
(2016) 08 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No.982 of 2008

Board of Trustees of Port

APPELLANT

Vs

Tukaram R. Katkar

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2016) 3 CLR 596 : (2017) 152 FLR 647

Hon'ble Judges : S.C. Gupte, J.

Bench : Single Bench

Advocate : Mr. R.S. Pai a/w Mr. Anand Pai, Ms. Kavita Anchan i/b M/s K.V. Kini & Co, Advocates, for the Petitioner; Ms. Shobhana Gopal, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

S.C. Gupte, J.—This Petition challenges an award passed by the Central Government Industrial Tribunal No.II (CGIT) at Mumbai, allowing the first Respondent's reference. The subject matter of controversy in the reference concerns the first Respondent's age. According to the recorded date of birth available with the Petitioner, which was 17.02.1942, he was superannuated with effect from 01.04.2000. (The retirement age being 58 years, the first Respondent would have completed the age of 58 years on 17.02.2000). According to the first Respondent, he was born on 17 February 1952. A few years before his superannuation, the first Respondent, accordingly, sought a correction of his date of birth in the records of the Petitioner. After his superannuation, the first Respondent sought a reference from the Central Government raising a dispute about the Petitioner's refusal to correct his date of birth. The impugned order accepts first Respondent's case that his date of birth was 17.02.1952 and directs the Petitioner to treat him as an "employee" till he attains the age of superannuation in the year 2012 on that basis.

2. The Petitioners are the Board of Trustees of the Port of Mumbai. Since 1 April

1979, the first Respondent was engaged as a "mazdoor" with the Petitioner, then known as Bombay Dock Labour Board (BDLB) which was constituted under the Dock Workers (Regulation of Employment) Act, 1948. (The board was superseded by the Central Government by Notification dated 25 February 1994 and all employees of BDLB were absorbed in the employment of the Petitioner trust w.e.f. 1.3.1994.) At the time of his registration, a declaration was signed by the first Respondent giving his date of birth as 17 February 1942. After his initial appointment as "mazdoor", the first Respondent came to be designated as "Tindel". Whilst he was working as such with BDLB, in the year 1982, the Unions representing workmen of BDLB approached the Management seeking an opportunity to workmen represented by them, who were aggrieved by incorrect dates of birth recorded in the Board's records, for correcting their dates of birth with supporting documents. On the basis of this representation, the Board issued a letter dated 31 December 1982 informing various departments to make arrangements for change of dates of birth in the records of the Board. It is not a matter to dispute that accordingly, an announcement was made on 1 January 1983, affording an opportunity to the workmen to correct their dates of birth by submitting proof in the form of supporting documents. The announcement was made in different languages including Marathi. The workmen of the Board were informed that written representations for change of dates would be entertained upto 30 June 1983 and not thereafter. Considering, however, that a number of representations continued to be received even after 30 June 1983, the date for receipt of representations was extended upto 31 December 1983. It was made clear to the workmen that no representation would be entertained or considered after that date. Admittedly, no representation was made by the first Respondent in response to this announcement. It is the Petitioner's case that after addressing the grievances of all employees, the Board in its meeting held on 27 April 1987 finally resolved that no more representations for correction in the date of birth or age of any workman would be entertained by the Board. The committee resolving this consisted of representatives of the workers as well as the Board and the Union Government.

3. It appears that the first Respondent, for the first time, requested for a change of his date of birth by his letter dated 15 June 1990. There is nothing to indicate on what basis he applied for such change on this date. It, however, transpires from the record that there was a communication dated 22 May 1990 addressed by the Assistant Administrative Officer of the Board to Life Insurance Corporation of India (LIC) in respect of a certain mortgage loan application made by the first Respondent. In that application, the retirement age of the first Respondent was shown as "in the year 2012". Possibly, on the basis of this communication, the first Respondent applied to the Board for correction of his date of birth to "17 February 1952". The application was rejected by the Board in its letter dated 18 August 1990. Nothing further was done in this behalf for nearly five years thereafter. Once again, on 6 March 1995, the first Respondent submitted an application requesting for change of date of birth from 17.02.1942 to

17.02.1952. The request was rejected once again by the Petitioner. The first Respondent thereafter carried the matter before the Central Government, which declined to make any reference in the matter. The first Respondent, thereafter, preferred a writ petition before this Court. This Court was pleased to quash the order of the Central Government declining adjudication and directed the Government to refer the dispute to the Industrial Court. Accordingly, by its letter dated 11 April 2001, the dispute in respect of correction of the first Respondent's date of birth was referred to CGIT. By this time, going by the date of birth of the first Respondent in the record of the Petitioner, the first Respondent had already retired with effect from 01.04.2000 as noted above. CGIT, by the impugned award dated 9 August 2007, allowed the reference, directing the Petitioner to treat the first Respondent as its employee on the basis of his date of birth of 17.02.1952 and grant him consequential benefits.

4. The record of the case indicates that there are at least two documents generated around the time the first Respondent registered himself with BDLB for employment as "mazdoor". There is a registration form, which is signed by the first Respondent, which shows his date of birth as "17-2-42". True, there is some overwriting in the year "42", but in the column of age, the figure is clearly shown as "37 years" (which is in accordance with the date of birth of 17-2-42). The registration form was signed on 1 April 1979. The second document is the medical registration card of the employee, which also shows the first Respondent's date of birth as "17.2.42". As against this record, what the first Respondent has relied on before the CGIT, is the statement made in the employer's certificate issued by the Assistant Administrative Officer of the Petitioner to LIC, mentioning the retirement age "in the year 2012". This document is neither here or there. It is not the first Respondent's case that as of the date of this document, namely, 22.05.1990, the Petitioner had applied for correction of his date of birth to 17.02.1952, so as to make 2012 his retirement year. In fact, it appears from the record that after getting this certificate, which was obviously an error on the part of the Petitioner, the first Respondent was encouraged to apply for change of date of birth in the record of the Petitioner. Apart from this document, what is produced before the Court is a revenue extract, namely, Village Extract No.14, which shows the date of birth of the first Respondent as 17.02.1952. In this record, the name of the record holder is shown as "Tukaram Ramu Dadu Katkar". Merely, on the basis of this document, which does not in any way amount to any irrefutable proof of the date of birth applied for, the CGIT could not have directed the Petitioner to change the date of birth of the first Respondent maintained by it.

