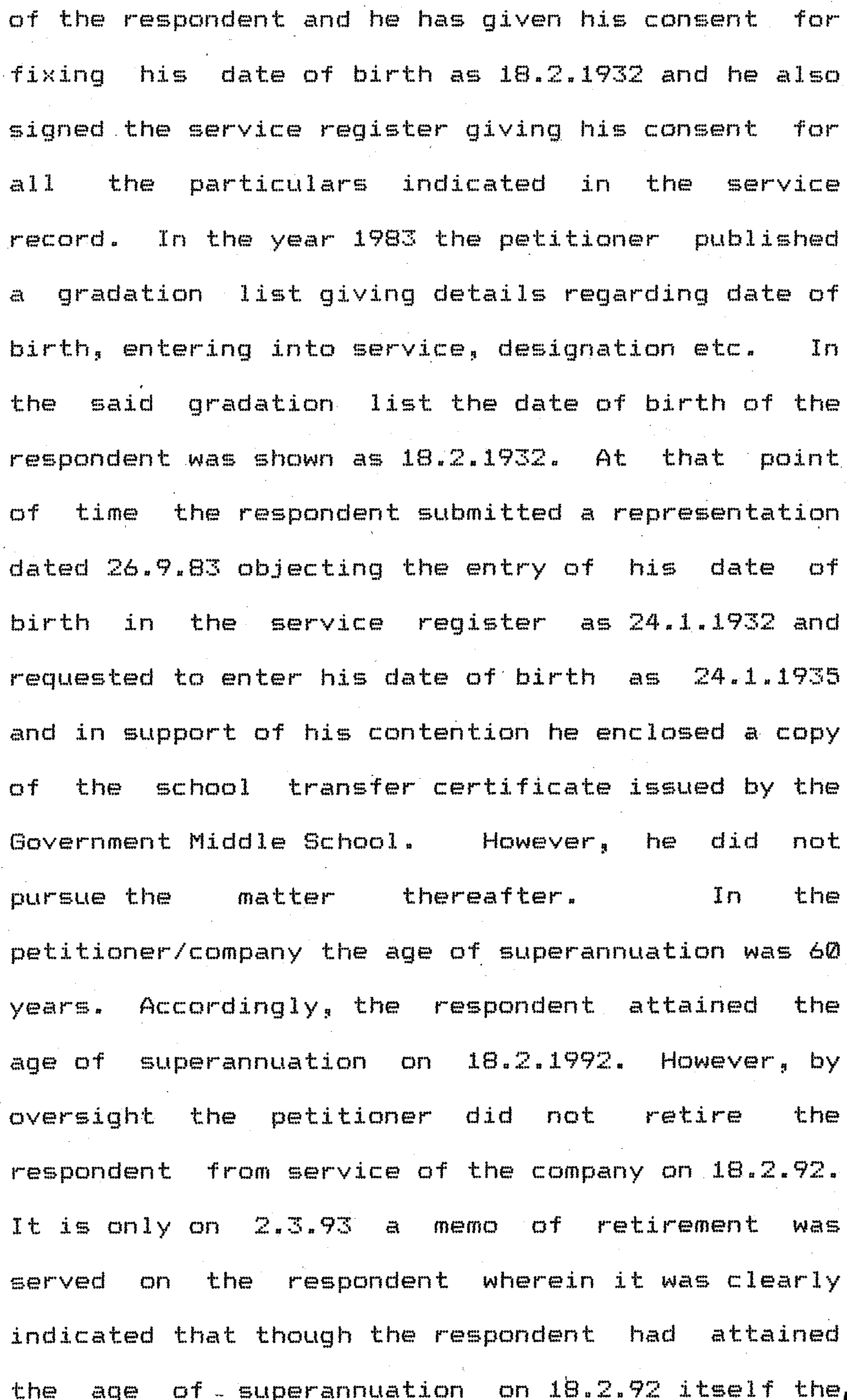
O R D E R

The petitioner/management has challenged in this writ petition the order of the labour court, Mysore, in I.D.No.50/93 holding that the

