
(2019) 06 GAU CK 0041

In the Gauhati High Court

Case No : Writ Petition (C) No. 383 Of 2015, MC 752 Of 2015

Assam State Fertilizer And Chemicals Ltd

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Evidence Act, 1872 — Section 58

Constitution Of India, 1950 — Article 226

Citation : (2019) 06 GAU CK 0041

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M Gogoi, B Das

Final Decision : Allowed

Judgement

1. The petitioner has made a challenge to the Award dated 10.11.2014 passed by the Labour Court, Guwahati in Case No. 2/2014, by which the Management (petitioner) has been directed to reinstate the Workman along with 60% back wages.

2. The entire controversy relates to the claim of the Workman that his date of birth was 31.10.1956, while the Management's service record of the Workman showed his date of birth to be 01.03.1953.

3. The petitioner's case is that the Workman/respondent No. 2 had initially joined a private Company namely, Associated Industries Assam Limited on 02.05.1969. The said Company was taken over by the Assam Industrial Development Corporation Limited (AIDC in short). On the Company being taken over by the AIDC, the Workman submitted certain documents as proof of his age, which showed that as on 01.03.1975, the petitioner's age was 22 years. Thus, as per the documents submitted by the Workman, which were, Attestation Form dated 01.03.1975, Form of Medical Certificate dated 01.03.1975 and Identity Certificate dated 01.03.1975, the Workman was 22 years in the year 1975.

Accordingly, his date of birth would be 01.03.1953 and the date of retirement of the workman being 60 years, the respondent's date of retirement would be 28.02.2013. The Workman was thereafter engaged in the petitioner's establishment with the same service records which included the above documents, as the petitioner was a subsidiary of AIDC Limited.

4. The petitioner's counsel submits that as the petitioner found that the Workman was still working beyond his date of retirement, i.e., 30.09.2013, he was released from service immediately vide letter dated 30.09.2013. The excess salary paid to the Workman was directed not to be recovered from the Workman.

5. The Workman being aggrieved at being released from service on 30.09.2013, the Workman approached the Labour Court at Guwahati with his grievance under Section 2A of the Industrial Disputes Act, 1947. The grievance of the Workman was that as per the Certificate dated 25.01.1969 issued by the Headmaster of Mayong Government Aided M.E School and Certificate dated 15.09.2009 issued by the Officer (Personal & Administration) of the Assam State Fertilizers and Chemicals Limited, the petitioner's date of birth was 31.10.1956. Accordingly, the Workman prayed for setting aside/withdrawal of the letter dated 30.09.2013, issued by the petitioner releasing the Workman from service.

6. The petitioner's counsel submits that the Labour Court, after giving an opportunity to the parties to submit their evidence, disposed of Case No. 2/2014 vide Award dated 10.11.2014, by holding that the date of birth of the Workman should be treated as 31.03.1956 and his date of superannuation should be taken as 31.10.2016. Accordingly, the petitioner was directed to reinstate the Workman along with 60% back wages.

7. The petitioner's counsel challenges the Award dated 10.11.2014, passed in Case No. 2/2014 on the ground that the learned Labour Court did not make any finding with respect to Exhibit M-1, M-2 and M-3, which were documents submitted by the Workman, at the time of entry into service in the AIDC. He submits that as per the Judgment of this Court and the Supreme Court in the case of Hindustan Lever Ltd. Vs. S.N. Jadhav & Anr., reported in (2001) 4 SCC 52 (ii) Mantasir Alilaskar Vs. Commissioner & Secretary, Govt. of Assam & Ors., reported in 2004 (2) GLT 336 (iii) Burn Standard Co. Ltd. & Ors. Vs. Dinabandhu Majumdar & Anr., reported in (1995) 4 SCC (iv) Binda Prasad Singh v. Presiding Officer, Labour Court, Dibrugarh & Anr, reported in 2004 (Supp) GLT 564, admitted documents need not be proved.

