

(2000) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 2689 of 1993

Maharashtra State Road Transport Corporation and others

APPELLANT

Vs

Yeshwant Sridhar Phadke and another

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 114, 115, 27, 3
Industrial Disputes Act, 1947 — Section 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2000) 4 ALLMR 458 : (2000) 3 BomCR 847 : (2000) 2 BOMLR 744 : (2000) 87 FLR 868 : (2000) 4 MhLj 108

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : R.M. Sawant, for the Appellant; Mrs. Meena H. Doshi, for the Respondent

Judgement

R.J. Kochar, J.—The petitioners are a statutory Corporation established under the Maharashtra State Road Transport Corporation Act, 1950. The petitioner No. 1 is engaged in the activity of carrying passengers through out the State of Maharashtra and outside. The Corporation has its own depots and divisions at two different places in the State for the purposes of providing transport facilities to the passengers. The Corporation has its own statutory rules and regulations and service conditions determined by various settlements with the unions functioning in the Corporation.

2. The respondent No. 1 was employed by the petitioner No. 1 and was in class III category of the employees. He was employed in the year 1951. He held the post of Senior Foreman at Dapodi depot at the time of his superannuation i.e. 31-7-1987. According to him his birth date as recorded in the service record of the corporation was wrong and that the correct birth date, according to him, should have been 12-6-1931 instead of 15-7-1929 and therefore, he was entitled

to be continued till June 1989. According to him he was superannuated prematurely on the basis of recording of wrong birth date as 15-7-1929. It appears that when he smelt that he was about to be superannuated on and from 31st July 1987, on the basis of the recorded birth date i.e. 15-7-1929 he filed a representation with the petitioner Corporation by his letter dated 28th April 1987 bringing to the notice of the petitioner Corporation that his correct birth date was 12-6-1931 and not 15-7-1929 as recorded. Along with his representation he had produced a true copy of the extract of birth register issued by the Tahsildar showing that on 12-6-1931 one male child viz., Vasant was born in the family of his parents. He has also filed an affidavit of his Aunty to show that his elder brother Raghunath was born on 15-7-1929 and that the name recorded in the birth register as Vasant was subsequently changed as Yashwant and, therefore, Vasant and Yashwant are the names of one and the same person i.e. respondent No. 1. He has also relied upon a letter from the Tahsildar that only one male child was born in the family of the first respondent in the year 1929 at Murumbaugh and the name of that child was Raghunath (sic) the case of the first respondent, when his immediate elder brother Raghunath who was employed in the post office retired and he got alerted and approached the petitioner to find out his birth date on the record which he found to be 15-7-1929 and thereafter he submitted the aforesaid representation along with certified documents. It appears that by a letter dated 30th June 1987 his representation was rejected by the petitioner Corporation and he was finally superannuated by a common order passed by the Corporation superannuating a number of such employees including the first respondent.

3. Being aggrieved by the said order of superannuation passed by the Corporation, the first respondent approached the Industrial Court under Item 9 of Schedule 4 of the M.R.T.U. and PULP Act complaining u/s 28 of the Act that as per the correct record his correct birth date should have been 12-6-1931 and not 15-7-1929 and that he was entitled to be continued till the age of 58 years and that on 31-7-1987, he had not reached the age of superannuation and, therefore, the order of the Corporation amounted so on unfair labour practice within the meaning of the said Item 9 of Schedule 4 of the Act i.e. failure to implement award of the settlement. The Industrial Court by its order dated 23-11-1992 held and declared that the Corporation had engaged in unfair labour practice within the meaning of the aforesaid item and directed the Corporation to pay wages and all other benefits till the date of his retirement i.e. the end of June 1989. On the material record the Industrial Court has accepted the contention of the respondent employee that his birth date as recorded in the certificate issued by the Tahsildar to be 12-6-1931 and that the birth date recorded in the records of the Corporation on the basis of the school leaving certificate i.e. 15-7-1929 was incorrect. The Industrial Court has held in favour of the respondent employee that he was a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and, therefore, the provisions of the M.R.T.U. and P.U.L.P. Act 1971 were applicable and that his complaint was

