
(1995) 02 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 630 of 1995

Bennett Coleman and Company Limited	APPELLANT
Vs	
Durga Prasad Dube and another	RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Citation : (1995) 02 BOM CK 0076

Hon'ble Judges : K.G. Shah, J

Bench : Single Bench

Judgement

1. I have heard Mr. Dharmadhikari, learned Advocate for the Petitioners and Mr. Ganguli, learned Advocate for Respondent No. 1 at length. I am convinced that this writ petition should succeed and the impugned order passed by the Presiding Officer, 9th Labour Court, Bombay respondent No. 2 here in dated September 3, 1994 in Reference (IDA) No. 53 of 1989 be set aside.

2. The facts of the case in brief may be stated as follows :

The Respondent joined the service of the Petitioner on May 31, 1950 as Mono Operator. Some time after the Respondent joined the service, the Petitioner called upon him to furnish information for preparation of his history sheet. On the basis of the information supplied by the respondent, the Petitioner prepared the history sheet of the Respondent. In that history sheet the year of birth of the Respondent was shown to be 1926.

3. On January 5, 1971 the Respondent submitted a form for being a member of the provident fund benefits and in that form the year of birth of the Respondent was shown to be 1926. That form was signed by the Respondent.

4. On May 28, 1979 the respondent wrote to the Petitioner that the year of his birth in the service record of the Petitioner was not correct and that his correct date of birth was February 3, 1930 and the Respondent requested the Petitioner to make necessary correction in the service records as regards his date of birth.

That letter of the Respondent was not accompanied by any proof about his birth date. It appears that there was some correspondence between the parties thereafter, and on August 2, 1983 the Respondent again wrote to the Petitioner reiterating the stand that his date of birth was February 3, 1930 and along with that letter he sent to the Petitioner three documents, viz. a xerox copy of the school leaving certificate a panchayat certificate and an entry from family register. All these three documents mentioned the Respondent's date of birth to be February 3, 1930. The xerox copy of the school leaving certificate sent by the Respondent to the Petitioner as aforesaid purported to have been issued by the school authorities on July 8, 1945. On August 25, 1983 the Petitioner wrote to the Respondent that the Respondent was serving with the petitioner since May 31, 1950 at which time his year of birth was recorded in the Petitioner's records as 1926 and that at the time of the employment, the Respondent has filled in the history sheet signed by him mentioning therein his year of birth to be 1926. However he had not given any proof/certificate about the date of his birth. In this letter, the Petitioner also wrote to the Respondent that even on January 5, 1971 when the Respondent filled in the declaration and the provident fund nomination, he mentioned his year of birth to be 1926. In this letter, the Petitioner further stated that the respondent along with his application dated August 2, 1983 submitted a xerox copy of the school leaving certificate from J. H. School, Gorakhpur, U. P. dated July 8, 1945 and had requested to change his date of birth from 1926 to February 3, 1930 and, that, the Respondent had done, 33 years after entering the service. The Petitioner in this letter stated that after having gone through the certificate submitted by the Respondent they doubted the genuineness of that certificate on several reasons. The Petitioner expressed their inability to consider the request of the Respondent for change of date of birth.

5. On October 1, 1986 the Petitioner wrote to the Respondent that he would retire on superannuation w.e.f. January 1, 1987 on completion of 60 years. On October 3, 1986 the Petitioner once again wrote a letter to the Respondent firstly reiterating therein what the Petitioner had stated to the Respondent by its earlier letter dated August 25, 1983 and then further stating that on receipt of the representation of the Respondent the documents produced by the Respondent were shown to the Respondent in the presence of the Core Committee members of Mumbai Mazdoor Sabha and on inquiries made by the Core Committee members the Respondent had accepted that had signed the history sheet at the time of his employment wherein his year of birth was mentioned as 1926, In this letter dated October 3, 1986 the Petitioner further stated to the Respondent that the school leaving certificate relied upon by the Respondent was alleged to be on the letter head proforma bearing the name of the school and that, that certificate was issued in 1945 and yet it was submitted to the Petitioner for the first time only in 1983 i.e. to say about 38 years after its issuance and 33 years after the Respondent joined the service. It was also pointed out in that letter that the ink on the certificate appeared to be fresh though the certificate purported to have

been issued way back in 1945. It was also indicated that at several places in the certificate there were overwritings. At some other places the certificate was torn and it was pasted by means of a cello tape on which also there were overwritings. It was also highlighted that the signature of the head master was not clear and there was overwriting on the date of the issue of the certificate.