8. The petitioner's counsel relies upon the Judgment of the Apex Court in the case of Avtar Singh Vs. Gurdial Singh, reported in 2006 12 SCC 552 and Gannmani Anasuya Vs. Parvatini Amarendra Chowdhary, reported in 2007 10 SCC 296, to support his submission that correction of date of birth of an employee cannot be made at the fag end of his career.

9. The further ground of challenge is that the Labour Court had come to a decision in favor of the Workman on the basis of Exhibit-C, which is a Certificate

issued by the Headmaster of Mayong Government Aided M.E School, while at the time of entry into AIDC Ltd, the Workman had submitted an Identity Certificate issued by the Principal, Mayong Govt. Aided High School (Exhibit - M-2). The said Exhibit - C has also not been proved by the maker of the document, as he was not called to give evidence. Further, there is over writing on the date of Exhibit-C, inasmuch as, the date "25.1.1968" seems to have been over written to read as "25.1.1969".

Also, Exhibit-C was never a part of the service record of the petitioner Company. He submits that Exhibit-C came to see the light of the day, only during the pendency of Case No. 2/2014 in the Labour Court. The petitioner's counsel submits that Exhibit-D, which is a document allegedly made by the Officer working for the petitioner Company is not based on any service record.

10. The petitioner's counsel submits that a perusal of the impugned Award dated 10.11.2014 clearly shows that no finding was made on M-1 to M-3 and as the said documents are admitted even by the Workman, the Labour Court could not have turned a blind eye to the said admitted documents. He also submits that a reading of paragraph-11 of the impugned Award, whereby the Labour Court has held that the Workman appeared to be 22 years, on the basis of a medical examination held subsequent to the letter dated 10.10.2011, shows total non-application of mind, as the appearance of the Workman as 22 years is reflected in the Medical Certificate (Exhibit-M2) made on 01.03.1975. He also submits that the workman had given 3 copies of attestation form as well as the Certificate at the time of entry into the AIDC in 1975. However, there has been a correction in one of the attestation forms without there being any corresponding signature in the attestation form due to the correction made.

11. The petitioner thus prays that the impugned Award should be set aside and quashed as the decision made is based on a perverse finding of facts.

12. Mr. A. Dasgupta, senior counsel appearing for the Workman submits that Exhibit-D had been made by the Officer of the petitioner Company on the basis of the service records of the Company. Further, though the Workman took part in an ossification test before the State Medical Board, the report has not been furnished by the petitioner to the Tribunal or this Court till date. He also submits that as per the Judgment of the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, reported in 2010 3 SCC 192, a finding of fact recorded by the Tribunal cannot be challenged in a proceedings for a writ of certiorari, on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. Only an error of law, which is apparent on the face of the record, can be corrected by a writ.

13. The counsel for the Workman submits that in the examination-in-chief and cross examination of MW 1, the said witness has categorically mentioned that the age of the Workman has been recorded in his service book, as 22 years as on March 1975 and that the said service book has not been submitted. The senior

counsel submits that this admission made by MW 1 goes to show that the petitioner had made a service book. However, the same has not been produced by the petitioner till date. He also submits that as per the Certificate dated 15.09.2009 issued by Mr. J.C. Saikia, Officer (Pers. & Admn.), the date of birth of the Workman was 31.10.1956, as per his service record. The petitioner's officer having clearly admitted that the date of birth of the Workman was 31.10.1956, the petitioner could not take a different stand subsequently.

14. I have perused the records of the Labour Court. I have also noticed that Exhibit- M-1, M-2 and M-3 are the Attestation Form, Medical Certificate and Identity Certificate, which shows that the petitioner's age was 22 years at the time the said documents were signed, i.e., 01.03.1975. Exhibit - M-1 and M-2 have also been signed by the respondent. Exhibit - M-3 is the Identity Certificate, issued by the Headmaster, Mayong Government Aided High School. All the above 3 (three) documents are not denied by the respondents and they had been admitted and exhibited by the Labour Court.

