
(1995) 12 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 5367 of 1988

Maharashtra State Electricity Board

APPELLANT

Vs

Sakharam Sitaram Shinde

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1995) 12 BOM CK 0013

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B. N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an Award dated 29th March, 1988 made by the Labour Court Sangli, in Reference (IDA) No. 39 of 1985 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioner is the State Electricity Board. The respondent joined the service of the petitioner as daily rated labourer on 16th February, 1975. Prior to joining the petitioner's service the respondent was working in the Indian Army and though he claimed that he had been validly discharged from the Army, he did not produce his discharge certificate or any other document from the Army which would indicate his exact date of birth as recorded in the Army records, However, when he was recruited on 16th February, 1975 in the service of the petitioner, the respondent orally gave his date of birth as 1-4-1924. On or about 1-5-1976 the respondent produced a School Leaving Certificate dated 1st May, 1976 issued by the Head Master, Zilla Parishad, Marathi Boys' Primary School, Wangi, Taluka Khanapur, District Sangli, in which the date of birth of the respondent was shown as 1-4-1924. Some time in 1984, the respondent produced a School Leaving Certificate dated 23rd September, 1980 issued by the Head Master of the Zilla Parishad, Marathi Boys' Primary School, Wangi, Taluka Khanapur, District Sangli, in which strangely his date of birth was shown as 1-5-1925. The respondent also filed affidavit dated 3-5-1984 enclosing along with it a Xerox copy of the School

Leaving Certificate of his previous school. On the basis of the date of birth mentioned in the records, the respondent completed 60 years of age on 1-4-1984 and was superannuated from service with effect from 31st March, 1984. The respondent was paid all his dues including gratuity and provident fund. The respondent did not accept his superannuation from service, insisting that his date of birth was 1-5-1925 and that he was entitled to remain in service till 1-5-1985. In view of the discrepancy in the later certificates produced by the respondent, the petitioner refused to accept them as correct and declined to change its decision of superannuating the respondent from service.

3. The respondent raised an industrial dispute for reinstatement in service with continuity and back-wages. The industrial dispute was referred to the Labour Court, Sangli, vide Reference (IDA) No. 39 of 1985. The Labour Court, Sangli, by the impugned Award held that the correct date of birth of the respondent was 1-5-1925 and directed payment of wages from the date of his dismissal (i.e., 31-3-1984), with interest at the rate of 10 per cent per annum thereupon. Being aggrieved thereby, the petitioner is before this Court.

4. The reasoning of the Labour Court, as evident in the impugned Award appears to be strained, convoluted and difficult to accept. The first thing which should have struck the Labour Court was that the Respondent was an Ex-Army man and it would be improbable that he would not have a discharge certificate from the Indian Army clearly indicating his date of birth which had been accepted by the Army Authorities. The failure of the respondent to produce the Army discharge certificate should, per se, have led the Labour Court to draw an adverse inference against him. In any event, the first certificate produced by the respondent was in the year 1976 from the Primary School where he was studying, in which his date of birth was shown as 1-4-1924. There was no reasons to doubt the said certificate. It is obvious that the two subsequent certificates issued in the year 1980 and 1984 were issued by the same school at the instance of the respondent to support his bogus claim. It is unfortunate that the Labour Court has missed this aspect of the matter and preferred to rely upon the affidavit filed by the respondent that he was born on a particular date. It is trite to say that nobody can assert on oath his own date of birth. The comment of the Labour Court in the impugned Award that the respondent was making all efforts to get his age confirmed since many years, but his superior officers did not help him in getting his age confirmed, is totally unwarranted. Because the respondent belongs to the backward class, the Labour Court readily misdirected itself due to misplaced sympathy by believing the evidently got up case of the respondent. Considering the facts and circumstances of the case as a whole, I am satisfied that the date of birth of the respondent as recorded in the records of the petitioner was correct and, therefore, he was liable to be superannuated from service with effect from 1-4-1984. Hence, the action of the petitioner in retiring the respondent from service was unexceptionable. The Labour Court was in error in interfering with the said action and granting relief of payment of wages for a period of one year. The Award of the Labour Court is liable to be quashed and set

aside, in exercise of writ jurisdiction.

5. Writ petition is allowed. The impugned Award of the Labour Court is hereby quashed and set aside. Rule is accordingly made absolute with no order as to costs.