maintainable. I may mention here that the petitioner Corporation has not challenged the said finding on the point of the maintainability of the complaint. The Industrial Court has held that the Corporation should have given valid reasons for not accepting the representation made by the respondent employee which shows non application of mind, particularly when the respondent employee had furnished a voluminous record in support of his case that he was born on 12-6-1931 and not on 15-7-1929. The Industrial Court has dealt with the evidence on record and has considered the General Standing Order No. 430 dated 10-7-1988 relating to the birth date correction. While dealing with the contention of the Corporation that the birth date of the employees cannot be corrected at the fag end of their superannuation/retirement, the learned Industrial Court has found that after the retirement of his elder brother, who was born on 15-6-1929, he became alert in respect of his birth date and he made all efforts to correct the same in the record of the Corporation and therefore, it was considered by the Industrial Court that it was not at the fag end of the retirement.

4. The petitioner Corporation has assailed the judgment and order of the Industrial Court. Shri Sawant, the learned Counsel for the Corporation has submitted that the respondent himself had furnished his birth date as 15th July 1929 at the time of his recruitment in his own application for employment in the Corporation. Along with the said application a true copy of the school leaving certificate, issued by Poona Night High School, in which the birth date recorded as 15-7-1929 was enclosed. In the said application for employment written by the employee in his own hand writing and signed by him on 3-10-1951 the birth date was mentioned as 15-7-1929. He has also declared that the information furnished was true and correct. The Corporation's service history also shows birth date of the employee as 15-7-1929. The service record is maintained under Clause 43(c) of the Regulations framed by the Corporation in the form of General Standing Order. The procedure is prescribed in the General Standing Order for maintenance of the service record and also for correction of birth date, if there is any mistake found or realised by the employer. Shri Sawant has, therefore, vehemently contended that the attempt of the respondent employee at the very fag end of his superannuation i.e. in the month of April 1987 was not bona fide and there was no illegality on the part of the Corporation to have acted on the birth date given by the employee himself in his own handwriting in the application filed by him for getting employment in the year 1951 and also recorded in his declaration dated 8-7-1958 that the birth date recorded as 15-7-1929 was correct. The Corporation has relied upon a legal and valid document which was produced by the employee when he was employed on the basis of his application filed in the year 1951. It cannot be therefore, said that the Corporation has engaged in unfair labour practice. Shri Sawant has pointed out that the Corporation is bound by its general standing order in respect of service record and also the recording and correcting of the dates. He has drawn my attention to para 5 of the General Standing Orders. He has also cited

judgment of the Supreme Court reported in Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, .

5. As against the aforesaid submissions of Shri Sawant, Mrs. Meena Doshi the learned Advocate for the respondent employee has very vehemently submitted that the order of Industrial Court is based on the facts and appreciation of evidence which cannot be interfered with in exercise of Article 227 of the Constitution of India. She has also submitted that the employee had furnished a very valuable document in the form of a true copy of the extract from the birth and death register maintained by the Tahsildar. The learned Advocate for the respondent employee has submitted that between the two documents i.e. a school leaving certificate and the birth extract, the latter one is a primary document which must prevail over the former which is to be construed as secondary evidence. According to her, the Corporation ought to have accepted the birth extract which correctly reflects correct birth date of the employee to be 12-6-1931. This fact, according to Mrs. Doshi, has been fortified by the affidavit of respondent's aunty and also by the certificate issued by the Tahsildar. She has also pointed out dates of birth of other children born to the parents of the employee. She has also vehemently attacked the decision of the Corporation while rejecting the representation filed by the employee. She has criticised the decision of the Corporation which was given only in one line without giving any reasons for such decision. According to Mrs. Doshi the Corporation should have given good reasons as to why the documents produced by her client cannot be accepted or believed. She has also attacked the decision of the Corporation to reject the representation of the respondent on the ground that the legality or validity of the documents was not challenged and if that is so, the Corporation should have accepted the representation filed by the respondent. She has, in support of her contention, relied upon the following judgments.

i) 1997(III) L.L.J. 132;

ii) 2000(1) C.L.R. 410 ;

iii) Birad Mal Singhvi Vs. Anand Purohit, .

