
(1992) 01 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1143 of 1986

Madan Singh

APPELLANT

Vs

The Ganganagar Sugar Mills Ltd. and Another

RESPONDENT

Date of Decision : 30-01-1992

Acts Referred:

Citation : (1992) 1 WLN 73

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—Petitioner Madan Singh is an employee under the respondents. He entered the service of the respondents as a driver. His date of birth was recorded in the service book and service record as 30.6.1926. However, the petitioner did not know his exact date of birth. In a dispute between the employees of the respondents and the respondents an award was made by Sarvashri Kashi Nath Pandey and B.B. Thakur Pratap Singh. Term No. 12 of this award was as follows:

2 It was agreed that for the purpose of retirement the age given in the P.F. will be considered as correct age but in disputed case the record In respect of age may be corrected in the light of school leaving certificate, age given In Insurance Policy or any other documentary proof. In order to ascertain the age given in the Provident Fund record every workman will be informed about his age as given in the Provident Fund record and in case he does not produce any evidence as stated above challenging the correctness of his age as recorded the age recorded will be considered as correct. If any employee is forced to retire on the ground of ill health or infirmity the same has to be certified by the Factory Medical Doctor first but in case where there is dispute over such certificate the certificate of the civil surgeon will be considered as final.

The cases of the workman who have been retired some time back on the ground

of being over age will be scrutinised and those who will be found within the age prescribed for retirement and physically fit will be taken back.

The case of the petitioner in that his year of birth was 1933 though he did not know his date of birth. The fact that the date of birth of the petitioner had been recorded as 30.6.26 came to the notice of the petitioner, upon which he requested the Chief Medical and Health Officer, Sri Ganganagar on 29.9.83 to constitute a board for examination him with regard to his age.

2. A medical board was constituted by the Chief Medical and Health Officer vide Annx. 1 dated 1.10.83. The petitioner was examined by the medical board on 9.10.83 and the medical board determined his age on the date of examination to be 52-53 years. The petitioner moved the Provident Fund Commissioner, Rajasthan to correct his age on the basis of such medical certificate vide application Annx. 2. He also moved an application to respondent No. 2 for correcting his age in accordance with medical board's certificate. This application was moved on 4.2.85. It appears that no action was taken on this application and eventually an order was passed inter alia stating that the petitioner would be attaining age of 60 years on 30.6.86 and hence he shall be retired from afternoon of 30.6.86. This was done by Annx. 4. The petitioner submits that it was obligatory on the part of respondents to have informed the petitioner of his date of birth as recorded in the P.F. record and on petitioner's challenging the same to ascertain his correct date of birth on the basis of evidence produced but the respondents failed to do so. They also failed to take into consideration that petitioner himself had moved for correction of age and no decision had been made on such application. Upon such averments, the petitioner prayed that order Annx. 4 may be quashed and respondents be directed to correct the date of birth of the petitioner in the service record in terms of award.

3. The writ petition has been opposed on behalf of the respondents. The case of the respondents is that petitioner had himself filed a proforma Ex.R/1 in the company wherein he had mentioned his date of birth as 20.8.1925. It was pointed out that in the P.F. record the date of birth of the petitioner had been shown to be 1926. It was further mentioned that in pursuance of the award a general notice was affixed on the board of the company giving the employees an opportunity for getting their date of birth corrected. These notices were displayed on 19.8.80 and 3.9.80, yet the petitioner did not move for correction of his age and hence he was not entitled to any correction now. His order of retirement based on date of birth as recorded was proper and could not be quashed.

4. The petitioner filed a rejoinder to the reply/filed by the respondent and submitted that though Ex.R/1 bears his signatures, all that he remembers is that the form had been filled in by the clerk and the petitioner was merely asked to sign it. The petitioner did not know contents of Ex.R/1. The date given in Ex.R/2 did not tally with the date given in Ex.R/1. The petitioner pointed out in the rejoinder that medical board had been constituted by the respondents in certain other cases and dates of birth had been corrected on basis of such medical

examination reports and there should be no discrimination against the petitioner.

