
(2004) 05 GAU CK 0040

In the Gauhati High Court

Case No : WP (C) No's. 111, 112, 113 and 114 of 2004

Ramjee Yadav and Others

APPELLANT

Vs

Tripura Jute Mills Ltd. and Another

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Citation : (2004) 3 GLR 173

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

**Advocate : Samik Deb, S. Choudhury and U.K. Mazumdar, for the Appellant;
G.S. and K. Roy, for the Respondent**

Judgement

I.A. Ansari, J.—As Writ Petition (Civil) Nos. 111/2004, 112/2004, 113/2004 and 114/ 2004 raise common questions of law for determination, all these writ petitions have been heard together and are being disposed of by this common order.

2. (i) Ramjet; Yadav, petitioner in WP(CJ No. 111/2004, initially entered into the service of Tripura Jute Mills Limited (hereinafter referred to as "TJML") as Line Sardar vide order, dated 19.6.1080, issued by the General Manager, Tripura Jute Mills Limited (hereinafter referred to as "the TJML"). At the time of entering into the service, the petitioner submitted school certificate in proof of his date of birth, the date of birth, according to the said school certificate, being 30.7.1956.

(ii) Sunil Chandra Paul alias Sunil Paul, petitioner in WP(C) No. 112/ 2004, initially, entered into the service of TJML as Worker vide order, dated 1.3.1984, Issued by the Mill Manager, TJML. This petitioner produced the identity card issued by the respondent No. 2, namely, Personnel Officer, TJML, in proof of his date of birth, the date of birth of this petitioner being 28.8.1953.

(iii) Bilash Choudhury, petitioner in WP(C) No. 113/2004, initially, entered into the service of TJML as Worker-cum-Trainee vide order, dated 24.3.1983, issued by the General Manager, TJML, and this petitioner also produced, in proof of his

date of birth, the identity card, dated 19.5.1986, issued by the respondent No. 2, namely, Personnel Officer, TJML, showing his date of birth as 1.1.1954.

(iv) Smt. Jyotsna Biswas, petitioner in WP(C) No. 114/2004, initially, entered into the service of TJML as Worker vide, order dated 4.8.1988, issued by the respondent No. 2 and this petitioner too produced, in proof of her date of birth, the identity card, dated 4.8.1988, issued by the respondent No. 2 showing her date of birth as 12.9.1949.

3. Acting upon the certificate/documents aforementioned, so produced by the petitioners with regard to their dates of birth, the respondents/ authorities concerned entered the dates of birth of the petitioners in their respective service records thereby treating the dates of birth mentioned by the petitioners as true and correct. However, long after entering into the service, the petitioners were medically examined, on the strength of orders passed by the respondents/ authorities concerned, by the Medical Board and, acting upon the medical opinion with regard to the age of each of the petitioners, the respondents/authorities concerned treated the dates of birth of the petitioners as follows :

Sl No. Name Date of superannuation

1. Ramjee Yadav, Line Sardar WP(C) No. 111/04 Age as on 07-05-2002 56 years 31-03-2004

2. Jyostna Biswas, Peon WP(C) No. 114/04 Age as on 7-5-2002 56 years 31-03-2004

3. Sunil Paul, Breaker Feeder WP(C) No. 112/04 Age as on 30-05-2002 56 years 31-05-2004

4. Bilash Choudhury 41/4 Spn WP(C) 113/2004. Age as on 30-05-2002 56 years 31-05-2004

4. Acting upon the corrections so made in the dates of birth of the petitioners, the respondent No.2, namely, Personnel Manager, TJML, issued the common impugned Memorandum/order, dated 5.12.2003, superannuating the petitioners from their respective services with effect from the dates shown against their names. Hence, the present writ petitions.

5. Heard Mr. Somik Deb, learned counsel appearing on behalf of the petitioners, and Mr. G. S. Das, learned counsel appearing on behalf of the respondents.

6. While moving these writ petitions, the petitioners prayed for interim direction staying the impugned Memorandum/order, dated 5.12.2003, but the same was rejected in case of the petitioners in WP(C) No. III/ 2004 and WP(C) No. 112/2004, namely, Ramjee Yadav and Sunil Chandra Paul respectively. However, the learned single Judge by order, dated 24.3.2004, passed in CM Application Nos. 64/2004 and 65/2004 passed interim direction directing the respondents not to retire the petitioners, namely, Bilash Choudhury and Smt. Jyotsna Biswas till disposal of the writ petition and, on the strength of the said interim order,

these two writ petitioners are still continuing in service.

7. Admittedly, on the basis of the certificate/documents produced by the petitioners, the dates of birth had been entered into their respective service records and before altering or changing the said dates of birth of the petitioners so maintained in their respective service records, no opportunity of showing cause and/or hearing was given to the petitioners.

8. Since an employee's date of birth entered into the service record cannot be changed or altered without giving an opportunity of showing cause, for, if the date of birth of an employee is altered without giving opportunity of showing cause and/or hearing to the employee concerned, it will be in denial of the principles of natural justice and such violation cannot be permitted by the Court, since the common impugned Memorandum/order altering the dates of birth of the petitioners has been passed without giving any opportunity of showing cause and hearing to the petitioners, the same is *ex facie* illegal and not sustainable in law. (See *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, *Sarjoo Prasad Vs. General Manager and another*, *Union of India Vs. C. Rama Swamy and others*, , *Ashgar Khan Vs. Union of India (UOI) and Others*, , *Hari Singh v. State of Bihar* *Nomal Chandra Bhuyan v. State of Assam*, reported in 1998 (1) GLT 414 and *Yumnam Saratchandra Singh v. State of Manipur*, reported in (2001) 3 GLR 249 . See also *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, .

9. Confronted with the situation, as indicated hereinabove, the respondents have, now, offered to withdraw the common impugned Memorandum/order, dated 5.12.2003, aforementioned, reinstate the petitioner, namely, Ramjee Yadav [in WP(C) No. 111/2004], and take steps for determining the correct dates of birth of the petitioners after giving them an opportunity of showing cause and hearing.

10. In view of the above and as agreed to by the learned counsel for the parties, appearing before this Court, the common impugned Memorandum/order, dated 5.12.2003, is hereby set aside and quashed and the petitioner in WP(C) No. 111/2004, namely, Ramjee Yadav is hereby directed to be reinstated in service within a week from today w.e.f. the date of his superannuation and he shall be entitled to his full salary from the date of his superannuation. It may be mentioned here that the petitioner in WP(C) 112/2004, namely, Sunil Chandra Paul alias Sunil Paul, is yet to be superannuated, his date of superannuation being shown as 31.5.2004. The interim orders passed by this Court on 24.3.2004 in CM Application No. 64/2004 in WP(C) No. 113/2004 and CM Application No. 65/2004 in WP(C) No. 114/2004 in respect of the petitioners, Bilash Choudhury and Smt. Jyotsna Biswas respectively, are hereby made absolute. The respondents are, however, left at liberty to take such action in accordance with law for determining the correctness of the dates of birth of the petitioners and take such follow-up action accordingly as is permissible in law.

11. With the aforesaid observations and directions, these writ petitions shall stand disposed of. However, there shall be no order as to costs.