5-A According to me, the issue is very straight and simple. The petitioner Corporation is a statutory Corporation and it has its own rules, regulations, settlement and the General Standing Orders framed by the Corporation from time to time. It has no personal grievances or axe to grind against the respondent employee individually. The respondent employee had applied for a job with the Corporation by his application filled in and signed in his own hand writing. He has signed in English and filled in all the details in Marathi in the prescribed form. This is the oldest document which is available with the Corporation and which carries higher evidential value particularly when, the employee himself had signed the said documents on 3rd October 1951. He had written his birth date in the application based on the school leaving certificate as 15-7-1929. It is further significant to note that the Corporation had got a printed

declaration form to be filled in by the individual employees. The said declaration form also clearly indicates in the birth date column the birth date as 15th July 1929. The said declaration is declared by the respondent employee to be correct. He has signed the same. There are other documents such as service history of the personnel other than the gazetted officers of the Corporation. In this history sheet the birth date of the employee is recorded as 15th July 1929. The Corporation is required to maintain such a history sheet under its Regulation No. 46(3) under the General Standing Orders. It is made very clear in the said general standing orders that it is open to every Class III and IV employees to inspect the service book whenever he desires to do so and that it is made his duty to point out omissions, mistakes if any to the notice of his head of unit who is also made duty bound to see all the entries are fully and properly made and attested. Clause 8 of the said General Standing Order is very relevant for our purpose and it will be useful to reproduce the same.

"The date of birth shall be verified with reference to documentary evidence and a certificate shall be recorded to that effect, stating the nature of the document relied on. In the case of an employee, the year of whose birth is known but not the date, 1st July shall be treated as the date of birth. When both the year and the month of birth are known but not the exact date, the 16th of the month shall be treated as the date of birth. In the case of an employee who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from the date of appointment. When the date, month and the year of birth of an employee are not known and he is unable to state his approximate age, the age from appearance as stated in the medical certificate of fitness shall be taken as correct, he being assumed to have completed that age on the date the certificate is given and his date of birth deduced accordingly. When once an entry of age or date of birth is made in the Pay Audit Register or Service Book no alternation of the entry shall afterwards be allowed unless it is discovered that the entry was due to want of care on the party of a person other than the individual in question or is an obvious clerical error. The Heads of Units alone may correct such errors in this respect as are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds shall be referred to the General Manager."

In the face of the aforesaid documentary evidence, I am not able to accept the contentions of Smt. Doshi that I should ignore all these documentary evidence which are staring in my face to come to a conclusion that the correct birth date of the employee is 12th June 1931 and not 15th July 1929. The birth date i.e. 12th June 1931, which according to the employee is correct one, appears nowhere except in the representation filed by him on 28th April 1987 just at the fag end of his superannuation. It is not the case of the employee that the birth date was recorded by a clerk or somebody and that the applicant was illiterate one and that the clerk recorded the birth date wrongly. Here is an employee who fills up and signs the form on his own only after knowing the contents of the same.