With these statements, the Petitioner in that letter dated October 3, 1986 expressed their inability to accept the Respondent's request for the change of his date of birth based on that certificate.

6. On November 20, 1987 the Respondent wrote to the Petitioner inter alia that he was no longer desirous of coming back to work. However in that letter he sought that he be paid emoluments for four years or the monthly payment to enable him to maintain himself along with his family and ex-gratia amount as the Petitioner may deem fit be also paid.

7. The request of the Respondent to change his date of birth having been turned down by the Petitioner, the Respondent raised an industrial dispute. The conciliation attempt failed, therefore the matter was ultimately referred to the Labour as Court. The Labour Court accepted the Respondent's case and ultimately passed the impugned Award by which that Court his while partly allowing the reference declared that the termination of the service of the Respondent w.e.f. January 1, 1987 was illegal and unjustified. The Labour Court directed the Petitioner to pay full backwages with full other consequential benefits to the Respondent from January 1, 1987 to February 2, 1990, the date on which, according to the Labour Court, the Respondent completed 60 years of his age.

8. The Petitioner has challenged the aforesaid Award of the Labour Court by this writ petition.

9. The parameters of the Court's jurisdiction while dealing with a matter like this are now not res integra. By a catena of judgments, the Apex Court has laid down the principles which should govern such cases. To begin with, in *Union of India Vs. Harnam Singh*, . Their Lordships of the Supreme Court were dealing with the case of a peon, a Class IV employee, who entered the Government service on February 22, 1956 and at that time upon the material supplied by him, his service record was constituted wherein his date of birth was shown to be May 20, 1934. Thereafter that peon passed the matriculation examination in 1956 while he was in service. He was thereupon promoted from the post of Peon to the post of Lower Division Clerk in 1957, thereafter on the strength of his matriculation certificate which showed his date of birth to be April 7, 1938 he applied to the Government to change his educational qualifications in his service book and other service record. However at that time he made no attempt to have his birth date in his service record altered so as to be in conformity with the one stated in the matriculation certificate, viz. April 7, 1938. Thereafter successive seniority lists of the Lower Division Clerks and Upper Division Clerks were published

wherein, in the case of that employee, his date of birth was shown to be May 20, 1934, and all those seniority lists came to be signed by that employee from time to time. Around 1991 or so the Government informed that employee that he would retire on superannuation on May 31, 1992 and thereupon for the first time he made a representation for alteration of his date of birth on the basis of matriculation certificate wherein his date of birth was stated to be April 7, 1938. The representation and request of the employee was turned down by the Government. That employee therefore moved the Central Administrative Tribunal for a relief in the shape of a direction to the Government for rectification of his date of birth in his service record. The Central Administrative Tribunal granted that request. The Union Government carried the matter to the Supreme Court. Their Lordships of the Supreme Court in that connection held as follows : at P. 324

"The application for correction of date of birth, entered in the service-book in 1956, for the first time made in September 1991, was hopelessly belated. It had not been made even within the period of five years from the date of coming into force of Note 5 to FR 56(m) in 1979. His inaction for all this period of about thirty-five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth."

In that case Their Lordships posited as follows : at P. 320 - 321

"It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals."

Their Lordships have further posited in that judgment as under : at P. 321

"A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore cannot claim, as a matter of right, the correction of date of his birth even if he good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or tribunals cannot conic to the aid of those who sleep over their rights and allow the period of limitation to expire".

10. The aforesaid judgment clearly lays down that even if there is no rule prescribing a period of limitation within which the employee has to make an application for rectification of his date of birth entered in his service record, he has to make such an application or representation without any unreasonable delay otherwise his representation is liable to be rejected on the general

principles of Teaches and stale claims even if he has good evidence in support of his contention that his date of birth earlier recorded in the service record is clearly erroneous. This judgment also posits that the request for the rectification of the date of birth as recorded in the service record, if it is made belatedly, such a request is liable to be turned down.

11. In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, , once again Their Lordships of the Supreme Court were concerned with a similar case and in that case also Their Lordships have enunciated as follows.

"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature is made out the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim of correction of date of birth has been made in accordance with the procedures prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books."

