
(1999) 05 AHC CK 0193
In the Allahabad High Court
Case No : C.M.W.P. No. 7026 of 1989

L.H. Sugar Factories Ltd. Pilibhit

APPELLANT

Vs

Bisheshwr Dayal and others

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Citation : (1999) 3 AWC 2339

Hon'ble Judges : S.K. Jain, J

Bench : Single Bench

Advocate : V. Swaroop, Triloki Nath and V.K. Birla, for the Appellant; S.C., B.S. Nishad, V.N. Agarwal, G.C. Pant, Vinod Swaroop and A.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Jain, J.—This writ petition has been filed challenging the order dated 31.12.1988 passed by the Dy. Labour Commissioner. Bareilly, by which the respondent No. 2 had directed the petitioner to correct the date of birth of respondent No. 1 as 1.7.1929 instead of 25.12.1924.

2. The respondent No. 1 was employed by the petitioner as a labourer in the petitioner's Sugar Mills in the crushing seasons 1942-43 and his date of birth was noted as 25.12.1924 in the service record. He attained the age of 60 years on 25.12.1984 and he was served with a notice dated 23.2.1985 informing him that he will be retired from service of the factory on 26.3.1985. This notice (Annexure-I) was served on the respondent No. 1 on 25.2.1985. Challenging the validity of the said notice dated 23.2.1985 (Annexure-1), respondent No. 1 made a representation (Annexure-II) under Clause LL (4) before the U. P. Labour Commissioner, Kanpur Nagar on 18.3.1.985 alleging inter alia that he has not attained the age of 60 years as mentioned in his educational record. On the representation of the respondent No. 1 (Annexure-II) the Labour Commissioner, Kanpur passed an order dated 13.8.1985 directing Dy. Labour Commissioner. Bareilly to hear and decide the representation made by respondent No. 1 under

Clause LL of the Standing Order. The parties adduced oral and documentary evidence in support of their respective case. The respondent No. 1 filed a copy of the transfer certificate issued by the Primary Pathshala Ghemau, district Kanpur, which shows that respondent No. 1 has passed class IVth and left the school on 27.4.1940 and his date of birth was noted as 1.7.1929. In the said transfer certificate (Annexure-IV) issued on 9.10.1984. After hearing the parties, the Dy. Labour Commissioner accepting the case of the respondent directed that the date of birth of respondent No. 1 as mentioned in the aforesaid transfer certificate (Annexure-IV) should be accepted as correct. He accordingly directed that the date of birth of respondent No. 1 should be held as 1.7.1929 and he was entitled to remain in service upto 30.6.1989. This order dated 31.12.1988 passed by the Dy. Labour Commissioner is Annexure-XI on record.

3. Feeling aggrieved by the said order of Dy. Labour Commissioner dated 31.12.1988, the petitioner L.H. Sugar Factory Co. Ltd. has come up in this Court by filing the present writ petition.

4. Heard Sri V. K. Birla, learned counsel for the petitioner and Sri K. P. Agarwal Jeanned senior advocate, assisted by Km. Suman Sirohi for respondent No. 1 and perused the record.

5. The petitioner has filed objection to the claim of the respondent No. 1 alleging that as per rules the respondent No. 1 had to retire on attaining the age of 60 years shown in the record of his provident fund and service book as there was an agreement between the trade union and the employer entered into in the year 1964 by which an employee, had to retire after attaining the age of superannuation as per the date of birth recorded in his provident fund record. The petitioner has filed a copy of the said settlement deed of the year 1964 (Annexure-V) and the said settlement deed was duly registered.

6. Learned counsel for the petitioner has argued that this settlement clearly provides that the management can retire a workman on attaining the age of superannuation, according to the age given in the provident fund record. In this way, the age given in the provident "fund" record was final and not open to any dispute. In the Instant case, I find that the date of birth of respondent No. 1 was recorded in his service book and provident fund's record as 25.12.1924 and he never made any objection or representation against the same during a very long period of his service in the past. Learned counsel for petitioner has argued that the respondent No. 1 has now challenged his date of birth, which was the outcome of an after-thought and prior to that, he had never submitted any educational record to show that his date of birth was wrongly shown in his service book as well as provident fund record. The school transfer certificate (Annexure-IV) filed by respondent No. 1 is purported to have been issued on 9.10.1984 and the same was claimed by the petitioner to be a forged and fictitious document, which was prepared subsequently for the purposes of filing it as an evidence in the present case. Clause (iii) (a) of Second Wage Board for Sugar Industries as notified by the State Government on November 17, 1970

provides that the age of an employee as recorded in the provident fund record shall be taken as correct.

7. The provisions of Clause LL of Standing Orders read as under :

"LL. Retirement of workmen on reaching age of superannuation :

1. A workman may be retired from service on reaching the age of superannuation which shall be 60 years.

2. The provident fund record of the factory specifying the workman's age should, to begin with, be taken as the reliable record of the age of a workman for the purposes of retirement.