He also declares the contents to be true and produces proof with regard to the contents such as school leaving certificate for the birth date etc. On the basis of this important document submitted by the employee the Corporation has prepared the history sheet wherein the birth date is recorded as 15th July 1929. This birth date is disputed by the employee only in the year 1987. While submitting his representation it was contended by the employee that he woke up when he learnt that his elder brother retired from the Post Office service and then rushed for correction of his birth date. Obviously, this was too late in the day for the employee. The reliance placed by him on the certificate issued by the Tahsildar is irrelevant for our purpose as also whether this certificate is a primary document or a secondary one is also immaterial. The employer cannot be charged with an allegation of unfair labour practice when the employer has acted on the information declared to be true by the employee concerned. The said information furnished by the employee himself continued on the record of the employer for years together without any challenge or grievance made by the employer. It would be too much on the part of the employee to complain that the employer had committed unfair labour practice when he had acted on the information given by the employee himself. The birth date was furnished by the employee himself at various places including the school record and service records. All these documents in series have established beyond any manner of doubt that the birth date of the concerned employee was 15th July 1929 and he cannot make any grievance, atleast not of unfair labour practice, against the employer when he was superannuated at the age of 58 years in accordance with law. The first basic document is the application for employment filled in and signed by the employee in the year 1951 and also the school leaving certificate. Both these documents show the birth date of the employee as 15th July 1929. The subsequent documents which are produced by him are of not much consequence in the present case, which are obtained by the "employee to service his purpose. His attempt to show from Tahsildar's certificate that Vasant and Yashwant were the two names of one and the same person cannot be accepted by me. Since the basic and foremost evidence which I have discussed is crucial and relevant for our purpose, the certificate of the Tahsildar is to be ignored. The document which bears the name of the employee himself i.e. the School Leaving Certificate is more reliable than the certificate by Tahsildar which does not bear the name of the employee. According to me, therefore, the decision of the Corporation to superannuate the employee on the basis of the aforesaid correct birth date i.e. 15th July 1929 was legal and valid. It cannot be termed as unfair labour practice on the part of the Corporation. The last but not the least, about the fag end attempt to correct the birth date, the Supreme Court as clearly criticised such attempts of the employees who try to get their birth dates corrected at the fag end of the service. The Supreme Court in Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, has observed thus :---

"So far the facts of the present case are concerned, admittedly the respondent

entered into the service of State Government as early as in the year 1958, he never questioned the entry in respect of his date of birth in his service register, till August, 1991, when he filed an application before the Tribunal for alteration of his date of birth from 9-8-1934 to 9-8-1936. This application was filed only about a year before his date of superannuation, mentioned in his service register. On 9-9-1992, an interim order was passed by the Tribunal, when the respondent had already superannuated with reference to the date of birth mentioned in the service register and ultimately by the impugned order, the Tribunal directed the appellant to alter his date of birth as 9-8-1936. While issuing such a direction, the tribunal has taken into consideration, as to how many brothers the respondent has and what were the dates of their birth. Although the tribunal has observed that the different dates of birth of the brothers of the respondent, indicate that "there is a great deal of confusion and incongruities regarding dates of birth of the various members of the applicant's family," still on the basis of a report of the Revenue Divisional Officer, submitted after oral enquiry made from different persons, including the mother of the respondent, the tribunal has come to the conclusion, that the date of birth of the respondent was 9-8-1936 instead of 9-8-34. The Commissioner for Revenue Administration, had rejected the said report submitted by the Revenue Divisional Officer, but the Tribunal has accepted the said report for correction of date of birth of the respondent. If the date of birth of a public servant, is corrected only on basis of a report submitted by a Revenue Officer after holding an enquiry, according to us, it will introduce uncertainty, in public services. This Court has repeatedly pointed out that correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. While disposing of any such application, the Court or the Tribunal, has first to examine whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time after joining the service."

6. Following the ratio of the aforesaid judgment there is an irresistible conclusion to accept the birth date recorded by the Corporation and there is no irresistible conclusion based on any material that the birth date tried to be corrected as 12-6-1931 should be accepted.

7. The Supreme Court has further considered the issue and has framed certain guidelines in its decision in the case of *Burn Standard Co. Ltd. & others v. Dinabandhu Majumdar & another*, reported in 1995(2) C.L.R. 250. the Supreme Court has observed thus :---

"Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to

his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following :--

When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. The entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view if not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

8. In the light of the aforesaid guidelines and the observations made by the Supreme Court, the petition deserves to be allowed. The impugned judgement and order dated 23-12-1992 is quashed and set aside. Rule is made absolute

with no costs.

9. Petition allowed.