5. The Impugned award of the CGIT is replete with mistakes. It refers to some cross examination of the first Respondent regarding his not having filed his death certificate in the year "1977" or not having approached the Petitioner in the year "1977" for correction of his date of birth in response to the offer given by the Petitioner. Possibly, this may be a typing error; the opportunity was extended to all workmen of the Petitioner to correct their dates of birth in the year 1983.

CGIT appears to have relied almost singularly on the evidence of the certificate issued the Administrative Officer to LIC, calling it an important piece of evidence. As I have noted above, the document does not in any way advance the first Respondent's case. Apart from this certificate, CGIT refers to one more document, in which the retirement year of the first Respondent is shown as "2012", namely, the medical form of the employee. In fact, as noted above, the medical form of the first Respondent shows the date of birth as "17.2.42" and does not anyway suggest 2012 as his year of retirement. The circumstances considered by CGIT for its conclusion are, thus, either contrary to record or not relevant or germane. The only other document, which could have been relied upon in support of the date of birth set up by the first Respondent, was the certificate issued in Village Extract No.14, which, as I have noted above, cannot be treated as irrefutable evidence of his correct age. That certificate, as I have shown, is in the name of "Tukaram Ramu Dadu Katkar" and not in the first Respondent's correct name.

6. The Supreme Court, in the case of Secretary And Commissioner, Home Department v. R. Kirubakaran, 1994 Supp (1) Supreme Court Cases 155, has cautioned Tribunals and Courts about the scope of interference in respect of correction of dates of birth in service records, observing that Courts should be slow in interfering with the service record. The court, before interfering with the record, must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If there is no rule or order prescribing the period within which such application has to be filed, then such application must be filed within a reasonable time. Besides, the applicant has to produce irrefutable proof in support of his claim for change of date of birth. Whenever any such question arises, the onus is squarely on the applicant to prove the wrong recording of his date of birth in his service book.

7. Admittedly, in this case, the service record was prepared on the basis of a self-declaration made by the first Respondent. Admittedly, there was an opportunity extended by the Petitioner to all its employees to correct their self-declared dates of birth by producing supporting evidence. Admittedly, the first Respondent did not apply for any correction within that period. On the date, when he applied for the first time nearly seven years after the last date of submission of applications for correction, i.e. in the year 1990, there was no proof tendered by the first Respondent as to his age or date of birth save and except a certificate issued by the Administrative Officer of the Petitioner, which, as I have noted above, has no basis and does not accord with the first Respondent's service record with the Petitioner. Even thereafter, the first Respondent did not take any steps for nearly five years. In this premises, merely on the basis of revenue record produced as of the year 1995, that too not in the name of the first Respondent but in the name of "Tukaram Ramu Dadu Katkar", it cannot be said that the Petitioner was bound to correct the date of birth of the first Respondent and its refusal to do so

amounts to an unfair labour practise or actionable wrong calling for correction in an industrial dispute. The first Respondent's application for correction of his age in the service record was neither in accordance with the prescribed procedure nor within the prescribed time or for that matter, reasonable time. The application was not accompanied by any document, which could be termed as irrefutable proof, which could not have been disregarded by the employer. In the premises, the ratio of the decision of the Supreme Court in Kirubakaran's case squarely applied and there was no case for the CGIT to order correction of the first Respondent's date of birth.

8. Learned Counsel for the first Respondent referred to the case of Ardeshir B. Cursetji v. Abulla Fakir Jambarkar 2002(95) FLR 556 decided by a learned single Judge of our Court. In that case, the Labour Court had accepted the employee's case and corrected his date of birth. The award was challenged by the employer. Based on the evidence on record, the learned Judge did not find any fault with the award within the scope of review envisaged under Articles 226 and 227 of the Constitution of India. The learned Judge noted the facts of the case in para-5 of the judgment, in the following words :

"5. I have gone through the evidence recorded by the Tribunal. I find that the first respondent had no knowledge as to what was the date of birth recorded by the petitioner in the records maintained by it. Moreover, it appears that the petitioner has recorded in 1987 the date of birth as 1932 in the nomination form. This nomination form was required to be counter-signed by the authorised officer of the petitioner and this officer was required to certify that the declaration had been signed/thumb impressed by the workman concerned employed in the establishment in his presence after he was read out the entries made in the declaration form. Obviously, therefore, the entries were made by some officer of the firm and the form has merely been signed by the first respondent. The petitioner has therefore filled this form on the basis of some evidence available with it. The petitioner was aware in 1987 when this declaration form was filled that the first respondent had declared his date of birth as 15th July, 1932 and, therefore, if it had any dispute about this, it should have called upon the first respondent at that stage to substantiate his claim that his date of birth was 15th July 1932."

These facts are clearly distinguishable from the facts of our case. The judgment, rendered on the basis of these distinguishable facts, cannot be cited as an authority in support of the first Respondent's case here.

9. In the premises, the award cannot be sustained. Rule is accordingly made absolute and the impugned award of CGIT dated 9 August 2007 is quashed and set aside. No order as to costs.