

(2006) 10 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (Civil) No. 20769 of 2005

Span India Pvt. Ltd.

APPELLANT

Vs

Ram Sunder and Another

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Citation : (2006) 10 DEL CK 0066

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Inderjit Singh, for the Appellant; S.N. Mehrotra, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—Admit.

2. The respondent was employed by the petitioner as a workman in 1977. In the record of the management, his date of birth was recorded as 1.1.1943. He was sought to be retired with effect from 31.12.2000. The respondent raised an industrial dispute which was referred to the Labour Court. The following were the terms of reference:

Whether the services of Sh. Ram Sunder S/O Sh. Ram Lal have been terminated illegally and/or unjustifiably under the garb of superannuation and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?

3. The Labour Court in the impugned award dated 4.1.2005 held that the correct date of birth was 1945 and directed wages to be paid till the period of 30.6.2003. Before the Labour Court, the respondent in his statement of claim said that his date of birth was 7.2.1948 and not 1.1.1943 as recorded by the petitioner management. He alleged that in the ESI Card, his date of birth was 1945. He claimed reinstatement with full back wages. The petitioner management in its

reply stated that at no time prior to 1997 the petitioner made any attempt for correction of his date of birth and that he has been rightly superannuated. According to the management, the plea of the workman about the date of birth having been raised 24 years after he joined service had to be rejected. Coming to the facts about the record, it was contended that the workman in February, 1996 while giving his nomination and declaration form under the Employees Provident Fund and Misc. Provisions Act, 1952 had given his date of birth as 1943. The management also said that the respondent/workman had not produced his date of birth certificate till 27.1.2000 i.e. till completion of 24 years of service. The Labour Court observed that there were three dates of birth available on record. One was 1.1.1943 recorded in the nomination form of the provident fund submitted on 2.2.1996. The second was 1945 recorded in the identity card issued by the ESI Corporation at the time of his appointment. The third was 7.2.1948 which was mentioned in the High School Examination Certificate. The Labour Court felt that the date of birth in the ESI Identity Card must have been recorded on the information supplied by the management and, Therefore, that must have been the date of birth first recorded in point of time. Accordingly, the date of birth was held to be 1.1.1945 and superannuation with effect from 31.12.2000 or 8.1.2001 was found to be wrong. The Labour Court directed that the workman should have been retired with effect from 30.6.2003. For coming to the retirement age, the Labour Court referred to the standing orders which mentioned the date of superannuation as 58 years.

4. It is contended by the management petitioner that the award is perverse inasmuch as neither the workman nor the management claimed that the date of birth was 1945 or 1.7.1945. Even before this Court, the respondent workman has repeatedly urged in the counter to the writ petition and during oral arguments that his date of birth was not 1945 and could not be treated as 1.7.1945. Thus, the Labour Court's finding in respect of date of birth is clearly perverse.

5. The petitioner's counsel further points out that the service record admittedly recorded the date of birth as 1.1.1943. It is true that at no point earlier than the year 2000, the respondent workman even questioned the date of birth recorded by the employer. Admittedly, even in 1996, the respondent himself wrote the date of birth as 1.1.1943 on the nomination form for provident fund. Thus, the workman respondent was aware of the record of the date of birth as 1.1.1943. Although the respondent alleged that he had asked the management to correct the record there is no evidence of any effort being made at any time before 2000. Thus, for the first time, the effort was made 24 years after he entered the service. The workman also never before submitted the metriculation Certificate before the management.

6. The learned Counsel for the petitioner management Mr. Inderjit Singh refers to the judgments on the question of date of birth and superannuation to put forth his point that this question cannot be raised at the very far end of the person's

career. The brief judgment on this point cited by the petitioner is in the case of Union of India v. Ram Sua Sharma 1996 (72) FLR 843. The judgment delivered by K.Ramaswamy and G.B.Pattanaik, JJ on 15.2.1996 is as under:

The controversy raised in this appeal is no longer rest integra. In a series of judgments, this Court has held that a court or tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. Admittedly, the respondent had joined the service on December 16, 1962. After 25 years, he woke up and claimed that his correct date of birth is January 2, 1939 and not December 16, 1934. That claim was accepted by the Tribunal and it directed the Government to consider the correction. The direction is per se illegal. The appeal is accordingly allowed. No costs.

7. Mr.S.N.Mehrotra counsel appearing for respondent No. 1, on the other hand, says that the respondent workman in this case had actually raised the dispute before he retired and not after his retirement. This will, however, not change the situation. The fact remains that the respondent workman raised the question 24 years after his joining the service and soon before his retirement and, Therefore, must be held to be highly belated. It may be added that he made no effort to explain why in the 24 years of his service he never made any representation in this regard. Even in his application made to the management on 27.1.2000, he merely says that he had come to know that by mistake his date of birth had been wrongly recorded and his correct date of birth i.e. 7.2.1948 should be recorded in his PF and ESI records. There is no mention even in this application that he made any application earlier. Nor has he made any mention about the date when he came to know of the mistake. There is nothing to mention therein why he did not make any effort for correcting the date. Therefore, following the Supreme Court judgment mentioned above, the workman respondent could not have raised a dispute about the correctness of the date of birth recorded in his service record. The impugned award is clearly in violation of the law laid down by the Supreme Court and is Therefore perverse.

8. This Court has no option but to quash the impugned award. Hence the writ petition is allowed and the impugned award dated 4.1.2005 is quashed with the above findings.