3. This record of age shall stand modified as may be warranted by the following :

(a) Date of birth as given in High School Certificate. If the school leaving certificate is below High School then such certificate must be authenticated by the District Inspector of Schools or by the District Education Officer as the case may be ;

(b) Date of birth as certified by a Municipal Corporation. Municipal Board, a Cantonment Board, a Notified Area or a Town Area Committee.

(c) An insurance policy taken before November 1, 1960 :

Provided that (i) where the date, month and the year of birth of a workman are recorded in Provident Fund records, the date of birth as given in the Provident Fund records shall be taken as final.

(d) the foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these Standing Orders.

4. The age of new entrants shall be accepted on the following basis :

(i) Date of birth given in the High School Certificate/ Transfer Certificate :

(ii) Date of birth as certified by Nagar Mahapalika/ Nagar Palika/Cantonment Board/Notified Area Committee/Town Area Committee/Gram Panchayat :

Provided that the new entrant shall furnish proof of his age within three months of the date of his appointment and the management shall accept it within six months of the date of appointment. The date of birth so accepted shall be final."

8. In the present case, respondent No. 1 had been in employment of Factory since 1942-43, but he never raised any objection regarding his date of birth recorded in his service book and provident fund record. For the first time, the respondent No. 1 preferred a representation after receiving the notice dated 23.2.1985 informing him that he will be retired from the service Of factory with effect from 26.3.1985. It appears that the respondent No. 1 has managed to get the bogus School Transfer Certificate (Annexure-IV) to be used as an evidence in the aforesaid proceeding before the Dy. Labour Commissioner. Had it not been

so, the respondent No. 1 must have challenged the correctness of his date of birth long before and not at the verge of his retirement. As such, the transfer certificate does not inspire confidence. It may be added here that the respondent No. 1 himself had filed a declaration and nomination form under the Employees Provident Fund Scheme, 1952 and his age was shown as 35 years on 25.12.1959. On both the above records, i.e., declaration and nomination forms and provident fund record form (Annexure-IX), the signatures of respondent No. 1 are to be found. The correctness of the entries made regarding the date of birth in the aforesaid documents bearing the signature of respondent No. 1 is not open to any dispute. Learned counsel for the respondent No. 1 has argued that the presumption regarding the date of birth of a person is a rebuttable presumption. I agree but I do not find any evidence which can convince me that the date of birth of respondent No. 1 has been wrongly shown to be 25.12.1924 in his service record including the provident fund.

9. It was held by Hon'ble Supreme Court in the cases of Secretary and Commissioner, Home Department and others v. R. Kiru Bakaran 1994 1 SCC 155 ; Chief Medical Officer v. Khadeer Khadri 1995 12 SCC 82 ; Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, and Collector of Madras and Another Vs. K. Rajamanickam, , that the Court or Tribunal cannot entertain a petition for correcting the date of birth at a very belated stage and certainly not at the verge of retirement.

10. In Secretary and Commissioner's case (supra), the Apex Court observed that 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.

11. In Union of India and others Vs. Kantilal Hematram Pandya, the Apex Court has held that the Court may not place any reliance on a document or certificate of date of birth which had been brought into existence for the benefit of the pending proceedings as the correctness and genuineness of such a certificate is not free from doubt and the same might have been obtained for getting the relief by such an employee. The Court has observed as under :

"He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by this Court in Harnam Singh's case (supra) was thus fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts. Stale claims and belated applications for alteration of the date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay on the eve of retirement, need to be scrutinised carefully and interference made sparingly and with

circumspection. The approach has to be cautious and not casual."

12. There is yet another important circumstance which indicates that the contention of respondent No. 1 that he was born on 1.7.1929 is manifestly wrong. Admittedly respondent No. 1 joined the services of Mills in the year 1942 and he worked for about 43 years till he was served with a retirement notice. In case his contention is accepted, it would mean that he joined the service of Mills at tender age of 13 years, which is not believable. Moreover, he belonged to village Ghemau, Kanpur and it does not appear probable that he had left his home at such a tender age of 13 years and gone to district Pilibhit to work in a sugar factory.

13. Lastly. It is also to be seen that the operation of the impugned order passed by the Dy. Labour Commissioner, Bareilly was stayed by this Court. Obviously, the respondent No. 1 might have retired from the service long ago.

14. Taking into the consideration the entire facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court as discussed above, I am of the opinion that this petition deserves to be allowed.

15. Thus, the petition succeeds and is allowed. The impugned order dated 31.12.1988 passed by the Dy. Labour Commissioner, Bareilly contained in Annexure-X to the writ petition, is, hereby, quashed.

However, there shall be no order as to costs.