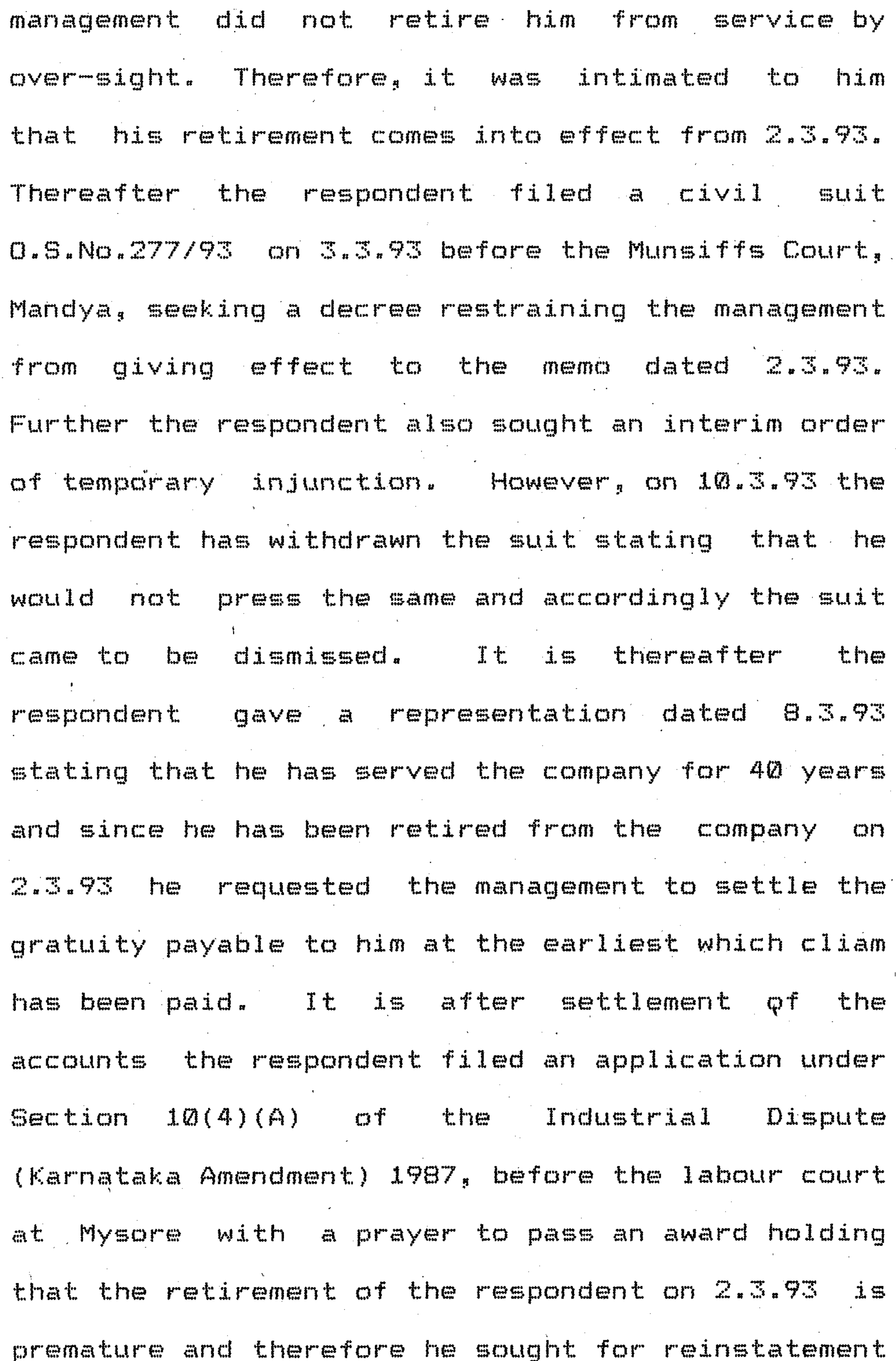
respondent/claimant is entitled to retire from service with effect from 24.1.95 and award of consequential benefits on the basis of the said date of retirement.

2. Brief facts of the case are as hereunder:

The petitioner is a company manufacturing sugar. The respondent was appointed as mason in the year 1951. While joining the company he did not furnish his date of birth. Subsequently, he was working in the company as a driver. As no documentary proof of date of birth was given by him to indicate his age, the petitioner constituted Medical Board for examining the respondent and similarly placed employees who have not given the date of birth or age at the time of entering into service. The respondent was called upon to appear before the Medical Board. The respondent appeared before the Medical Board. He was examined and the Medical Board gave its report stating that the age of the respondent as 30 years as on 18.2.1962. On the basis of the said report the age of the respondent was entered as 30 years in the service register. The said fact was brought to the notice

