

(2006) 07 CAL CK 0022

In the Calcutta High Court

Case No : F.M.A. No's. 1393 of 2000 and 124 of 2006

Ramani Kanta Das

APPELLANT

Vs

Garden Reach Shipbuilders and Engineers Ltd. and Others

 Garden Reach Shipbuilders and Engineers Ltd. and
Others Vs Ramani Kanta Das

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Citation : (2006) 3 CALLT 603 : 110 CWN 727 : (2007) 112 FLR 411

Hon'ble Judges : Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Biswa Ranjan Ghosal and Keya Bhattacharjee, in FMA No. 1393 of 2000 and Dipak Kumar Ghosh and Ranajoy De, in FMA No. 124 of 2006, for the Appellant;

Judgement

Ashim Kumar Banerjee, J.—These two appeals were filed by both the parties against the same order of the learned single Judge passed on August 5, 1999 partly allowing the writ petition of Ramani Kanta Das (hereinafter referred to as "Ramani"), the appellant in FMA No. 1393 of 2000. Ramani read in Kalidhan Institution in South Calcutta prior to 1957. He read at the primary level for few years. In 1957 he joined Garden Reach Shipbuilders & Engineers Limited (hereinafter referred to as "GRSE") as an unskilled labour. In 1959 his age was determined as 22 years as he could not produce any document in support of his date of birth. In course of his employment he passed out school final examination in 1960 as a private candidate. In 1964 he applied for the post of clerk in GRSE where he was successful. He was given appointment in the post of clerk. The letter of appointment would, however, show that such appointment was provisional and it was further mentioned that in case he was not found suitable in the post of clerk he would be reverted to his original post of turner. Ramani continued his studies and became a commerce graduate and ultimately he retired as an Accounts Officer of GRSE in the year 1995.

2. In 1994 before few months of his retirement GRSE wrote a letter to Ramani for production of appropriate documents in support of his date of birth. Such opportunity was given in terms of the service rules of GRSE where opportunity was given to all employees to apply for correction of their date of birth on production of appropriate documents. At this juncture Ramani objected to the recording as per GRSE's record. His year of birth was recorded as 1937 on the basis of finding of the Medical Board in 1959. According to Ramani, he passed out school final in 1960 and he produced school final certificate wherein his date of birth was recorded as of 1940 and such document was accepted by GRSE in 1964 when he was given appointment in the post of clerk. He was treated as such as would appear from his medical card as well as identity card. Hence, the authority was not entitled to treat his year of birth as of 1937 on the basis of such erroneous recording and that too prior to his substantive appointment as clerk. According to him, his appointment as unskilled labour was temporary in nature. He was appointed as a clerk through a regular recruitment process and at the time of his entry the school final certificate was produced and that was to be taken as unimpeachable evidence in support of his date of birth.

3. The learned Judge disbelieved the case of the petitioner to the extent where he contended that his appointment in 1964 in the post of clerk was a fresh one. His Lordship upon verification of the records found that the appointment of the petitioner in the post of clerk was by way of promotion and not by substantive appointment. His Lordship observed that the parties treated such appointment as promotion in the post of clerk. His Lordship, however, allowed the petition to the extent that the writ petitioner's year of birth should be taken as of 1940 on the basis of school final certificate as according to His Lordship the said document was taken as sacrosanct in 1964 and disputes raised by GRSE in 1994 after 30 years was not permissible in law.

4. Mr. Biswa Ranjan Ghoshal, learned Counsel appearing for Ramani contended as follows:

i) Since Ramani applied for a substantive post of a clerk and participated in the regular recruitment process along with other eligible candidates his appointment in the post of clerk was independent of his past service as a temporary unskilled labour.

ii) Since at the time of entry in service in a post of clerk the respondent company accepted the school final certificate as a proof of his date of birth such recording should be considered for determining his date of superannuation.

iii) The company itself for the first time issued the notice of superannuation in 1994 in terms of the service rules and the writ petitioner immediately produced his school final certificate as a proof of recording of the date of birth at the time of his initial entry. Hence, there had been no occasion for raising a dispute with regard to recording of the date of birth.

iv) The fact that the company accepted the date of birth as recorded in the

school final certificate would be evident from the identity card and the medical card and there was no occasion for raising any dispute on that score.

v) The learned Judge while accepting the case of the writ petitioner that his date of birth was properly recorded at the time of his entry in service as a clerk there was no occasion for depriving him the benefit of full salary for the remaining period.

5. In support of his contention Mr. Biswa Ranjan Ghosal relied the Apex Court decision in the case of *State of Punjab v. Mahinder Singh* reported in 2005, Volume-V, Supreme, Page 585 and a single Bench decision of this Court in the case of *Gian Chandra Dhagat v. Damodar Valley Corporation* reported in 1997, West Bengal Law Reporter, Page 32.