5. I have heard the learned Counsel for the parties.

6. The learned Counsel for the petitioner submits that petitioner is an illiterate person, who knows only to put his signatures. Under the terms of the award the respondents should have informed the petitioner personally regarding date of birth recorded in the P.F. record and thereafter should have given an opportunity of challenging the recorded age. This was not done. Ex.R/3 and Ex.R/5 have not proved to have been actually published on the notice board of the company. No material has been placed on record to show that these were actually published. At any rate personal notice was required to be given to every workman and such a general notice could not be used to shut-out the petitioner. In all fairness to the petitioner, the respondents should have accepted the certificate issued by the medical board and should have determined his correct age on the basis of the medical certificate. As against this, learned Counsel for the respondents submits that since the petitioner did not apply for correction of his age in spite of notice Annx. R/3 and Annx. R/5, he cannot ask for correction of his age now when order of his retirement has already been passed and he has already been superannuated.

7. I have considered the rival contentions and have perused the record. It is not disputed before me that the petitioner is an illiterate person, who knows only to put his signatures. He entered the service of the respondents as a driver. The petitioner was not informed about his exact date of birth as entered in the P.F. record as required by term No. 2 of the award. Ex.R/3 and Ex.R/5 purport to have been put on the notice board of the company but there is no proof that these were actually displayed on the notice board or that the petitioner knew about these notices. Moreover, such notice could not be proper substitute for a personal notice to the employee where his rights are affected vitally. When a notice for retirement could be served personally on the employee, a notice required by term No. 2 of the award could have also been served on the petitioner personally and in that case petitioner would have been obliged to move for correction of his date of birth within the time fixed by such notice. Since this was not done, the petitioner could not be precluded from moving an application for correction for his age. There is nothing to show that Annx. R/3 and Annx. R/5 had been brought to the notice of the petitioner at all.

8. It may here be re-called that the petitioner had moved the company as back as Feb., 1 985 by moving application for correction of his date of birth. The respondents had ample opportunity to make enquiry into the matter and ascertain the correct date of birth of the petitioner before passing the order of retirement. Some fault could have been found with the petitioner if he would not have moved such an application after such notice. As already stated, the petitioner had moved his application quite in time to the respondents to make an enquiry into his correct date of birth. If the respondents were not satisfied by the report of the medical board submitted by the petitioner, the respondents could

have constituted to fresh medical board of their own to ascertain his age and then could have taken a proper decision, but the respondents did not do that.

9. Retirement for an employee is a matter of moment. The date of retirement is fixed on the basis of date of birth. In cases of illiterate or semi-literate employees, it may be difficult for them to give their correct date of birth. From the record, it appears that the respondents themselves had permitted correction of the date of birth of the employees on the basis of medical examination ordered by them. Annx. 6, Annx. 7 and Annx. 8 go to show that such a course was adopted by the company in cases of certain other employees also. There is absolutely no reason why the same procedure could not have been adopted in the case of the petitioner. I, therefore, find that the order Annx. 4 retiring the petitioner with effect from 30.6.86, without determining the correct age of the petitioner was bad in law and cannot be sustained.

10. No other point was urged before me.

11. In view of what I have stated above, this writ petition is accepted. Annx. 4 is quashed. Respondents shall determine the correct age of the petitioner within a period of six months from today. In case, respondents so desire, the petitioner shall appear before a fresh medical board constituted by them for this purpose for medical examination. The respondents shall give an opportunity to the petitioner to place such other material on record as may be available with the petitioner with regard to determination of his age. The management shall also have an opportunity of rebutting such evidence. Both the parties shall be free to lead oral evidence also before the appointing authority regarding the age of the petitioner. This enquiry shall be completed by the appointing authority within the aforesaid period of six months and the date of retirement of the petitioner shall be re-determined on the basis of the result of such enquiry. In case, the appointing authority on the basis of aforesaid enquiry finds that the petitioner should have retired on the basis of a date other than that as recorded in service record, the petitioner shall be retired in accordance with such corrected date of birth. The petitioner shall get all consequential benefits on the basis of such corrected date of birth. The parties are left to bear their own costs in the circumstances of the case.