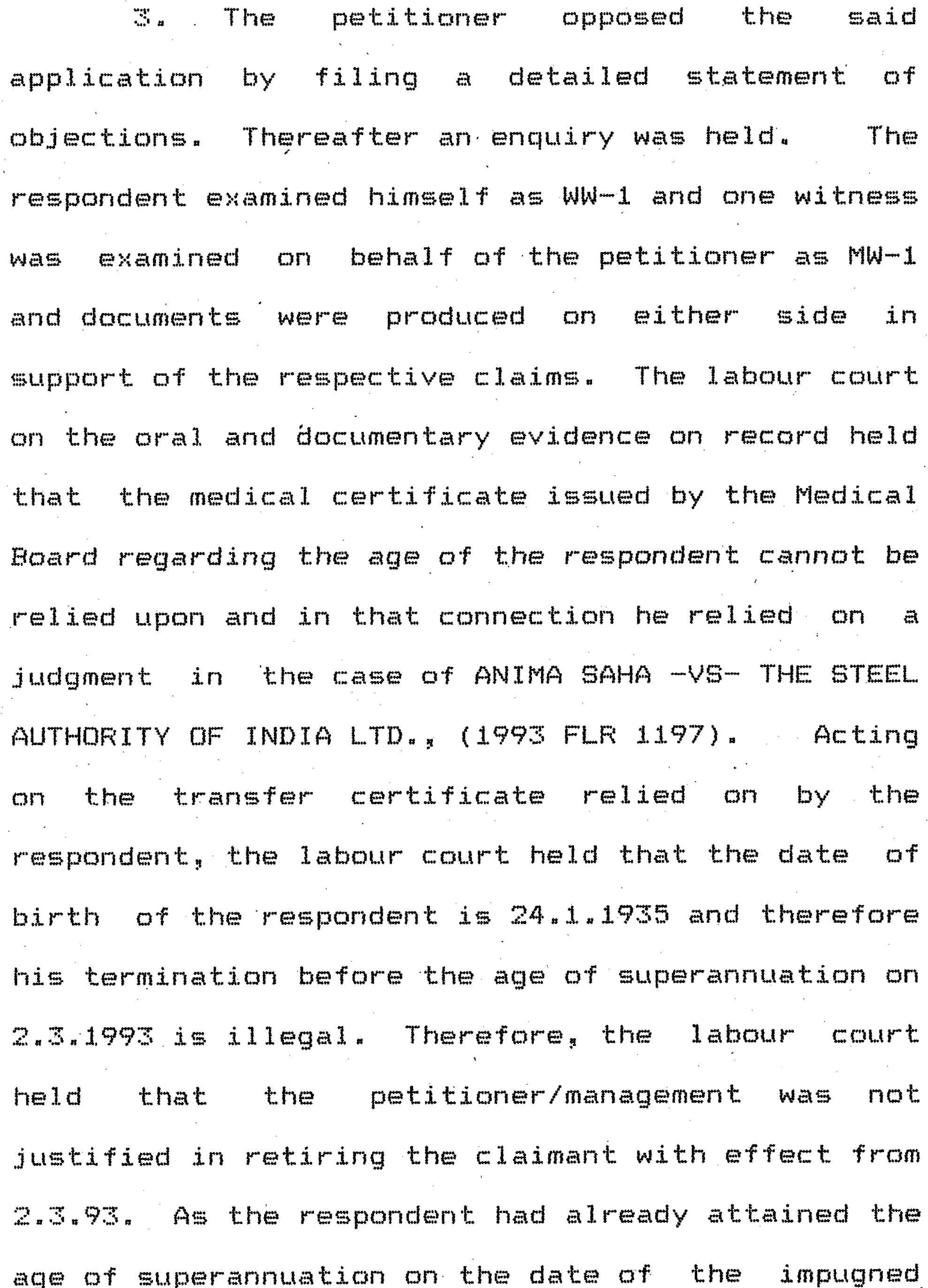


of the respondent and he has given his consent for fixing his date of birth as 18.2.1932 and he also signed the service register giving his consent for all the particulars indicated in the service record. In the year 1983 the petitioner published a gradation list giving details regarding date of birth, entering into service, designation etc. In the said gradation list the date of birth of the respondent was shown as 18.2.1932. At that point of time the respondent submitted a representation dated 26.9.83 objecting the entry of his date of birth in the service register as 24.1.1932 and requested to enter his date of birth as 24.1.1935 and in support of his contention he enclosed a copy of the school transfer certificate issued by the Government Middle School. However, he did not pursue the matter thereafter. In the petitioner/company the age of superannuation was 60 years. Accordingly, the respondent attained the age of superannuation on 18.2.1992. However, by oversight the petitioner did not retire the respondent from service of the company on 18.2.92. It is only on 2.3.93 a memo of retirement was served on the respondent wherein it was clearly indicated that though the respondent had attained the age of superannuation on 18.2.92 itself the