6. Mr. Dipak Kumar Ghosh, learned Counsel appearing for GRSE contended as follows:

i) Appointment of Ramani in the post of clerk was in continuation of his service as would appear from his letter of appointment in the post of clerk where it was specifically observed that in case he was not successful in having satisfactory performance during probationary period in the post of clerk he would be revert back to his original post of Turner.

ii) At the time of initial entry in service in 1957 Ramani could not produce any document in support of his date of birth. As such the then Medical Board in 1959 assessed his age as 22 years meaning thereby his year of birth was 1937. Such recording in 1959 was sought to be disputed in 1994 which was not permissible.

iii) Ramani did not raise any age dispute at any point of time during his service tenure. As per the service rules prior to his retirement the company gave opportunity for correction of the date of birth by producing contemporaneous document. Such opportunity was given to all the employees of GRSE. Since Ramani could not produce any contemporaneous document in support of his contention at that stage his prayer for correction of his date of birth was not acceded to.

iv) There was no subsequent recording of the date of birth as per the school final certificate obtained by Ramani in 1960 and the medical card or the identity card could not be taken as a proof of age of the concerned employee as those were issued for different purpose and that too on the basis of self declaration made by the employee concerned.

v) School final certificate of a private candidate was based upon self declaration of the candidate and in any event that was obtained much after his initial entry in service and as such could not be taken for determining his age.

vi) The learned Judge while rejecting the case of the writ petitioner that he was appointed in a substantive post of clerk in the year 1994 ignoring his past service should not have allowed the writ petition by directing reinstatement with 50%

back wages.

7. In support of his contention Mr. Ghosh cited as many as nine decisions:

(i) Calcutta Law Times 1991, Volume 1, page 318 (Steel Authority of India and Anr. v. Sudhendu Kumar Chakraborty and Ors.)

(ii) 1994, Supreme Court Cases, Supplementary 1, page 155 (Secretary & Commissioner, Home Department and Ors. v. R. Kirubakaran)

(iii) Visakhapatnam Dock Labour Board Vs. E. Atchanna and Others,

(iv) 1993, Supreme Court Cases, Volume 2, page 162 (Union of India v. Namam Singh)

(v) Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another,

(vi) Union of India Vs. C. Rama Swamy and others,

(vii) 1980, Supreme Court Cases, Supplementary, Page 678 (Jiwan Kishore v. Delhi Transport Corporation Ltd.)

(viii) 2004, Volume 2, Service Law Reporter, Page 741 (State of Punjab and Ors. v. S.C. Chadha)

(ix) Hindustan Lever Ltd. Vs. S.M. Jadhav and Another,

(x) 2005, Volume 105, Factory Law Reporter, Page 969 (U.P. Madhuamik Shiksha Parishad and Ors. v. Raj Kumar Agnihotri)

8. To consider the point in issue little analysis and recapitulation of the Apex Court decisions are necessary. On a composite reading of the Apex Court decisions cited above our understanding of the law is as follows:

i) Any dispute with regard to the recording of date of birth at the fag end of service carrier is not tenable.

ii) To resolve the age dispute contemporaneous independent records are relevant.

iii) Such contemporaneous documents should be unimpeachable and irrefutable. In absence of such unimpeachable evidence recording of date of birth at the time of initial entry in service must be considered to determine the date of superannuation.

iv) School record will have more probative value than a horoscope to find out the actual date of birth.

9. In the instant case Ramani claimed that he was born in 1940 meaning thereby he entered in service while he was 17 years old. Employment to minor is not legally recognized. However, this point was not gone into in detail by the learned Judge although we find that point was raised by the learned Counsel for the company. The writ petitioner did not sit for any board examination as a regular candidate. In support of his date of birth he produced certificate from the

Headmaster of the Kalidhan Institution in 1994-95. The said Headmaster was not there when Ramani allegedly studied in the said school. Such certificate of the Headmaster should not be considered as a relevant piece of evidence. Reference may be made to the recent Apex Court decision in the case of Ravinder Singh Gorkhi v. State of Uttar Pradesh reported in AIR SC W 2006, Page 2648.

10. In the case of Steel Authority of India (supra) the Division Bench of this Court observed that school final certificate of a private candidate could not be the conclusive proof of his date of birth.

11. The learned Judge, however, viewed the problem from a different angle. Let us examine whether he was right on that score or not.

12. Ramani contended that his appointment in the post of clerk was a substantive appointment irrespective of his past service record which according to him was temporary in nature. The learned Judge considered the original records produced before him and came to a conclusion that his appointment in the post of clerk was not an independent appointment and disbelieved the case of the petitioner on that score.

13. If the learned Judge's view that appointment as clerk was a continuation of appointment is correct that would conclusively show that the Ramani entered in service at the age of 17 years as per the school final certificate. This was not permissible. This aspect was not considered by the learned single Judge. His Lordship at one stage observed that it was not clear whether the record was rectified or not. However, in the later part of the Judgment His Lordship observed that the date mentioned in the school final certificate was accepted by the authority. Such inconsistency in the Judgment is apparent on its face.

14. Admittedly Ramani could not produce a single scrap of document which could not be taken as a contemporary evidence at the time of his initial entry in 1957 in support of his date of birth he could only produce the school final certificate and the certificate of Headmaster of Kalidhan Institution in 1994-95. These two documents could not be considered as unimpeachable to have a correction of date of birth as prayed for by Ramani.

15. Hence, appeal of the company being No. 124 of 2006 succeeds. Appeal of Ramani being FMA No. 1393 of 2000 consequently fails. Order of the learned single Judge is quashed and set aside. Writ petition filed by Ramani is dismissed. There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, it applied for.

Tapan Mukherjee, J.

16. I agree.