
(2003) 06 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 1845 of 2001

Lily Babu

APPELLANT

Vs

Municipal Commissioner and Others

RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2003) 4 BomCR 476

Hon'ble Judges : Khandeparkar R.M.S., J

Bench : Single Bench

Advocate : Sarvasri V.P. Patil and Pankaj J. Das, for the Appellant; S. Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Khandeparkar R.M.S., J.—Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the order dated 16-4-2001, passed by the Industrial Court, Mumbai, rejecting Complaint (ULP) No. 44 of 1998 filed by the petitioner. The grievance of the petitioner is that though initially she had disclosed her date of birth to be 22-9-1938 on the basis of the school leaving certificate. However, the petitioner was in fact born on 8-12-1945 and therefore based on circular dated 10-3-1986 the petitioner requested the respondent-Corporation to make necessary changes in her service records in relation to the date of birth of the petitioner but the same was illegally refused by the respondents and further the petitioner was served with the retirement memo dated 1-10-1996 stating that she would stand retired with effect from 1-10-1996. The refusal to carry out the necessary corrections in the service records pertaining to the date of birth of the petitioner inspite of documentary evidence having been produced in support of the claim of the petitioner in that regard is totally in violation of the circular of the Corporation dated 10-3-1986, and therefore it clearly amounts to unfair

labour practices being adopted towards the petitioner by the Corporation and ignoring the same the complaint having been rejected, according to the petitioner, the impugned judgment warrants interference by this Court.

3. While assailing the impugned order, the learned Advocate appearing for the petitioner, submitted that though the rejection of the application for correction of the birth date of the petitioner was on the ground that the application was not in consonance with the circular dated 10-3-1986 and though the Corporation had never raised any doubt regarding the genuineness of the birth certificate submitted by the petitioner, the Industrial Court erred in going into the issue regarding the genuineness of the birth certificate and thereby rejecting the complaint of the petitioner on that count. According to the learned Advocate, therefore, the Industrial Court has acted illegally and the rejection of the complaint cannot be sustained in the facts and circumstances of the case.

4. Perusal of the records disclose that undoubtedly there was a circular dated 10-3-1986, issued by the Corporation, permitting the employees of the Corporation to produce evidence regarding the correct date of birth of its employees and to seek necessary correction, if any, in their service records in relation to their birth dates based on cogent evidence. However, the said circular clearly laid down a cut off date to enable the employees to seek corrections in relation to their birth dates and accordingly the applications were required to be submitted latest by 15-9-1986. Undisputedly, the petitioner joined the services of the Corporation on 1-8-1977, yet the petitioner did not chose to file any application for correction of her date of birth on or before 15-9-1986. The application was filed as late as 22-2-1994 i.e., hardly two years prior to the date of her retirement in terms of the date of birth of the petitioner disclosed by her at the time of joining the services of the Corporation. The Corporation rejected the application as the same was not in accordance with the said circular dated 10-3-1986. It is not the case of the petitioner that apart from the said circular there was any other provision which entitled the petitioner to seek change in the birth date of the petitioner in the service records of the Corporation. There is also no explanation on record as to why the application for change in the date of birth was submitted as late as in the year 1994, hardly two years prior to the date of retirement based on the date of birth disclosed by the petitioner at the time of entering in the services of the Corporation.

5. Undoubtedly, the Industrial Court has considered the aspect of genuineness of the birth certificate produced by the petitioner along with her application. However, the rejection of the complaint has not been solely on the ground of doubt about the genuineness of the said certificate. The Industrial Court has also considered the other aspects of the matter, including the ground on which the application was rejected by the Corporation and has found no fault with the decision of the Corporation in that regard as the same does not disclose any illegality.

6. It was also sought to be contended that similar application filed by one Dr.

Irani was entertained much after the expiry of the cut off date disclosed in the circular dated 10-3-1986. The Industrial Court while dealing with the said contention has observed that the delay in respect of the application by Dr. Irani was condoned taking into consideration the circumstances in which the delay had occurred in filing the application by Dr. Irani and considering the same it has held that there is not an iota of evidence to show any discrimination shown to the petitioner while rejecting her application. It is pertinent to note that initially the date of birth of the petitioner was recorded in the service records of the petitioner with the Corporation based on the school leaving certificate produced by the petitioner herself at the time of her joining the services. Though two documents, called birth certificates, stated to have been issued by the registering authority of the Government of Tamil Nadu were produced, it is apparent from the records, and indeed the Industrial Court has analysed those materials in detail, and the same disclose that one of the birth certificates did not disclose the name of the person whose birth was recorded while the other certificate disclosed the name "A. Lilly". In one certificate details regarding the sex of the person born, name of the father/mother and the permanent address has been recorded in Tamil while in the other certificate the same has been recorded in English language. However, as regards the date of birth, the registration number and the date of registration does not make any difference and while the second certificate was issued on 26-8-1994, the other was issued on 5-10-2000. It appears that it was sought to be contended before the Industrial Court that the date of birth and the date of registration was as per the Malabar era and not as per the Christian era. However, apart from the affidavit of the petitioner and the certificate said to have been issued by the Notary from Tamil Nadu, no proof of whatsoever nature in that regard was produced. That apart, there is no explanation as to why two birth certificates were produced, one disclosing the name of the person whose birth was recorded and the other disclosing the name "A.Lilly". There is also no evidence produced by the petitioner to show that the name "A.Lilly" in the said birth register is the name of the petitioner herself. Undisputedly, the name of the petitioner is "Lilly Babu". There is nothing on record to disclose that "Lily Babu" and "A. Lilly" refers to one and the same person. Being so, no fault can be found with the impugned order rejecting the claim of the petitioner that by rejecting the application of the petitioner for change in the date of birth, the Corporation had indulged itself in unfair labour practice towards the petitioner and for the same reason no fault can be found with the impugned order dismissing the compliant filed by the petitioner.

7. As there is neither any illegality committed by the Industrial Court in dismissing the application, nor the impugned order discloses any finding contrary to the materials on record, nor it discloses any arbitrary exercise of jurisdiction, there is no justification for interference therein in writ jurisdiction and hence the petition fails and is dismissed with no order as to costs. The rule is discharged.