In the said judgment, Their Lordships of the Supreme Court also held as under :
at P. 676

"If the date of birth of a public servant, is corrected only on basis of a report submitted by a Revenue Officer after holding an enquiry, it will introduce uncertainty, in public services. Correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect."

It is also held in the said judgment as under at P. 676

"If an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned for his appointment. As such

whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of growing tendency amongst a section of public servants to raise such a dispute, without explaining as to why this question was not raised earlier."

This judgment again clearly lays down that a request for the rectification or alteration in the date of birth as entered in the service record of an employee should not be entertained, unless a clear case on the basis of material, which can be held to be conclusive in nature, is made out. Such a request should not be entertained merely because the employee concerned produces material which could make his claim only to be plausible. When such a case goes to the Court, the Court must be fully satisfied that the material produced by the concerned employee is of a conclusive nature, or to put it differently is irrefutable, from which the only irresistible conclusion to follow is that the date of birth as entered in the service record has wrongly been entered. Even at the cost of repetition, I would again recall the Harnam Singh's case (supra) where it has been said that merely because the evidence produced by the applicant is good evidence, that would not be sufficient. Going by the case of R. Kirubakaran, it has got to be said that merely because the evidence produced by the concerned employee makes his case plausible, that also would not be sufficient. In R. Kirubakaran's case (supra) the same principle as laid down in Harnam Singh's case (supra), has been reiterated, viz. that applications of such a nature, made extremely belatedly on the eve of retirement or near about the period of retirement should not be entertained in a casual manner for as noticed by the Supreme Court a tendency has grown in certain sections of public servants to make such applications only some time prior to the retirement with a view to gaining some more years in service even beyond the legitimate date of superannuation. In R. Kirubakaran's case (supra) it has clearly been held that in such cases the onus is upon the employee concerned to prove that his date of birth as recorded in the service record is wrong and that he could do so only by producing irrefutable evidence or conclusive evidence in support of his case. The evidence produced, if it is only good evidence or evidence which can make his case plausible, would not help him. In R. Kirubakaran's case (supra), the employee concerned had based his claim upon a report submitted by the Revenue Officer after holding a certain inquiry and the report went to show that the date of birth of the concerned employee was later than what was recorded in his service record. Even so Their Lordships of the Supreme Court said that the employee concerned could not succeed on such evidence.

12. In *State of Tamil Nadu v. T. V. Venugopalan*, 1994 Lic 2498, Their Lordships of the Supreme Court have held as under :

"Where the Government servant made an application for correction of date of birth exactly one year before his superannuation, inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The

Government servant having declared that his date of birth as entered in the service register to be correct would not be permitted at the fag end of his service career to raise a dispute as regard the correctness of the entries in the service register. It is common phenomena that just before superannuation an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or Courts are unfortunately unduly liberal in entertaining and allowing the Government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds or technicalities, question them and remain in office till the period claimed for gets expired".

13. There are many other judgments on this line, but I do not think that in view of the aforesaid three judgments referred to by me, it is at all necessary, for me to have the resume of the entire booty of the judgments rendered the Supreme Court on the point. The three judgments referred to by me above first clearly lay down that the application for correction of the date of birth, if it is belatedly made and no explanation for the delay is given, that itself would be a ground for rightly turning down that request. The judgments lay down that even if the request is made within the period prescribed by the rule, if there by any, or even if the application is made within a reasonable time of the entering into service, in absence of rule prescribing the period of limitation, the request cannot be rightly and casually granted merely on some good evidence or merely on evidence which would make the claim of the employee only plausible. What is required to be produced and proved by the employee concerned (and the burden is upon the employee) is irrefutable evidence or conclusive evidence or unimpeachable evidence from which the only irresistible conclusion could be that the date of birth of the employee as earlier entered in in the service record is clearly wrong and that the correct date of birth of the employee is as canvassed by the employee in his application.

