

(2005) 09 AHC CK 0309

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39370 of 2001

Executive Officer, Nagar Palika Parishad

APPELLANT

Vs

Presiding Officer Labour Court and Rupe Lal Balmikky

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(A), 33C(2), 4B

Citation : (2005) 6 AWC 6296

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Sarvesh and Anant Vijai, for the Appellant; V.K. Barman and Pankaj Barman and S.C., for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Challenging the legality and validity of the award of the Labour Court, dated 26th December, 2001, published on 23rd January, 2001, passed by the Labour Court, Kanpur in favour of Rupe Lal Balmiky, respondent No. 2, the present writ petition has been filed with a prayer to issue a writ in the nature of certiorari for quashing the impugned award, dated 26.12.2000.

2. Respondent No. 2 ,(hereinafter referred to as the respondent) was appointed as a sweeper by means of appointment letter dated 29th March, 1954 in Nagar Palika Parishad, Bilhore, district Kanpur Dehat. In the appointment letter the date of birth of the respondent is mentioned as 18th March, 1934. In the statement of deduction of provident fund etc. the aforesaid date of birth finds place. The age of superannuation of such employee is admittedly 60 years. A notice dated 28th January, 1995 was served by the petitioner on the respondent informing that he has already reached the age of superannuation on 31st December, 1994, but illegally continued to work thereafter. It appears that the respondent worked up to 25th February, 1995 and the payment of salary for the period 31st December, 1994 to 25th February, 1995 was sought to be deducted by the petitioner out of the payment tendered to the respondent towards retiral benefits. Being

dissatisfied, by the action, the respondent filed an application before the Prescribed Authority/Pargana Adhikari. The Labour Court II (U.P. Kanpur) by its order passed u/s 33C(2) of the Industrial Disputes Act, 1947, held that the respondent is entitled for the salary for the period he worked namely, 31st December, 1994 to 25th February, 1995 amounting to Rs. 8439.84. The said amount was paid by the petitioner against receipt dated 3rd May, 2000.

3. It appears that the respondent raised an industrial dispute and the State Government referred the matter for adjudication. The industrial dispute was to the effect as to whether the employer rightly put off prevented the workman, namely, the respondent w.e.f. 25th February, 1995 in accordance with law. If it is not so the relief to which the workman is entitled?

4. Before the Labour Court the petitioner filed written statement on the pleas inter alia that the present dispute is not an industrial dispute and it is beyond the ambit of Section 2A read with Section 4-B of the U.P. Industrial Disputes Act, hereinafter after referred to as the Act as the respondent was not dismissed/discharged, terminated or retrenched on the date given in the reference order; that the service of the respondent was not terminated on 25.2.1995, but he reached the age of superannuation much before the aforesaid date and the superannuated person can not seek any relief either for reinstatement or otherwise.

5. The Labour Court by the impugned award found that the allege date of birth 18th March, 1934 was wrongly recorded in the service book. The respondent was reported to be of 40 years of age under the certificate dated 18th December, 1978 issued by the Chief Medical Officer, wherein his age was estimated about 40 years and as such he would have attained the age of superannuation on 31st December, 1998. Consequently it awarded the payment of salary with accrued benefits for the period 25th February, 1995 to 31st December, 1998. The said award is under challenge in the present writ petition.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the petitioner strenuously contended that the Labour Court exceeded in its jurisdiction in ordering correction of the date of birth as recorded in the service book after retirement of the respondent. Elaborating the argument it was submitted that the said medical certificate is of little value in as much as during his long tenure of service the respondent never disputed correctness of the date of birth as recorded in the service books. Not only this the respondent submitted an affidavit on the stamp paper, a copy of which has been filed as Annexure-2 to the writ petition, wherein he reiterated his date of birth as 18th March, 1934. In para 2 of the affidavit which was sworn on 29th March, 1974, the respondent has stated that at that time his age is around 40 years and 11 days. The Labour Court committed illegality in ignoring this document and has given preference to medical certificate which was uncalled for. In this view of the matter, it was submitted that at this distance of time, the date

of birth as held by various judicial pronouncements could not have been corrected and therefore, the order of the Labour Court is vitiated.

8. In contra, the learned Senior Counsel raised a preliminary objection and submitted that the writ petition is liable to be dismissed on the ground of laches. The writ petition was presented before the Stamp Reporter on 24th November, 2001 and was reported to be in time up to 23rd April, 2001. It was submitted that the writ petition having been filed beyond 90 days, is liable to be dismissed as barred by time. On the question of merit it was submitted that the respondent is an illiterate person and the alleged affidavit dated 29th March, 1974 was obtained under coercion and is liable to be ignored. In the face of the medical certificate issued by the Chief Medical Officer, the respondent was entitled to work up to 31st December, 1998 and as such the award treating the respondent in service up to that date is "perfectly justified and calls for no interference by this Court.

