

(2004) 03 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 451 of 1996

Shri Dattu Rama Sawant

APPELLANT

Vs

Bharat Textile Mills N.T.C. (S.M.) Ltd.

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 78, 79

Citation : (2004) 3 ALLMR 672 : (2004) 102 FLR 580 : (2004) 3 MhLj 84

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Karnik, for the Appellant; Kiran S. Bapat, for the Respondent

Judgement

Nishita Mhatre, J.—This Petition challenges the order of the Industrial Court passed in a Revision Application setting aside the order of the Labour Court granting the Petitioner wages for the period from 1.1.1989 to 31.12.1992. The Respondent was directed to make the payment within one month from the date of the order.

2. The Petitioner was working with the Respondent-Mill as a Helper from 1954. On 10.12.1988, the petitioner was informed that he would stand superannuated from 1.1.1989 on completion of 60 years of age. Thereafter the Petitioner informed the Respondent that his date of birth was 20.11.1931 and that he was entitled to continue in service for a further period of three years. On 1.1.1989, the Petitioner's services were terminated in accordance with the letter dated 10.12.1988 informing him that he had reached the age of superannuation. Aggrieved by this termination of his services, the Petitioner sent an approach letter u/s 42 of the Bombay Industrial Relations Act. As his grievance was not redressed, the petitioner filed an application under Sections 78 and 79 of the Act challenging the order of termination of his services. This application was filed on 20.2.1989. The Respondent contested the claim of the Petitioner and stated that his date of retirement was correctly recorded by them and therefore, the Petitioner had been retired from service on attaining the age of superannuation.

The Labour Court by its order dated 7.1.1994 held that the Petitioner had not been able to prove that his date of birth was 20.11.1931 as the birth certificate produced by him did not tally with his name. However, the Labour Court held that assuming the year of birth of the Petitioner was 1929, he ought to have been continued in service till the age of 63 years in accordance with standing order 20(A) of the Standing Orders applicable to the mill workers. The Labour Court also held that retiring the petitioner in January 1989, when his exact date of birth was not known was illegal and that the Petitioner ought to have been continued in service in any case upto 31.12.1989. Taking both these issues into consideration, the Labour Court directed the Respondent to pay wages to the Petitioner from 1.1.1989 to 31.12.1992.

3. Being aggrieved by this order, the Respondent preferred a revision application against the order of the Labour Court. The Revision Application was allowed and the Labour Court's order was set aside.

4. Ms. Karnik, learned Counsel appearing on behalf of the Petitioner, submits that the Industrial Court has erred in setting aside the order of the Labour Court when the Labour Court rightly came to the conclusion that the Petitioner was entitled to continue in service upto the age of 63 years under the Standing Order 20(A) of the Standing Orders applicable to the mill workers. She submits that in view of the Division Bench judgment of this Court in the case of *Tata Textile Mills (U.C.) and Ors. v. Munnilal Nanhoo Yadav and Ors.* reported in 1990 1 CLR 120, the Petitioner ought to have been continued in service upto 31.12.1992 and hence, the termination of his services prior thereto was illegal. She submits that although the Labour Court has held that the birth certificate produced by the Petitioner could not be relied upon, the Labour Court has rightly concluded that the Respondent had violated the Standing Order 20(A). In any event, she submits that the Respondent has committed an illegality by terminating the services of the Petitioner on 1.1.1989 when his exact date of birth was not known but the year of birth was recorded. She submits in view of the judgment of the Allahabad High Court in the case of *Ahmed Hussain v. The Managing Director, U.P. State Road Transport Corporation and Ors.* reported in 1992 1 CLR 105, the Petitioner ought to have been continued till the end of year that is 31.12.1989.

5. On the other hand, Mr. Bapat, learned Advocate for the Respondent-Mill, submits that the Labour Court was completely in error in granting the wages payable for the period from 1.1.1989 to 31.12.1992 on the basis that the Petitioner ought to have been continued in service upto the age of 63 years when there were no pleadings to that effect in the application itself. He submits that there was no opportunity for the Respondent to counter this pleading of the petitioner or to lead evidence on the efficiency of the Petitioner at the age of 60 years. He relies on the judgment of *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, to submit that merely by stating in the evidence that he was terminated without following the standing orders, the Petitioner could not be

continued till the age of 63 years when they were no pleadings to that effect. He further submits that the Petitioner having approached the Labour Court with unclean hands, no indulgence should be shown to him and the order of the Industrial Court ought to be upheld.

6. On a perusal of the application itself, I find that the Petitioner has not in terms stated that his services were wrongly terminated in view of a breach of the standing orders applicable to him. However, he has stated that his services were wrongly terminated and that he be permitted to continue in service till the age of superannuation. He has also stated that he was aggrieved by the illegal and wrongful termination of his services and, therefore, he had approached the Labour Court under Sections 78 and 79 of the Act. In his evidence, the Petitioner has stated that he was entitled to continue in service upto the age of 63 years in accordance with the standing orders. He has also deposed to the fact that he is physically fit to perform his normal duties as a helper in the department of the respondent. However, there is no cross-examination indicating that the Respondent had challenged the Petitioner's efficiency. No suggestion was put to the Petitioner that he was not physically fit to continue in service. The Respondent examined its witness who was its record clerk. A suggestion was put to him on behalf of the Petitioner that the petitioner was efficient and physically fit to continue in service. This witness has not been able to deny the same. In fact, this witness has deposed that he had been continued in service by the Respondent-mill beyond the age of 60 years.

7. The Labour Court took into consideration these factors and found that the workman was entitled to continue in service till the age of 63 years in accordance with the standing orders. In fact, the workman instead of being retired on 1.1.1989 even as per the year of birth recorded by the Respondents ought to have been allowed to continue till he attained the age of 63 years in accordance with the records maintained by the Respondent. This having not been done by the Respondent, it has obviously committed an illegality. In the case of Shankar Chakravarty (supra), the Supreme Court was considering whether it would be open for a party to raise a contention based on the evidence recorded if there was no pleading. The Court held that & fact which is required to be established must be pleaded and evidence on that count must be led. In the present case, by law, the Petitioner was entitled to continue in service till the age of 63 years as held by the Division Bench of this Court in Tata Textiles (supra). Therefore, the submission that it was necessary for the Petitioner to plead that he should be allowed to continue upto the age of 63 years is unacceptable, when the Petitioner has stated in the application filed before the Labour Court that he should have been continued in service in accordance with the standing orders applicable. The Petitioner has clearly stated that his services were terminated illegally albeit on the ground that his date of birth was wrongly recorded. The Labour Court while rejecting this contention of the Petitioner has correctly found that he was entitled to continue in service upto the age of 63 years as per the records maintained by the Respondent.

8. The finding recorded by the Labour Court that the Petitioner was entitled to continue in service till the end of the year when only the year of birth has been recorded by the Respondent also cannot be faulted. In fact this is ought to have been done in accordance with the Standing Orders.

9. The Industrial Court was clearly in error by setting aside the order of the Labour Court. The order of the Industrial Court is, therefore, set aside. The Petitioner was entitled to continue in service upto 31.12.1992. The date is taken as 31.12.1992 as it is the practice to continue the workman till the end of the year when they attained superannuation.

10. Rule made absolute with no orders as to costs.

11. The Respondent shall make the payment as directed by this order within three months from today.

12. Writ Petition is disposed of accordingly.