
(2001) 09 JH CK 0078
In the Jharkhand High Court
Case No : CWJC No. 1041 of 2000 (R)

Kashi Nath Sharma

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 50 BLJR 106

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : D. Jerath, S.N. Prasad and R. Mishra, for the Appellant; Subha Jha and Shailesh, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the award, dated 6.2.1999 passed by the Presiding Officer, Labour Court in Reference Case No. 6/93, whereby it was held that the termination of services of the concerned workman by way of superannuation is proper and the petitioner is not entitled to any relief.

2. It appears that the Government of Bihar, Department of Labour, Employment and Training, vide notification, dated 9.7.1993 referred the following dispute to the Labour Court for jurisdiction :--

"Whether the termination of services of Shree K.N. Sharma. Ticket No. 159863 P.No. 49901 workman. Tata Iron and Steel Co. Ltd., Jamshedpur is proper ? If not whether he should be reinstated on the job or what compensation he should be paid."

3. The case of the workman was that his service was wrongly terminated with effect from 4. 1. 1989 by way of premature superannuation instead of his actual date of superannuation falling on 15.1.2005. According to the workman, he joined the service of the management in 1962 at the age of 18 years. His correct

date of birth is 15.1.1944. At the time of initial appointment he stated his age as 18 years and the date of birth as 15.1.1944 but inadvertently it was recorded as 4.1.1928 without any basis. In 1966 the workman was made permanent and in 1968 for the first time he learnt that his date of birth has not been correctly recorded by the management and since then he has been continuously representing before the management to correct the date of birth

4. On the other hand, the case of the management is that the workman was absorbed in service in 1967 and at that time he did not produce any certificate or any documentary proof in support of his age. The management therefore adopted the prescribed procedure of Standing Order and the age of the petitioner was assessed by the Medical Board who assessed his age as 35 years on 3.1.1963. It is further stated that the workman was superannuated on 4.1.1988 on completion of 60 years of age. But, before that, on the request of the workman, he was allowed one year extension being found medically fit as per the Standing Order. The workman was, therefore, finally superannuated on 4.1.1989.

5. The Labour Court after considering the evidences both oral and documentary adduced by the parties and after discussing those evidences, came to a finding that the workman was rightly superannuated in 1989 on the basis of date of birth recorded in the service record. The relevant portion of the finding recorded by the Labour Court in the award is reproduced hereinbelow :--

"21. At the time of argument learned Advocate for the management has drawn my attention towards para 5 and 7 of the cross-examination of the workman. In para 5 the workman has admitted that Company has an Standing Order which bear all terms and conditions in connection of service of employees. In para 5 he has also admitted this fact that he has received a letter from the Company, that Company going to give extension of one year service after attending the age of 60 years. Before extending the service of one year the workman has been medically examined for this purpose. In this connection no clear word. He has further stated that he has not make any objection before the management that he has not attended the age of 60 years. In para 7 of cross-examination the workman has clearly admitted that at the time of initial appointment he has been medically examined and by medical examination his date of birth has been ascertained as 4.1.1928. In para 4 he also accepted this fact that at the time of his initial appointment he has not produced any certificate/document in proof of date of birth. In this para also this workman has clearly accepted that after attending the age of 60 years the company has extend the service for one year.

22. On careful consideration of above discussed facts, circumstances and evidence adduced on behalf of both the parties, I come to the conclusion that on the basis of evidence produced on behalf of the workman, it cannot be believed that his date of birth is 4.1.1944. At the same time on the basis of above facts and circumstances as well as evidence adduced on behalf of the parties. I come to the conclusion that at the time of initial stage of appointment, i.e., in 1968 the workman had not produced any document and certificate in proof of his age and

date of birth. In the circumstances as per provision 8 of the Works Standing Order, the Management has got rightly assessed the age of the workman by the Medical Officer of the Company and on the basis of the assessment of the age by the Medical Officer of the Company, the Company has rightly recorded the date of birth of the workman as 4.1.1928. vide Ext. M, M/1-a. Therefore, management has rightly superannuated the workman from 4.1.1989 giving him 1 year extension of service after attending the age of 60 years. On 4.1.1988. Point No. (i) and (ii) are decided accordingly."

6. Mr. Dilip Jerath, learned Counsel appearing for the petitioner, assailed the impugned award on the ground, inter alia, that the Tribunal has not considered the school leaving certificate as proof of his date of birth rather it relied only upon the entry made in the service record. Learned Counsel submitted that the Tribunal has not considered the deposition of the elder brother of the workman who was 6 years elder to him but is still in service. If this part of the evidence is accepted, the award cannot be sustained in law.

7. From perusal of the award, it appears that the Tribunal, after considering documentary evidences as also the evidence of the witnesses including the workman, who accepted that before his superannuation in 1988 he had requested for extension of his service and the same was allowed for one year, has come a conclusive finding that the workman was rightly superannuated in 1989. I do not find any perversity in the said finding. It is well-settled that finding of fact recorded by the Labour Court or the Tribunal cannot be judicially reviewed except in case of mala fide or perversity. The Court cannot reappraise the evidence like the appellate Court. By a catena of decisions of the Supreme Court and the High Court the law has been set at rest that the High Court, in exercise of writ jurisdiction, cannot sit as an appellate Court and to reappraise the evidence recorded by the Labour Court or the Tribunal in order to come to a different finding. Suffice it to refer the decision of the Supreme Court in *Bank of India and Another Vs. Degala Suryanarayana*, .

8. For the reason aforesaid. I do not find any reason to interfere with the award passed by the Labour Court. This writ application has no merit, which is accordingly dismissed.

9. Writ Petition dismissed.