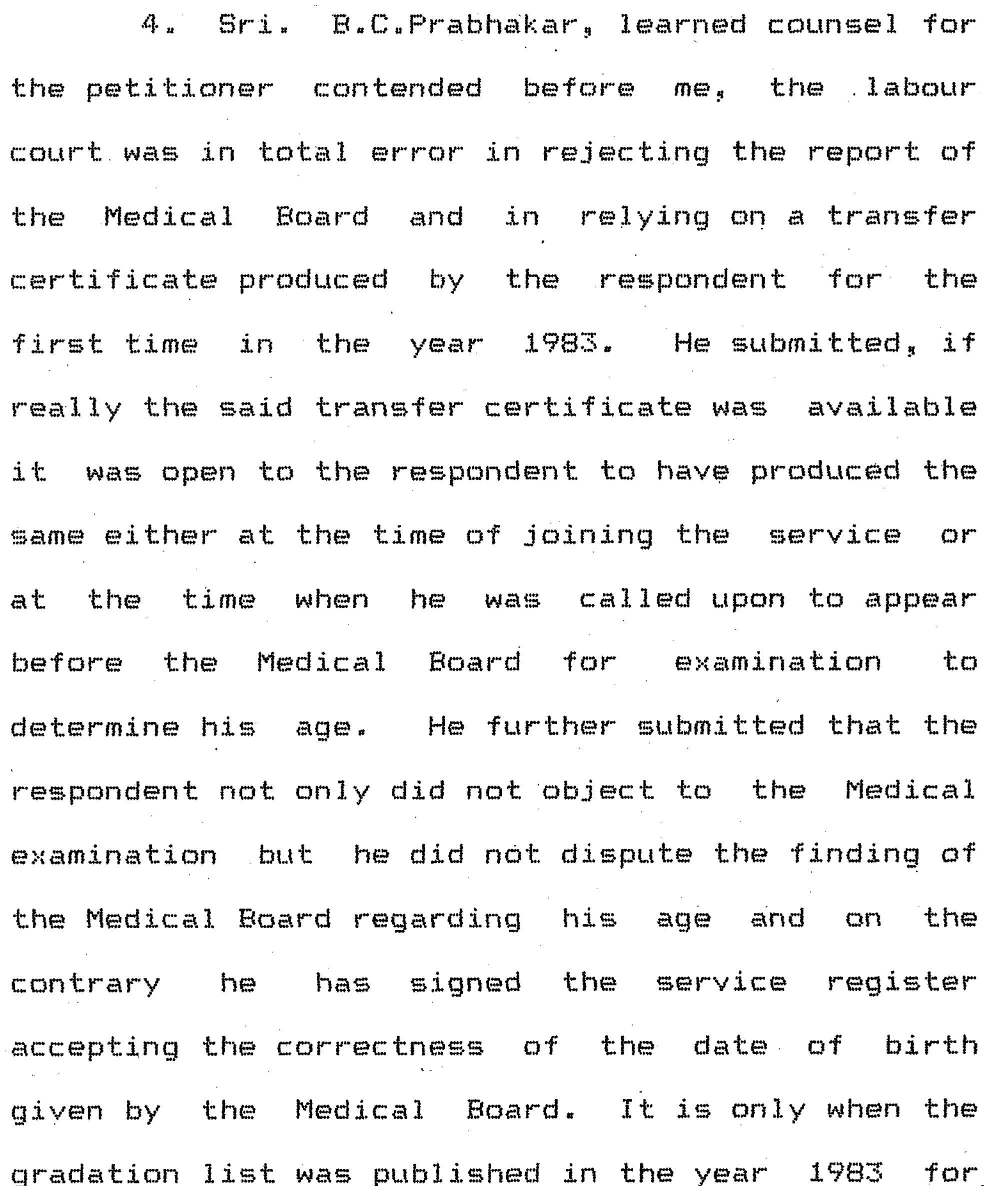
management did not retire him from service by over-sight. Therefore, it was intimated to him that his retirement comes into effect from 2.3.93. Thereafter the respondent filed a civil suit O.S.No.277/93 on 3.3.93 before the Munsiffs Court, Mandya, seeking a decree restraining the management from giving effect to the memo dated 2.3.93. Further the respondent also sought an interim order of temporary injunction. However, on 10.3.93 the respondent has withdrawn the suit stating that he would not press the same and accordingly the suit came to be dismissed. It is thereafter the respondent gave a representation dated 8.3.93 stating that he has served the company for 40 years and since he has been retired from the company on 2.3.93 he requested the management to settle the gratuity payable to him at the earliest which cliam has been paid. It is after settlement of the accounts the respondent filed an application under Section 10(4)(A) of the Industrial Dispute (Karnataka Amendment) 1987, before the labour court at Mysore with a prayer to pass an award holding that the retirement of the respondent on 2.3.93 is premature and therefore he sought for reinstatement

as driver retrospectively from 2.3.93 with continuity of service, full backwages and other consequential benefits.



3. The petitioner opposed the said application by filing a detailed statement of objections. Thereafter an enquiry was held. The respondent examined himself as WW-1 and one witness was examined on behalf of the petitioner as MW-1 and documents were produced on either side in support of the respective claims. The labour court on the oral and documentary evidence on record held that the medical certificate issued by the Medical Board regarding the age of the respondent cannot be relied upon and in that connection he relied on a judgment in the case of ANIMA SAHA -VS- THE STEEL AUTHORITY OF INDIA LTD., (1993 FLR 1197). Acting on the transfer certificate relied on by the respondent, the labour court held that the date of birth of the respondent is 24.1.1935 and therefore his termination before the age of superannuation on 2.3.1993 is illegal. Therefore, the labour court held that the petitioner/management was not justified in retiring the claimant with effect from 2.3.93. As the respondent had already attained the age of superannuation on the date of the impugned

award the labour court declined to grant the relief of reinstatement but held the respondent is entitled for backwages for the period from 2.3.93 to 24.1.95. It is against the said award of the labour court the management has preferred this writ petition.



4. Sri. B.C.Prabhakar, learned counsel for the petitioner contended before me, the labour court was in total error in rejecting the report of the Medical Board and in relying on a transfer certificate produced by the respondent for the first time in the year 1983. He submitted, if really the said transfer certificate was available it was open to the respondent to have produced the same either at the time of joining the service or at the time when he was called upon to appear before the Medical Board for examination to determine his age. He further submitted that the respondent not only did not object to the Medical examination but he did not dispute the finding of the Medical Board regarding his age and on the contrary he has signed the service register accepting the correctness of the date of birth given by the Medical Board. It is only when the gradation list was published in the year 1983 for

the first time, he raised the objection by filing a representation. However, he did not pursue the matter for nearly a period of ten years thereafter. It is only after the service of the order of termination on superannuation which was served on him he has raised the dispute disputing the age and date of birth. Therefore, he submits in view of the settled legal position the labour court committed serious error in ignoring the medical report and in acting on the transfer certificate which was produced for the first time in the year 1983 and therefore he submits the impugned award of the labour court is liable to be set aside.

5. Sri. Leelakrishnan, learned counsel for the respondent submitted, when there is documentary proof of age and date of birth the medical report would have no value. He further submitted before a medical report could be acted upon that report should be based on ossification test and also radiological examination and in the absence of such test being conducted the medical report of medical opinion has no value in the eye of law. He also submitted, as initially the petitioner was appointed in Sathanur Farm he was employed only at the age of 15 years and therefore the finding of

the Medical Board is incorrect and cannot be made basis for determining the date of birth of the respondent. When the labour court on proper appreciation of the oral and documentary evidence has recorded a finding that the medical report cannot be accepted, whereas the date of birth in the transfer certificate is acceptable, this court in its jurisdiction under Article 226 could not interfere with the said finding of fact and therefore he submits a case for interference is not made out.

