

(2005) 09 DEL CK 0058

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2932 of 1992

Chando Devi

APPELLANT

Vs

P.O., Labour Court etc.

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H, 25J

Citation : (2005) 09 DEL CK 0058

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Sanjay Ghose, for the Appellant; Nemo, for the Respondent

Judgement

Gita Mittal, J.—The petitioner impugns an award dated 16th September, 1991 made against her holding that the termination of the petitioner bona fide and justified. It is contended that the petitioner was appointed on 15th May, 1975 with the Flood Control & DRG (Mechanical Division) of the Delhi Administration as daily wager beldar i.e. the unskilled worker in the pay scale of Rs. 70-85 with usual allowances vide order dated 15th May, 1975 which was later revised to Rs. 196-232 with usual allowances with effect from 1st January, 1975 and that there were no complaints against her. The petitioner was asked to furnish an affidavit giving her correct age.

2. The petitioner is stated to have an unblemished and uninterrupted record of service to her credit till her unceremonious discharge on 15th October, 1976. The cause of termination is that she is alleged to have submitted an affidavit on 7th May, 1974 duly attested by a Magistrate wherein she has affirmed her date of birth as 2nd April, 1950.

Based on a complaint alleged to have received by the respondent, the petitioner was directed to appear for medical examination and was found fit by the doctors. However the doctors recorded that though as per her own statement she was 25 years of age. However she appears to be 35 years of age.

3. Another memo dated 23rd July, 1976 has been placed on record requiring the petitioner to appear again for the medical examination before the Staff Surgeon of the Irwin Hospital on 26th July, 1976. This communication specifically records that the Anti Corruption Department of Delhi Administration was investigating a complaint and had desired that the age of Chando Devi, the petitioner herein should be clearly indicated. The respondents had requested the Staff Surgeon to take x-ray of the petitioner's chest and to sent the medical report to the authority specified in the communication. It appears that her 2nd medical examination was conducted on 28th July, 1976 when it was opined that though according to her own statement she claimed that she was only 30 years of age, but by appearance she appears to be of about 36 years.

4. On the basis of such medical reports based on the petitioner's appearance the respondents have claimed that the petitioner was guilty of serious misconduct of having deliberately misrepresented her date of birth and her age and consequently was removed from service by an order of termination dated 15th October, 1976. This communication purported to give one month's notice served on the petitioner.

5. Aggrieved by the action of the respondents, the petitioner made a claim seeking entitlement of reinstatement with continuity of service and full back wages. As the matter could not be resolved in conciliation proceedings, vide an order dated 23th November, 1984, the following dispute was referred for adjudication to the Labour Court:

Whether the services of Smt. Chando Devi have been terminated by the management illegally and or unjustifiably and if so to what relief is she entitled and what directions are necessary in this respect?

6. The petitioner filed her claim to which the respondents filed a reply disputing the contentions of the petitioner. According to the respondents the petitioner was appointed as an unskilled worker against a temporary work charge post and that same was liable for termination without notice at the discretion of the appointing authority. However the respondents have specifically averred as hereafter:

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3. Admitted that there was no complaint about her work, but she misled the office by giving wrong information about her age.

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7. Admitted to the extend that her services were terminated after giving one month's notice by the department as per the requirement/condition of employment. On the basis of the medical report department found her guilty of serious mis conduct of deliberately concealing the facts in regard to her age, and deposing wrongly in her affidavit just to get employment as an unskilled worker on W/Ch. Estt.

8. Department has taken the lenient view by terminating her services after one month notice being a lady otherwise for furnishing a false information on oath in an affidavit before a Magistrate and concealment of facts, suppression of information entails more severe punishment. It is denied that the workman was dismissed or removed from service. One month's notice was served upon her. Her services were terminated on account of furnishing false information and concealment of facts. The termination was not based on mere suspicions. The medical report and her own contradictory statement proved it beyond doubt that she deliberately concealed the facts about her age just to get an employment in the department. The appointing authority was competent to terminate the service of such temporary work charged employee without assigning any reason. As required under the rules in the instant case one month notice was served to Smt. Chando Devi.