14. It is from the above legal perspective that I have to examine the case before me.

15. The Respondent joined the service of the Petitioner on May, 31, 1950. At that time he was called upon to furnish certain particulars, on the basis of which his history sheet was prepared. On the information supplied by him, though of course no exact date of his birth was made known to the Petitioner, the year of birth was made known and that was 1926. In the history sheet the year of birth of the Respondent was entered as 1926. That history sheet has been signed by die Respondent. Thereafter in 1971 the Respondent applied for being a member of provident fund scheme and filled in certain forms and signed those forms. In those forms also the car of birth of the Respondent was stated to be 1926. Even at that time in 1971 i.e. to say even after 21 years of his service, the Respondent did not contend that 1926 as entered in the service record as his year of birth was a wrong entry. He in fact confirmed that entry by stating in the provident

fund application form that his year of birth was 1926. For 8 years thereafter again he was all throughout silent. For the first time on May 28, 1979 he addressed a representation to the petitioner stating therein that his date of birth was February 3, 1930 and not in 1926. But even at that time, except his bare word, he produced no evidence in support of his contention. For the first time, around August 2, 1983, he while repeating his representation. annexed thereto, certain documents. Those documents are - a primary school certificate, a junior high school certificate, a village panchayat certificate, an extract from family register and copies of Life Insurance Corporation Policy proposal. According to him, in all those documents his date of birth is stated to be February 3, 1930. Therefore the year of 1926 as entered in his service record as the year of his birth is a wrong entry which should be rectified and his date of birth in his service record should be corrected to February 3, 1930. Within 23 days of this second representation, on August 25, 1983, the Petitioner wrote to the Respondent that they have gone through the certificate produced by the Respondent, but they doubted the genuineness thereof on various grounds. It appears that thereafter once again some correspondence was exchanged between the parties and on October 3, 1986 the Petitioner wrote to the Respondent a detailed letter showing the reasons why the documents relied upon by the Respondent could not be accepted as genuine. Inter alia it was pointed out that though the school leaving certificate so heavily relied upon by the Respondent was issued in 1945, at no point of time prior to 1983 the Respondent either produced or claimed to rely upon the same. It was also pointed out that, that certificate though it purported to be a school leaving certificate was not upon a letter head. It was also pointed out that the ink in the certificate appeared to be fresh though the certificate purported to have been issued way back in 1945. At several places in the certificate there were overwritings. At some other places the certificate was torn and was patched up by a cello tape and even on cello tape there were some overwritings. There was overwriting even in the date mentioned in the certificate. Thus the Petitioner informed the Respondent the grounds on which they were not agreeable to accept the request of the Respondent to rectify his date of birth. The records show that thereafter as the Respondent insisted in his claim, a joint meeting with the Core Committee of the Mumbai Mazdoor Sabha was held and at that time in the presence of the Core Committee members of Mumbai Mazdoor Sabha the respondent was shown the documents upon which he relied, and the Core Committee made inquiries, and the members of the Core Committee, as also the Respondent accepted that those documents could not be accepted in support of the request of the Respondent to rectify the date of birth of the Respondent as entered in his service record. Thereafter on November 20, 1987 the Respondent wrote to the Petitioner stating that he had lost 4 years of his service and all benefits that go along with it, and that he was then not desirous of coming back to work. With these statements in that letter the Respondent prayed to the Petitioner that he be paid the emoluments for the 4 years of his service or a monthly payment to enable him to maintain himself along with his family and an ex gratia amount as

the Petitioner may deem fit be paid.

16. The request of the Respondent having been turned down by the Petitioner, he Respondent raised a dispute. The attempted conciliation failed. The dispute was thereafter referred to the Deputy Commissioner of Labour who transferred it to the 9th Labour Court at Bombay. The Labour Court received the evidence tendered before it by both the sides and passed the impugned Award.

17. On these facts, I think the Labour Court was clearly in gross error in granting the request of the Respondent and passing the impugned Award. To recapitulate, the Respondent entered the service of the Petitioner in 1950. At that time upon information furnished by him, his history sheet was prepared wherein his year of birth was shown to be 1926. He signed that history sheet. In 1971 i.e. after about 21 years of his joining the service, he applied for being a member in the provident fund scheme and in that application in the relevant forms under his signature his year of birth came to be stated as 1926. In 1979 though he came out with a case that his correct date of birth was February 3, 1930, he did not produce any evidence in support of that claim. For the first time in August 1983 he produced some documents. The question is whether these documents produced by the Respondent for the first time 33 years after joining the service could be said to be unimpeachable evidence or irrefutable evidence or the evidence from which an irresistible conclusion should be that 1926 as the year of birth of the Respondent as entered in the service records was a wrong entry and that his correct date of birth is February 3, 1930. As indicated hereinabove, the burden was upon the respondent to prove that these documents are genuine and that these documents furnished irrefutable proof about his claim that he was born on February 3, 1930.