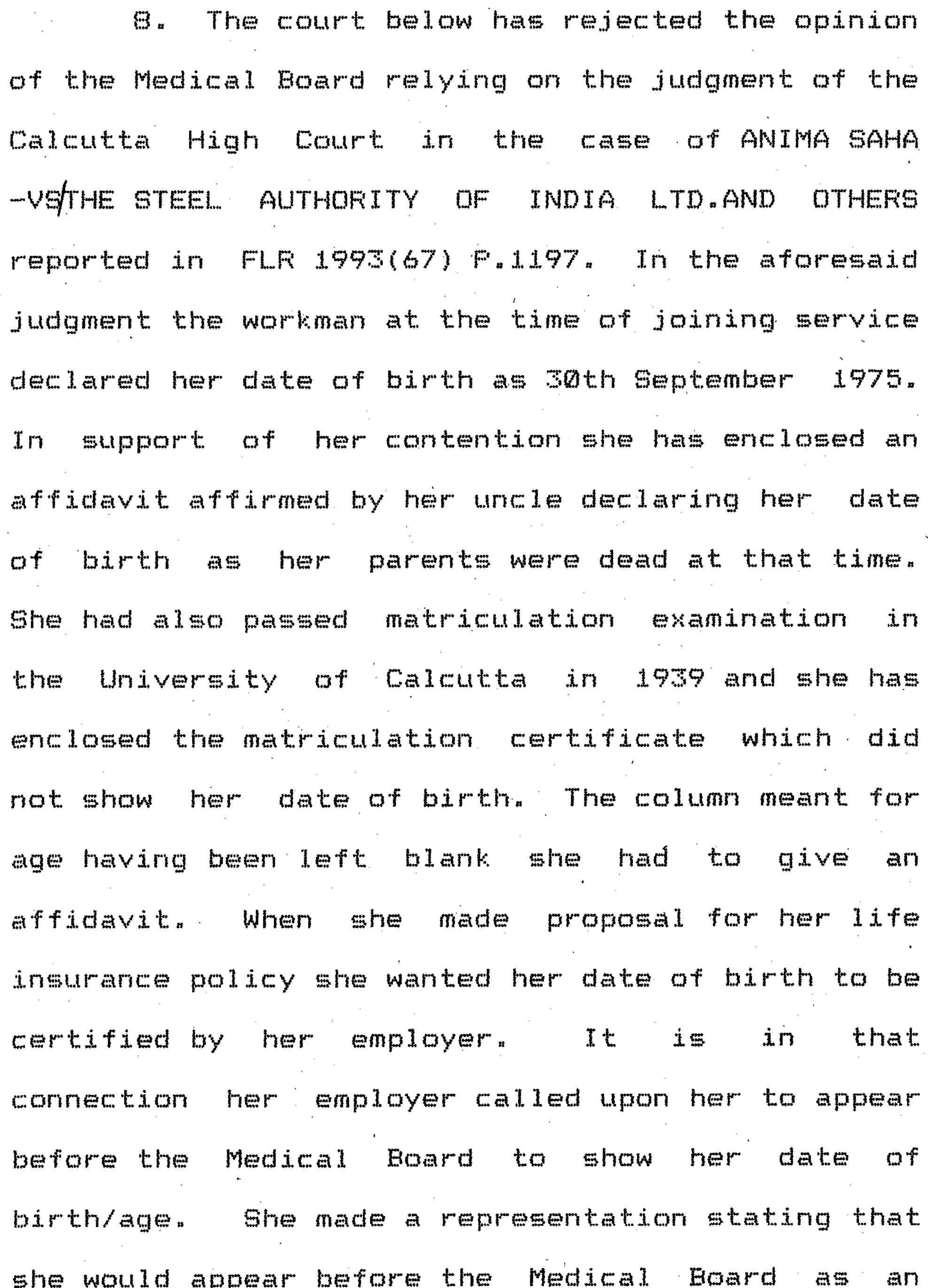
6. In view of the aforesaid facts and rival contentions, what emerges is this :

It is not in dispute that the respondent joined the service of the petitioner in the year 1951. At the time of joining the service he has not given his date of birth. No reasons are forthcoming for not giving his date of birth at the time of joining the service. If really he has studied in the school and he was in possession of a transfer certificate, no reasons are given for not producing the same before the management. It is only in the absence of proof of age of the respondent the petitioner has constituted a Medical