9. I have given my careful consideration to the respective submissions of the learned counsel for the parties.

10. With regard to the plea of laches, I find that in para 29 of the writ petition it has been stated that although the impugned award was published on 23rd January, 2001 and a copy of the same was issued to the petitioner on 12th December, 2001, but somehow the department entertained the belief that the copy of the impugned award shall be supplied by the Labour Court, therefore, it could not be filed earlier. The petitioner could not go to the court earlier due to administrative problem and as such prayed for condonation of delay. In reply the respondent in para 24 of the counter affidavit only this much, has stated that when the award is published in gazette and published on the notice board there is presumption of knowledge. Looking to the facts that the petition is on behalf of a local body and the officers of the local body have no personal interest in the litigation on its behalf, I find no justification to throw away the writ petition on the ground of laches, specially when the question of payment to the respondent out of public exchequer is involved. There is no plea of mala fide on the part of the petitioner. Learned counsel for the respondent could not dispute that the period of limitation for filing a writ petition has not been prescribed anywhere. It is true that there is a practice prevalent in Allahabad High Court to prefer a writ petition within a period of 90 days from the date of the impugned order. Taking into consideration the entire facts and circumstances, the preliminary objection raised by the respondent is hereby overruled.

11. Now coming to the merits of the case it is clear from the award of the Labour Court that it proceeded to pass the award in favour of the respondents solely on the basis of the medical certificate issued by the Chief Medical Officer, dated 18/12/1998, certifying that at the time of medical examination the age of the respondent was around 40 years. It does not appear from the record, nor there is any plea that the respondent ever took any steps in 1978 or thereafter for incorporation of his date of birth in the service book on the basis of the above

medical certificate. Although a vague assertion has been made in the counter affidavit that copy of the appointment letter was not issued to the respondent at the time of granting appointment. But it is difficult to accept the said contention at this stage. Significantly the service book was filed before the Labour Court, wherein the date of birth of the respondent has been recorded as 18th March, 1934. The genuineness and correctness of the service book was not disputed by the respondent continuously during his service including before the Labour Court. Only this much was disputed that the date of birth in the service book is not correctly recorded in view of the subsequent medical certificate issued by the Chief Medical Officer. In this state of affairs the observation of the Labour Court that the date of birth as recorded in the service book is imaginary, is incorrect. The said observation of the Labour Court is wholly arbitrary. Even if the respondent is illiterate person he could have disputed the non recording of the correct date of birth immediately after joining service or within a short span of time thereafter. It has been held by Supreme Court on number of occasions that an employee can not dispute the correctness of date of birth as recorded in the service book after serving a long time and at the verge of retirement

12. The Supreme Court in the case of U.P. Madhyamik Shiksha Parishad and Others Vs. Raj Kumar Agnihotri, has considered the matter in great detail as also in its earlier judgments and held that the application for correction of the date of birth by a public servant can not be entertained at the fag end of his service. It has reiterated its earlier view in the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, that any direction for correction of date of birth of public servant concerned has a chain reaction, inasmuch as the others waiting for years below him for the respective promotions are affected in this process, the same are likely to suffer irreparable injury, inasmuch as the case of correction of the date of birth, the officer concerned continues in the office in some cases for years within which time the many officers who are below him in seniority waiting for their promotion may lose the promotion for ever.

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as because of his correction of the date of birth the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the Court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service book.

...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 the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier, it is not possible to uphold the finding recorded by the Tribunal."

13. In view of the above authoritative pronouncement by the Apex Court, it is clear that the impugned award of the Labour Court suffers from manifest error of law and is liable to be quashed. There is absolutely no explanation as to why the respondent did not take any steps when he was in service specially after 1978, for correction of the date of birth in the service record.

14. Besides the above, there is declaration on oath given by the respondent reaffirming his date of birth as 18th March, 1934 in the affidavit dated 29th March, 1974, filed as Annexure-2 to the writ petition. The Labour Court very conveniently overlooked the said document. The allegations in the counter affidavit that the said document was notified before the Labour Court has been denied in the rejoinder affidavit and I see no reason to accept the plea of the petitioner that the said document was filed before the Labour Court. The only explanation given in the counter affidavit is that thumb impression of the respondent on the affidavit was obtained under coercion. The plea of coercion raised in the counter affidavit besides being vague is not supported by any evidence. There is no denial that the said document does not contain the thumb impression of the respondent. The plea of coercion has been raised as afterthought to some how get over the said document. As laid down by the Supreme Court in the case of Secretary and Commissioner Home Department and others (supra) that the onus is on the applicant to prove about the wrong recording of his date of birth in his service book. In the present case the respondent has failed to discharge the said onus, consequently, the order of the Tribunal holding otherwise and treating the respondent in service up to 31st December, 1998 is patently illegal, and is liable to be quashed.

15. In the result the writ petition is allowed. The impugned award which was received for publication on 26th December, 2000 and was published on 23rd January, 2001, passed in Case No. 113 of 1997 is hereby quashed. However, it is made clear that the amount already paid to the respondent for the period 31.12.1994 to 25.2.1995 shall not be recoverable from him. No order as to costs.