
(1994) 06 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 18016 of 1990

Nagar Mahapalika, Bareilly

APPELLANT

Vs

Labour Court Bareilly and Another

RESPONDENT

Date of Decision : 26-06-1994

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (1994) 06 AHC CK 0007

Hon'ble Judges : G.P.Mathur, J

Final Decision : Allowed

Judgement

G. P. Mathnr, J.—This petition has been filed by the employers for quashing the award, dated 2721990 of Labour Court, Bareilly given in adjudication case No, 126 of 1987.

2. Jamil Khan, respondent No. 2 was employed in Nagar Mahapalika, Bareilly. After attaining the age of sixty years as per records of Nagar Mahapalika, he was retired on 30111984. Feeling aggrieved by the aforesaid order of retirement, respondent No. 2 raised an industrial dispute. The State Government by its order, dated 18121986 made a reference to the Labour Court under Section 4K of U. P. Industrial Disputes Act (hereinafter referred to as the "Act"). The reference was whether the termination of service of Jamil Khan on 30111984 was valid or proper and if not what benefits he was entitled to get. The Labour Court given an award that the termination of service of Jamil Khan on 30111984 was not valid and therefore he was entitled to be reinstated with full back wages.

3. Shri G. D, Srivastava, learned counsel for the petitioner has submitted that at the time of the appointment Jamil Khan has declared his age as 36 years and accordingly the said age was noted in his service book which was prepared on 19111960. The respondent No, 2 had put his thumbimpression as well as hi? signatures on the service book on the basis of the aforesaid record, he was superannuated after attaining the age of sixty years which was the age of retirement for his category of employees. The learned counsel has further

submitted that in view of Rule 47 of U. P. Nagar Mahapalika Sewa Niyamawali, Nagar Mahapalika was fully justified in retiring respondent No. 2 on the basis of the age mentioned in the service book. Shri V. S. Johary, learned counsel for respondent No. 2 has however submitted that Jamil Khan had given a declaration at the time of joining service in the years 1958 that his age was 26 years and the entry regarding his age made in the service book was incorrect, He has further submitted that if respondent No. 2 was of 26 years of age in 1958, he would have attained the age of 60 years in 1992 and therefore the order retiring him from service on 30/11/1984 is incorrect. In support of his submission, learned counsel has placed reliance on *Om Prakash Misra v. State*, 1987(55) FLR 239. It has also been urged that the writ petition had been filed after long delay and it was liable to be dismissed on this ground alone.

4 The question of delay in filing the writ petition may be considered first. The impugned award of the Labour Court was delivered on 27/2/1990. An award of the Labour Court does not become enforceable till it is published by the State Government under Section 6(3) of the Act and the cause of action for filing the writ petition would arise only after publication of the award. The date on which the impugned award was published under Section 6(3) of the Act has not come on the record. It is stated in the rejoinder affidavit filed on behalf of the petitioner that the copy of the award was received in the office of the Health Department of the Nagar Mahapalika on 22/5/1990. The writ petition was got reported from the office on 16/7/1990 and order for issuing notice upon respondent No. 2 was passed by a learned Single Judge on 17/7/1990. It shows that the writ petition was filed within sixty days of the receipt of the copy of the award and therefore it cannot be held that the petitioner is guilty of laches.

5. Before the Labour Court, the employers examined two witnesses viz RW1 Aziz Husain and EW2 Anoop Sinha and they also filed copy of the service book (Ex. E2) and copy of the letter sent by the employers to respondent No. 2 for getting himself medically examined (Ex. E23) and also report of the handwriting expert. The respondent No. 2 examined himself as a witness and also filed copy of declaration form (Ex. W1). There is no dispute that service book of respondent No. 2 was prepared on 19/11/1960 in which his age was mentioned as 36 years. The respondent No. 2 put his thumbimpression as well as his signatures on the service book on the same page where his age was mentioned. There is also no dispute that respondent No. 2 had attained the age of 60 years in November 1984 in accordance with the entry made in the service book. It is also mentioned in the very first sentence of paragraph S of the award that at the time of his retirement in 1984, respondent No. 2 was working as "Transport Lipik" (Transport clerk) in the Health Department of Nagar Mahapalika, Bareilly. A person working as clerk must necessarily be a literate person and can be presumed to be aware of the implications of entry made in the service book. Therefore, apart from the fact that the relevant endorsement regarding age in the service book had been thumbmarked as well as signed by the respondent No. 2, it is clear that right from 1960 respondent No. 2 was aware about the fact that as per the record of

Nagar Mahapalika, he was shown to be aged 36 years in 1960 meaning thereby that the year of his birth was 1924. The employers have also led evidence and have filed copy of a letter (Ex. E3) sent to respondent No. 2 asking him to get himself medically examined. The case of respondent No. 2 is that he had not received the aforesaid letter. The letter bears the signatures of respondent No. 2 and his signatures on the letter has also been proved by E. W2 Anoop Sinha, handwriting and finger print expert. The report of the expert is Ex. 4 on the record of the Labour Court. The Labour Court has not recorded any finding to the effect that the report or statement of handwriting expert E. W2 Anoop Sinha is not reliable or cannot be believed. The evidence produced by the employers thus shows that a letter was sent to respondent No. 2 for getting himself medically examined but he refused to do so which would have been helpful in ascertaining his correct age.

6. The Labour Court has held that a declaration form had been submitted by respondent No. 2 on 16/1/58 wherein he had shown his age as 26 years but subsequently at the time of preparation of service book in November, 1960 his age was mentioned as 36 years and as the service book was prepared two years after submission of declaration form, the age should have been recorded as 26 years. On this basis, the Labour Court has held that the entry made in the service book is wrong. The Labour Court further observed that it appears that by mistake instead of 26 years the figure 36 years was recorded.