Board not only to examine the respondent, but to determine the age of the persons who are similarly placed as that of the respondent. Before the respondent was called upon to appear before the Medical Board it was made clear to him the reason why he has to appear before the Medical Board. If really, the respondent had no doubt about his date of birth and he has studied in the Government school and he was in possession of the transfer certificate which he now relies on, on the face of it appears to have been issued in the year 1956 six years prior to the date of the medical examination it was open to him to produce the said certificate and contend before the petitioner that there was no necessity for his examination to decide his pobable age. On the contrary he submitted himself for the medical examination and when it was made known to him that the probable date of birth of his is 18.2.1932 accepting the same he has signed his service register in token of acceptance of the said date of birth. Nearly 11 years thereafter he did not raise any objection to such entry being made in the service register. It is only in the year 1983 when the petitioner published a gradation list showing his date of birth as 18.2.1932, for the first time he raised his objections to the same by

submitting a representation and enclosing alongwith the representation the transfer certificate. However, thereafter he did not bother to find out what happened to his representation, whether the petitioner has accepted his objection and whether any corrections have been made in the service register. It is only on 2.3.1993 when he has been served with a communication informing him that as he superannuated on 29.2.92 itself he should have been retired, but by mistake he has been continuing in service, however, he is retired from service on 2.3.93, nearly one year after the actual age of superannuation, he made an unsuccessful attempt to challenge the entry of date of birth in the service register by filing a suit. Probably as no interim order was granted in the said suit he withdrew the suit, made a request to the petitioner to settle his gratuity amount and other service benefits and after collecting all the amounts he has raised the present industrial dispute contending that his date of birth is 18.2.1935 and not 18.2.1932.

7. Therefore, the only question that would arise for consideration is, in the light of the aforesaid facts, whether the labour court was



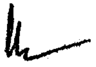
justified in accepting his contention that his date of birth is 18.2.35 and not 18.2.1932 as opined by the Medical Board.

8. The court below has rejected the opinion of the Medical Board relying on the judgment of the Calcutta High Court in the case of ANIMA SAHA -VS/THE STEEL AUTHORITY OF INDIA LTD.AND OTHERS reported in FLR 1993(67) P.1197. In the aforesaid judgment the workman at the time of joining service declared her date of birth as 30th September 1975. In support of her contention she has enclosed an affidavit affirmed by her uncle declaring her date of birth as her parents were dead at that time. She had also passed matriculation examination in the University of Calcutta in 1939 and she has enclosed the matriculation certificate which did not show her date of birth. The column meant for age having been left blank she had to give an affidavit. When she made proposal for her life insurance policy she wanted her date of birth to be certified by her employer. It is in that connection her employer called upon her to appear before the Medical Board to show her date of birth/age. She made a representation stating that she would appear before the Medical Board as an

obedient employee but any difference with or deviation from the date of birth declared by her and supported by affidavit would not be acceptable to her. The Medical Board on examination gave her age as 42 years 6 months on 3rd March 1977, accordingly her date of birth had been recorded as falling on 3rd September 1934 whereas she gave the date of birth as 30th September 1935, a difference of one year. It is in that context that her date of birth was altered according to the medical report. The question arose, how far the authority concerned would be justified in superseding the declaration of the petitioner about her age made at the time of her entry in the service, on the basis of medical report subsequently obtained. It is in that context it is held that without any fear of contraiction that the medical opinion about the age of a person, more so in the case of adults, can never be certain to the extent of telling the exact age of a person on a particular date. On the basis of physical features and factors such as teeth, height, weight etc., even if it is possible for medical experts to make an approximate assessment about the age of an adult, such assessment can never pronounce the exact age on any particular date. But it is generally accepted that a more

reliable assessment about age can be made by conducting ossification test. It is however the contention of the petitioner that in her case no ossification test was made. Therefore, having regard to the facts of that case, the court held that as the difference between the age opined by the medical assessment and the age declared by the petitioner and affirmed in the affidavit was only one year which falls within the range of the acknowledged possibility of variation of the age calibrated by medical opinion, the age declared by the medical board was not acceptable.

9. In the instant case the respondent has not given his date of birth at the time of joining service, he did not give his date of birth even at the time of medical examination. After medical examination he did not challenge the correctness of the same. On the contrary he accepted the correctness of the said report by signing the service register. Now the difference in age given by him and the medical board is roughly three years. Under these circumstances, the court below was in total error in wrongly applying the law laid



down in the aforesaid judgment to the facts of this case and rejecting the medical opinion given by the Medical Board.

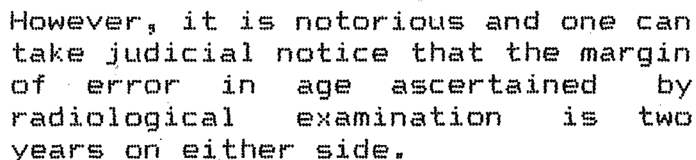
10. The learned counsel for the petitioner relied on a judgment of the Supreme Court in the case of BHARAT COKING COAL LTD. -VS- PRESIDING OFFICER AND ANOTHER (1996 I LLJ 453) where it has been held:

> The Industrial Tribunal was not justified in setting aside the medical opinion regarding the age of the workman determined by the Medical Board constituted by the Management. No objection was raised before the Tribunal regarding the competency of the doctors constituting the Medical Board. The medical examination of the Civil Surgeon could not be any different than that of the Medical Board constituted by the Management. The findings of the Tribunal was based on surmises and conjectures. In fact the workman did not challenge the opinion of the Medical Board constituted by the management, which determined the age of workman as 58 years and on that basis the workman was retained in service for 2 more years. Hence the dispute raised by the workman after retirement is unjustified.