15. The Labour Court has held in Para No. 11 that "the respondent had to go for Medical Examination vide letter dated 10.10.2011, issued by the Deputy Manager (P&A) but, the Medical Officer could not give conclusive report as regards the age of the respondent, but only mentioned that from the appearance of the workman he is 22 years. It is stunned to see despite having official record, i.e. service book, workman was sent for medical test in the year 2011." Para 14 of the Award says that the petitioner did not produce the Service Book.

The Labour Court seems to have erroneously placed reliance upon Exhibit - M-2 when it states that the Medical Officer mentioned the appearance of the Workman as 22 years. If the respondent had been sent for Medical Examination on 10.10.2011 and if his date of birth was 01.03.1953 or 31.10.1956, then the respondent could not have been less than 50 years of age and could not have had the appearance of a 22 year old in October, 2011. Exhibit - M-2, which is the Medical Certificate, issued on 01.03.1975, states as follows:

"Shri. Ananda Ram Saikia's age is according to his own statement 22 years and by appearance about 22 years."

The Labour Court has not made any mention or taken into consideration the Medical Certificate dated 01.03.1975, reproduced above.

16. Exhibit M-3 is the Identity Certificate, issued by the Headmaster of Mayong Government Aided High School on 01.03.1975, which shows that he has known the respondent for the last 22 years. Exhibit - C on the other hand is the Certificate issued by the Headmaster of Mayong Government Aided M.E School, issued on 25.01.1968/1969, which shows that the Workman left the School on 31.12.1968 and that he was 12 years 2 months at the time of leaving the School. There is nothing in the evidence to show that the Workman had studied in both the Mayong Govt. Aided High School and Mayong Govt. Aided M.E School. Further, Exhibit - M-3 had been submitted by the Workman at the time the

Workman worked under the AIDC. There is discrepancy in the age of the Workman, that is palpable from the above 2 documents. While Exhibit - M-3 was admitted and not denied by the Workman, the learned Labour Court has however placed reliance upon the Certificate issued by the Mayong Govt. Aided M.E School, to come to a finding that the Workman was born in the year 1956.

17. The learned Labour Court has also relied upon Exhibit-C to come to a finding that the Workman's date of birth was 31.10.1956 by disregarding the contents of Exhibit - M-3. The learned Labour Court has come to a finding that the age of the Workman, when he joined AIA Company on 02.05.1969 was not relevant as the situation was also different. This finding of the learned Labour Court is totally perverse, as the age of the Workman at the time when he joined the AIA Company would surely be important to determine the date of birth of the Workman. Assuming that the Workman's date of birth was 31.10.1956, the Workman would have been 12 years of age at the time he joined the AIA Company on 02.05.1969. The above would surely be an illegal appointment and in all probability, the Workman would not have been employed in the AIA Company when he was only 12 years of age. Thus, this Court finds that the observation made by the learned Labour Court that the age of the Workman when he joined the AIA Company in 02.05.1969 is not relevant is perverse. The age of the Workman at the time of joining AIA Company on 02.05.1969 is very relevant to determine the date of birth of the Workman.

18. In the case of Avtar Singh And Others v. Gurdial Singh And Others, reported in 2006 12 SCC 552, the Apex Court has held at Para 9 as follows;

"9. Section 58 of the Evidence Act postulates that things admitted need not be proved."

When Exhibit - M-1, M-2 and M-3 are admitted documents, the learned Labour Court was to have made a finding on them. However, the same was not done.

19. In the case of Seema Ghosh v. Tata Iron & Steel Co., reported in 2006 7 SCC 722, the Apex Court has held at Para 30 as follows:

"30. The High Court has not given any undue credence to the evidence of the management or wrongly relied upon the one-sided testimony of the Management as alleged by the appellant. We have already noticed that the findings arrived at by the Labour Court are nothing but perverse against the facts and passed the award in favour of the workman on totally misplaced sympathy. In our opinion, both the learned Single Judge and of the Division Bench are right and within their jurisdiction in reassessing and revaluing the weight of the evidence in the case recorded by the Labour Court by which the High Court came to the conclusion that the workman was not entitled to any relief. When the judgment of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same."