18. Coming to the school leaving certificate, that document purports to have been issued by the school authorities way back in 1945. The Respondent has not tendered any explanation why he did not produce that document before the Petitioner either at the time he entered the service in 1950 or even in 1971 when he filled in the provident fund form or 1979 when for the first time he raised a claim for rectification of his date of birth. As contended by the petitioner, that document is wholly suspicious for though it purports to have been issued in 1945, the ink thereof is fresh; there are overwritings at various places; it is not on the letter head of the school; it has been torn at various places and the patch up by cello tape again contains wrings thereon. Now such a document, I am sure, not only could not be said to be an unimpeachable evidence of the contents thereof, but it has hardly any probative value.

19. The second document is a L. I. C. Proposal form. This proposal form would certainly be the Respondent's own creation and it would not have been difficult for him to state therein any date that suited his convenience. Such a document cannot be said to be either irrefutable piece of evidence or conclusive piece of evidence about the date of birth of the Respondent. The entry in the family register was sought to be relied upon. It is not explained on the record as to

what is this family register.

20. Mr. Ganguli, learned Advocate for the Respondent very strenuously contended that the Respondent has produced a certificate issued by the Village Panchayat stating therein that the Respondent's date of birth is February 3, 1930. According to Mr. Ganguli, this certificate is a conclusive piece of evidence of the facts stated therein for it is equivalent to a certificate of facts as entered in the births and deaths register. According to Mr. Ganguli, an entry in the births and deaths certificate is conclusive about the facts stated therein. Therefore, this Village Panchayat Certificate has an equal probative value and therefore if not on any other piece of evidence, on that document alone the Labour Court was justified in granting relief to the Respondent. I am afraid, the submission is wholly misconceived. Firstly this certificate is not proved. The authority who issued the certificate has not been examined. It is not shown as to under what provision of law such a certificate is issued and there is no evidence to show that it is issued on the basis of an entry in the births and deaths register. With these infirmities in this document, it could never furnish proof of a clinching or conclusive nature.

21. As I have pointed out, with reference to the Supreme Court judgments, in such a case the burden of proof is upon the employee who claims to have the date of his birth as entered in the service record, rectified. Very unfortunately, the Labour Court has cast the entire burden on the Petitioner to prove that the documents relied upon by the Respondent are not genuine. Such an approach is wholly unwarranted. To put it in the words of Their Lordships in the case of T. V. Venugopalan (*supra*) the Labour Court has unfortunately taken unduly liberal view in favour of the Respondent ignoring the settled legal principles. Secondly the Labour Court has not made any exercise for the purpose of finding out whether the documents relied upon by the Respondent are of a conclusive nature or they are of unimpeachable character. The Labour Court has not at all dealt with the contentions raised by the Petitioner against the genuineness of those documents. The Respondent produced those documents and the Labour Court has without any attempt to find out whether they are genuine, accepted them as genuine and has acted upon them. I think this is not the approach to be made to a problem like this. If such an approach, in such matters, is permitted, as pointed out by Their Lordships of the Supreme Court, in the judgments referred to by me hereinabove, that would lead to a lot of evil consequences. A person who is not entitled to continue in service beyond date of his superannuation computed from the date of his birth as entered in the service record on his own say would continue in service for much longer years without any justification. Secondly such an approach would deprive others who are waiting in queue for getting employment/promotion upon retirement of the existing employee. It would also give impetus to fabrication of evidence.

22. Thus, having considered the matter from all the relevant angles. I am more than convinced that the Labour Court's approach in the matter was wholly

uncalled for. The Labour Court has unnecessarily taken an extra charitable view in favour of the Respondent without applying the correct legal principles as enunciated by Their Lordships of the Supreme Court to the facts of the case, and has illegally cast the entire burden upon the Petitioner to prove that the documents tendered by the Respondent were non-genuine. Such an approach is wholly against the principles of law enunciated by the Supreme Court. The Award of the Labour Court therefore cannot be sustained. Hence the writ petition is allowed. The Award of the Labour Court is set aside. The request of the Respondent for rectification of his date of birth is rejected. The rule is made absolute accordingly.

23. Certified copy be expedited.