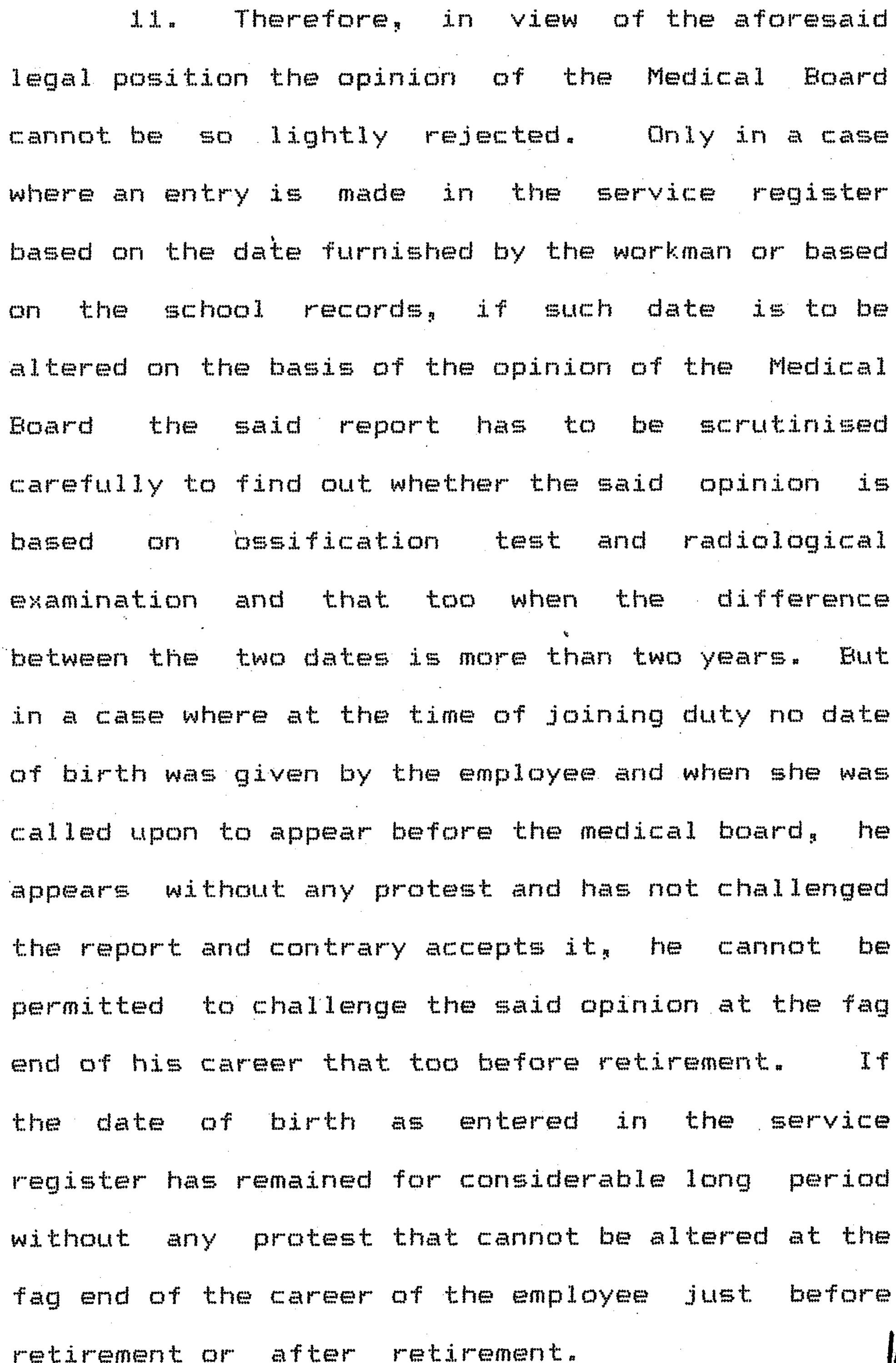
He also relied on the judgment of the Calcutta High Court in the case of FATEH ALAM KHAN -VS- TEA TRADING CORPORATION OF INDIA & OTHERS (1994 II LLJ 1175) wherein it has been held as under:

> The respondents acted upon the medical examination report for determining the age of the petitioner while the petitioner relied upon the purported School Leaving Certificate. It was incumbent upon the respondents to ascertain the date of birth of the petitioner for his service purposes and they preferred to act upon the medical examination report which was there in the record from the very time of joining of the petitioner in service. It cannot be said that respondents acted arbitrarily or malafide in determining the date of birth of the petitioner on the basis of the medical examination report. The materials on records are not of such clear nature as can lead the court to any clear conclusion that the purported School Leaving Certificate can be or ought to have been accepted as on unimpeachable piece of evidence on the point. It cannot be said that the respondents acted arbitrarily or malafide in refusing to act upon the School Leaving Certificate.