7. Having considered the entire material on record. I am of the opinion that the award given by the Labour Court cannot be sustained as the finding recorded by it is based purely upon conjectures and surmises. Merely because the age of respondent No. 2 in the declaration form was mentioned as 26 years it cannot lead to the conclusion that there was any mistake in making entry about the age in the service book. The further reason given by the Labour Court that it appears that by mistake instead of "26" the figure "36" has been written also does not appeal to reason since service book was prepared two years after the submission of the declaration form. There was no question of writing the same age therein and therefore it is not possible to draw an inference that figure "36" had been inadvertently written for the figure "26". If the declaration form had been made the basis for making entry in the service book, the same having been prepared after two years, the age would have recorded as 28 years but this was not done. No statutory provision has been brought to my notice to show that the age mentioned in the declaration form would be deemed to be the correct age and would supersede the age as mentioned in the service book. In *State of Assam v. Daksh Prasad Deka*, AIR 1971 SC 173, it has been held that the date of compulsory retirement under F.R. 56(a) has to be determined on the basis of service book and not on what the employee claimed to be his date of birth, unless service record is first corrected consistent with the appropriate procedure. It is not the case of respondent No. 2 that he applied any time prior to his retirement for making correction about his age, as recorded in the service book.

8. The respondent No. 2 was an employee of Nagar Mahapalika and his service conditions are governed by U. P. Nagar Mahapalika Sewa Niyamawali, 1962. SubRule (1) (a) of Rule 47 of these Rules provides that the date of compulsory retirement of a Mahapalika servant is the date on which he attains the age of 60 years. Subrule (5) which has a bearing on the controversy in dispute reads as follows:

"For the purpose of this rule the age of a servant shall be determined with reference to his date of birth as recorded in the High School Examination Certificate or in the certificate of an examination recognised by Government as equivalent thereto or if there is no such certificate with reference to his date of birth as recorded in the Hindustani Final Examination or Junior High School Examination or as entered in the Scholar's Register of any institution recognised by Government. Where there is no such authentic record of the age of a servant or where the servant has not studied in any recognised institution it would be permissible to examine other reliable documentary evidence such as entries in the service book, certified copy of entry in the birth register, the affidavit of the parent or guardian, the horoscope or such other recorder the medical certificate by the Civil Surgeon of the district. The decision of the Appointing Authority as to the correct age of a servant shall be final."

9. The respondent No. 2 had not produced High School Certificate or Certificate of Junior High School Examination and in absence thereof the employers were fully entitled to rely upon the entry in the service book. In the present case, except for the entry made in the service book there was no other material as enumerated in subrule (5) which could be looked into for the purpose of determining the age of respondent No. 2. In these circumstances, the employers were fully justified in retiring respondent No. 2 on the basis of entry made in the service book. The Labour Court has erred in completely ignoring to consider this statutory provision.

10. There is another infirmity in the award. In the operative portion, the Labour Court has held that retirement from service of respondent No. 2 with effect from 30111984 was illegal and has directed his reinstatement with full back wages. The effect of this direction is that respondent No. 2 would continue in service indefinitely. Even assuming that he was born in 1932 in accordance with the age mentioned in the declaration form, he would attain the age of 60 years in 1992 and could not continue in service thereafter.

11. As already stated, the respondent No. 2 put his thumb, impression and signatures on the service book which was prepared in 1960. He was therefore fully aware about the fact that his age was mentioned as 36 years in 1960. Till he retired in 1984, he made no grievance whatsoever and made no application (or correction of his age. It was only when he had been retired, he raised a dispute and the State Government also made a reference to the Labour Court in December 1986 i.e. more than two years after his retirement. Another question which crops up in this connection is whether such a claim could be entertained at

that stage.

12. Recently the Supreme Court, in a series of decisions, has strongly deprecated the practice of the employees making representations for correction of their age shortly before their age of retirement. In *Union of India v. Harnam Singh*, AIR 1993 SC 1367 it has been observed that the date of birth entered in the service records of Government servant is of utmost importance for the reason that the right to continue in service stands decided by this entry in the service record. It has also been observed that in the absence of any provision in the rule for correction of date of birth, the general principle of refusing relief on the grounds of laches or staleness is generally applied by the courts or the tribunals. If the Government fixes a timelimit, beyond which no application for correction of date of birth can be entertained, an application for correction of date of birth made beyond the time so fixed cannot be entertained even if the employee had good evidence to establish that the recorded date of birth is clearly erroneous. In *Secretary and Commissioner, Home Department v. R. Kirubakaran* 1994(1) UPLBEC 89 (SC) it has been observed as follows in para 5 of the report :

"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book."

In *Burn Standard Company y. Dina Bandhu Majumdar*, 1995(4) JT 23, the High Court had issued a direction of date of birth of an employee of the Company in a writ petition but the order was reversed by the Supreme Court with the following observations :

"That fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of nonraising of an objection in the matter by the employee, in our view, should be sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

In my opinion, the principle of law enunciated by the Supreme Court should also

apply in the present case. Here the employee never made any application for correction of his age at any point of time.

13. For the reasons given above, I am clearly of the opinion that the award given by the Labour Court suffers from manifest error of law and cannot be sustained. The writ petition is, accordingly, allowed and the award given by the Labour Court in adjudication case No 126 of 1987 is quashed. Interim order is vacated. No cost.