The termination order of Smt. Chando Devi were neither discriminate nor hostile. The service of Smt. Chando Devi ex-official was terminated after giving her one month notice by the appointing authority due to her disqualification for the appointment in the department. Both the facts that she concealed her age by giving wrong affidavit and the medical report about her age according to which she was over age were disqualification on her employment in the department. Her services were terminated on the grounds of deposing falsely while furnishing an affidavit on oath before the Magistrate stating therein that her date of birth is 2.4.1950.

7. The Labour Court had proceeded to record evidence when the petitioner had stepped into the witness box. She specifically deposed that there was no complaint of any kind against the services rendered by her and that she was not given any opportunity of being heard prior to termination of her services and that she was an illiterate lady. It was further stated that no amount was paid or offered to the petitioner at the time of termination nor any notice pay or service compensation was offered or paid to her and that she remained unemployed since her services were terminated. The petitioner deposed to the effect that her parents were not alive on the date of making of the statement and that she was told her age by her mother. It was however claimed that several juniors to the petitioner remained employed. Since the petitioner was not aware of the cause of her termination she denied any knowledge thereof.

8. The witnesses of the respondents have proved the employment of the petitioner. MW-2 Mr. R.K. Mandhar accepted that he was in-charge of the workshop where the petitioner was working and that she was removed in June, 1978. He later stated that the petitioner was removed from service after a year or 1 1/2 year from the date of her employment and that she was employed in June, 1975 to the extent that he remembered.

9. The Labour Court passed an award dated 16th September, 1991 rejecting the claims of the petitioner. After considering the evidence of the witnesses on behalf of the respondent, the Labour Court arrived at a conclusion that the petitioner's

age was about 35-36 years at the time of her appointment and that she was beyond the eligibility age of 18 to 25 years for the job to which she has been engaged. It was held that as per the report of the medical examination the petitioner was not less than 35 years of age at the time of medical examination and, therefore, the petitioner was over age on the date when she entered into the job with the respondents. The learned court further held that any service obtained by deceitful means or fraudulent representation would not fall within the ambit of service as defined in Section 2(oo) of the Industrial Disputes Act, 1947 and that the petitioner's services were brought to an end by a simple order of discharge against her. The same being bona fide, no domestic inquiry was required to be conducted. For these reasons, the Labour Court gave a finding that the discharge order was bona fide and the action was not intended to be punitive. No illegality having been committed, it was held that the order of termination could not be vitiated. The reference was answered against the workman.

10. Learned Counsel for the petitioner has argued at length that the award proceeded on the basis as if reference related to claim of regularization being made by industrial worker whereas the only issue before the Labour Court was only as to whether the termination of the petitioner's service was valid and legal. Learned Counsel has also drawn my attention to the provisions of Section 25F, G & H which would govern the petitioner's rights and has submitted that Section 25J contains a non-obstante clause. The petitioner having worked more than 240 days, it is argued, it was incumbent upon the respondent to comply with Section 25F which, according to the petitioner, has not been complied with. As per Section 25G, an employer has to follow the principles of last in first out and effecting retrenchments and by virtue of Section 25H, the respondent was bound to offer re-employment to a workman whose services were illegally terminated. Based on these statutory provisions the petitioner urges that non-compliance of Section 25F renders the given action of the respondents in terminating her services illegal. It is contended that in the instant case there can be no manner of doubt that the termination was stigmatic and that a proper departmental inquiry had to be held and principles of natural justice required strict compliance.

11. So far as the eligibility age for the purpose of engagement is concerned, learned Counsel appearing for the petitioner has pointed out that the applicants had to be between 15 to 25 years of age which in the case of SC/ST candidates was relaxable by 5 years bringing the eligibility age to 30 years. The petitioner has claimed to be such a candidate and, therefore, could have been appointed at the age of 30 years.

12. On a query put to the learned Counsel for the petitioner it is pointed out that the petitioner claimed her date of birth as 2nd April, 1950 and that there is no material whatsoever for holding that the petitioner was older merely on visual appearance.