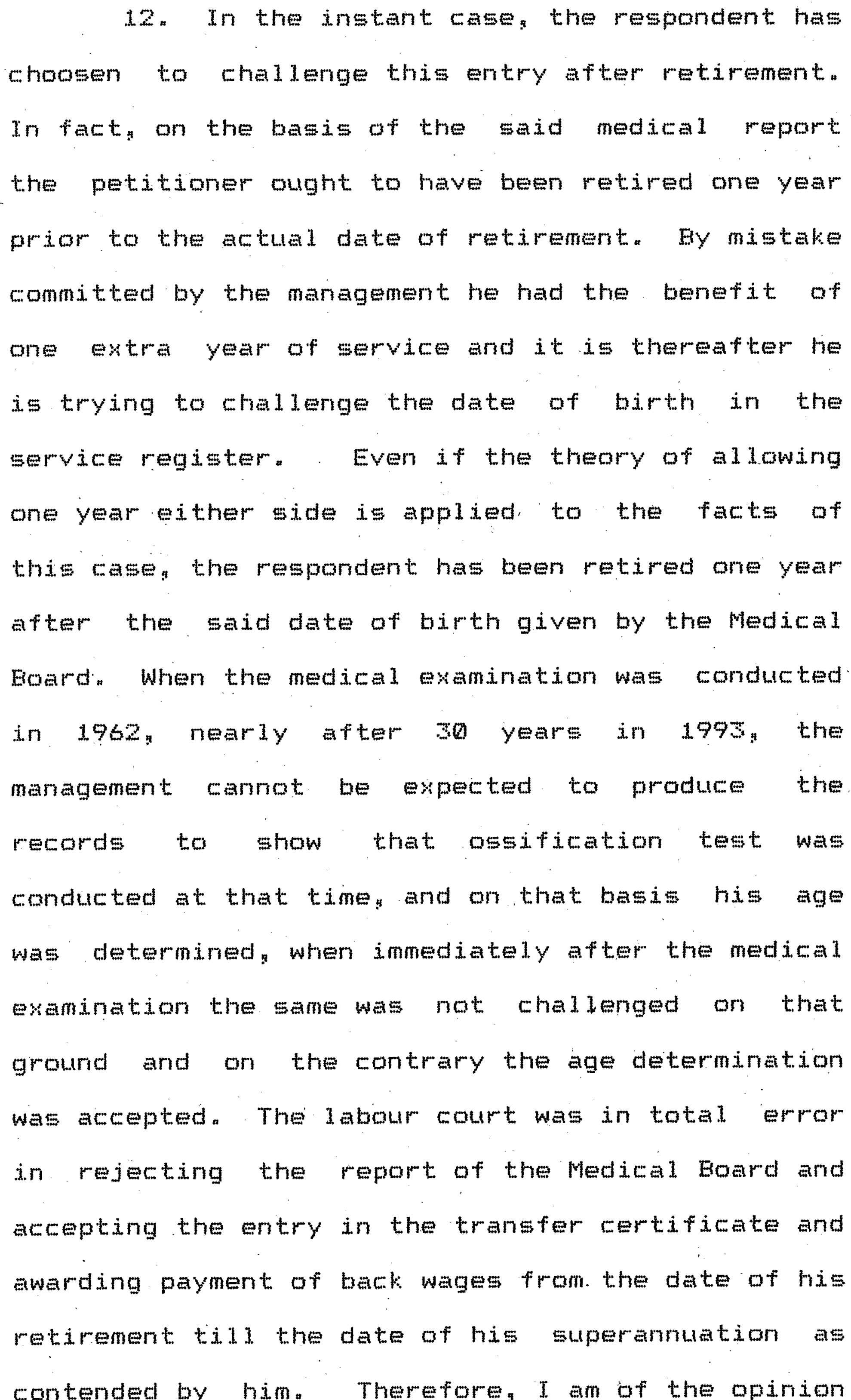
The Supreme Court in the case of JAYAMALA -VS- HOME SECRETARY, GOVERNMENT OF JAMMU AND KASHMIR AND OTHERS (AIR 1982 SUPREME COURT 1297) dealing with a medical report has held as under:



> However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.



11. Therefore, in view of the aforesaid legal position the opinion of the Medical Board cannot be so lightly rejected. Only in a case where an entry is made in the service register based on the date furnished by the workman or based on the school records, if such date is to be altered on the basis of the opinion of the Medical Board the said report has to be scrutinised carefully to find out whether the said opinion is based on ossification test and radiological examination and that too when the difference between the two dates is more than two years. But in a case where at the time of joining duty no date of birth was given by the employee and when she was called upon to appear before the medical board, he appears without any protest and has not challenged the report and contrary accepts it, he cannot be permitted to challenge the said opinion at the fag end of his career that too before retirement. If the date of birth as entered in the service register has remained for considerable long period without any protest that cannot be altered at the fag end of the career of the employee just before retirement or after retirement.



12. In the instant case, the respondent has choosen to challenge this entry after retirement. In fact, on the basis of the said medical report the petitioner ought to have been retired one year prior to the actual date of retirement. By mistake committed by the management he had the benefit of one extra year of service and it is thereafter he is trying to challenge the date of birth in the service register. Even if the theory of allowing one year either side is applied to the facts of this case, the respondent has been retired one year after the said date of birth given by the Medical Board. When the medical examination was conducted in 1962, nearly after 30 years in 1993, the management cannot be expected to produce the records to show that ossification test was conducted at that time, and on that basis his age was determined, when immediately after the medical examination the same was not challenged on that ground and on the contrary the age determination was accepted. The labour court was in total error in rejecting the report of the Medical Board and accepting the entry in the transfer certificate and awarding payment of back wages from the date of his retirement till the date of his superannuation as contended by him. Therefore, I am of the opinion

the impugned order passed by the labour court cannot be sustained and accordingly it is set aside. Hence I pass the following order.

Rule made absolute. Writ Petition is allowed. Parties to bear their own costs.

PR.

Sd/- JUDGE