In the case of *Devinder Singh v. Municipal Council, Sanaur*, reported in 2011 6 SCC 584, and in the case of *Harjinder Singh (Supra)*, the Apex Court has cited the case of *Syed Yakoob v. K.S Radhakrishnan*, reported in AIR 1964 SC 477, which is to the effect that findings of fact reached by an inferior Court or a Tribunal as a result of appreciation of evidence cannot be reopened or questioned in a writ proceeding. It also held that an error of law, which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be. However, it was also held as follows:

"Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law, which can be corrected by a writ of certiorari."

In the case of *Sawarn Singh v. State of Punjab*, reported in 1976 2 SCC 868, the Apex Court has held at para 13 as follows:

"13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

The judgments of the Apex Court cited above clearly show that the findings reached by the Tribunal as a result of appreciation of evidence cannot be reopened or questioned in a Writ proceeding. However, if a finding of fact is based on no evidence or not supported by evidence, the same would be regarded as an error of law and the perverse finding can be corrected by a Writ certiorari. On considering the above facts, this Court finds it difficult to understand as to how the learned Labour Court could have ignored admitted facts and documents, i.e., Exhibit - M-1, M-2 & M-3, while deciding the issue of the correct date of birth of the Workman.

20. In the present case, this Court finds that the learned Labour Court did not make any finding with regard to Exhibits - M-1, M-2 and M-3, which were admitted by the Workman and exhibited during evidence. Further, the learned Labour Court has totally ignored the date of birth of the Workman when he joined the AIA Company on 02.05.1969. If the Workman was born on 31.10.1956 and he joined the AIA Company on 02.05.1969, the Workman would have been only 12 years of age. This fact, clearly belies the claim of the Workman that he was born on 31.10.1956.

21. It is settled law that an employee cannot raise a dispute regarding his date of birth at the fag end of his career as has been held by the Apex Court in the case of *Hindustan Lever Ltd. v. S.M. Jadhav & Another*, reported in 2001 4 SCC 52 and by this Court in the case of *Mantasir Alilaskar v. Commissioner & Secretary, Govt.*

of Assam & Others, reported in 2004 2 GLT 336. In Mantasir Alilaskar (Supra), this Court has held that when a person obtains employment on the basis of a declaration made by him including the declaration relating to his date of birth and he remains silent over the years after getting the employment, he cannot make a grievance relating to the alleged wrong recording of his date of birth at the fag end of his career.

22. With regard to the Certificate dated 15.09.2009, issued by one Mr. J.C. Saikia, Officer (Pers & Adm), which is the effect that the date of birth of the Workman was 31.10.1956, as per his Service Book. It is seen that the said Mr. J.C. Saikia did not give any evidence in the Court to prove the Certificate dated 15.09.2009. The only Service Book of the Workman that has been produced is the file containing Exhibits - M-1, M-2, M-3 etc., which had been submitted by the Workman at the time the AIA Company had been taken over by the AIDC. The same shows that the Workman's date of birth was 01.03.1953.

23. In view of the reasons stated above, this Court finds that the learned Labour Court has come to a finding by totally ignoring admissible evidence and the fact that the Workman would have been only 12 years old at the time he joined AIA Company, if his date of birth was to be accepted as 31.10.1956. This Court accordingly finds that the perverse finding made by the learned Labour Court amounts to an error of law, which has to be set aside in this writ petition. Accordingly, in view of the reasons stated above, the impugned Award dated 10.11.2014, passed by the learned Labour Court, Guwahati in Case No. 2/2014 is hereby set aside.

The writ petition is accordingly allowed.

Send back the LCR.