13. I find that in the instant case, the services of the petitioner have not been

terminated without there being any allegations made against the petitioner. On the contrary the respondents have stated that on the basis of the medical report, the petitioner was found guilty of serious misconduct of deliberately concealing the facts in regard to her age and making a wrongful deposition in her favour. It has been alleged that the petitioner misled the respondents and that she concealed her age by giving a wrong affidavit. The action in terminating the services of the petitioner has been described as being the "minimum barest departmental action taken being a lady otherwise the penalty would have been duly put to her". I, therefore, find force in the submissions made by the learned Counsel for the petitioner that the present case was not a case of discharge simplicitor but the order was made an act penalising the petitioner for the alleged misconduct i.e. filing of false affidavit with regard to her date of birth. Looked at from any angle it cannot be contended that prior to passing of the termination order, the petitioner was entitled to an appropriate notice to explain her position on the allegations against her and also to produce such evidence and material as was available in respect of the allegations made by the petitioner. On this ground alone the award dated 16th September, 1991 cannot be sustained. The respondents have failed to abide by and comply with the principles of natural justice which they were bound to do so. The petitioner has clearly stated that she was illiterate and that her mother had told her about her date of birth. The social milieu in which the petitioner is placed, there is no reason to disbelieve her statement. I would, therefore, agree with learned Counsel for the petitioner that in the circumstances in which the petitioner was placed, it is almost impossible for records of birth being maintained. Assuming that the petitioner was borne on the date claimed by her, the respondents cannot be permitted to fix a date to her based on no material whatsoever.

14. The only scientific method for age determination is to be found in x-ray of bones and ossification parameter which have to be scrutinized by forensic experts. Based on such material, assumptions are drawn with regard to the age of a person. Request for a technical evaluation was contained in the letter dated 28th July, 1976 (Annexure-R-2) which was ignored. In the instant case no such test has been undertaken.

15. It is necessary to note that no x-ray appears to have been conducted, nor is alleged to have been conducted. There is no report of such investigation in either the entire medical record placed before this Court or in the counter affidavit which has been closely perused. Therefore, there would be no ossification record or report to enable a scientific assessment of the real age of the petitioner. No ossification record or expert opinion by a forensic expert has been obtained which would have taken the matter out of the pale of controversy.

16. On bare physical appearance, age assessments have been drawn. These assessments are based on no scientific material and are not of any forensic expert. The assessment completely ignores the strata and background of the petitioner where the toils of mere existence and struggle to eke out a living must

necessarily take their toll and impact physical appearance. Bereft of any scientific inputs, such assessments are unworthy of judicial credence and deserve to be rejected.

17. The petitioner has stated that she is an illiterate lady and that information with regard to her date of birth was based on the information given by her mother. Information with regard to her age has been received by the petitioner orally from her mother. There is nothing on record which can persuade me to disbelieve the petitioner on such statement.

18. The witness of the respondent MW-2 Mr. R.K. Mandhar has clearly stated that the petitioner was removed from service in July, 1978 after a year or 15 months from the date of her appointment. The date of birth of the petitioner is stated to be June, 1975.

19. The respondents were duly served with the notice in the present case and even filed a counter affidavit. Thereafter without any reason or justification, the respondents stopped appearing. Despite the matter having been deferred to await the appearance of the respondents they opted not to appear before this Court. Accordingly the arguments of the petitioner were heard and the record of the instant case carefully perused.

20. In this view of the matter I am of the considered view that in the facts of this case, the respondents nursing doubts about the statement of the petitioner, the respondents ought to have given her an opportunity to show cause prior to arriving at any firm conclusion of misrepresentation by her. Only then their action could be held to be in accordance with law with regard to the termination of the services of the petitioner. I find that the same is not based on any cogent and reliable evidence.

21. The petitioner has also not been put to notice and has not been given any opportunity to represent her side of the case prior to passing the order of termination. For all the foregoing reasons the writ petition is allowed and the Award dated 16th September, 1991 is hereby quashed.

22. In the instant case the services of the petitioner were terminated vide an order passed on 15th October, 1976. The reference was made vide an order dated 23rd November, 1984. The petitioner has been in this Court since 1992 for a period of more than 12 years and litigating for more than 20 years. The matter is, therefore, remanded to the Labour Court No. II for fresh consideration passing an Award in accordance with law. The parties shall appear before the Labour Court on 3rd October, 2005 for appropriate directions. It is expected that the matter shall be disposed of within a period of three months keeping in view the long duration of the disputes.