
(2004) 02 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 43020 of 1997

U.P. State Electricity Board	Vs	APPELLANT
Presiding Officer, Labour Court Vth and Another		RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Electricity (Supply) Act, 1948 — Section 5

Citation : (2004) 2 AWC 1533

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; Rajiv Sharma and S.C. Shukla, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition has been filed praying, inter alia, quashing of the impugned award dated 20.2.1997 (Annexure-21 to the writ petition) passed by respondent No. 1.

3. The case of the petitioner U.P. State Electricity Board (hereinafter referred to as the petitioner-Board), in brief, is that it was constituted u/s 5 of the Electricity (Supply) Act, 1948. Respondent No. 2, Mani Ram, was employed in the petitioner-Board. His date of birth was recorded in his service record as 1.3.1931. He retired from service after attaining the age of superannuation, i.e.; 58 years from the post of High Pressure Welder. A certificate dated 24.10.1997 was issued by the Government of India, Ministry of Supply and Rehabilitation, Department of Supply through the competent authority/Director, National Test House, Alipore, Calcutta, containing the signatures of respondent Mani Ram countersigned by the Chief Inspector of Boilers, U.P., Kanpur, showing his date of birth as 1.3.1931. Similarly on 16.8.1979 and 27.11.1984 the competent authority National Test House, Calcutta issued certificates duly signed by

respondent Sri Mani Ram himself. The service book of Sri Mani Ram also goes to show that his date of birth as recorded in the service record in Form No. 13 dated 9.3.1971 is 1.3.1931. On 28.3.1986, Sri Mani Ram filed an application after expiry of 17 years of service for correction in the service records regarding date of birth. He alleged that his correct date of birth is 1.3.1941 instead of 1.3.1931. Respondent No. 3 thereafter raised an industrial dispute regarding correction of his date of birth in his service book. The following reference was made to the Labour Court Vth, Kanpur, or adjudication :

"Whether the employers were justified in recording date of birth of Sri Mani Ram as 1.3.1931 in the Service Book of the workman Sri Mani Ram son of Sri Pooran Lal, High Pressure Welder, Boiler Maintenance Division? If not, then what should have been the correct date of birth?"

4. An interim order was passed by the labour court as under :

"Parties present. They were heard on the application of the workman at 16D and the reply of the employers at 16D. The hearing of this case shall be held continuously from 5th onward till end. The employer shall not superannuate the workman till the proceedings of the case concluded."

5. The employer by means of Writ Petition No. 4827 of 1989 challenged the aforesaid order dated 20.3.1989. The workman in the meantime retired on 1.3.1989 his due date of superannuation on the basis of his date of birth as recorded in his service record.

6. The writ petition was decided vide order and judgment dated 18.4.1996 directing the labour court to make all endeavour to dispose of the said adjudication case as early as possible, preferably within a period of three months from the date of production of a certified copy of that order before it, fixing a suitable date and continuing with hearing on successive and consecutive dates until hearing is concluded.

7. It is submitted by the counsel for the petitioner-Board that the time granted by this Court in Writ Petition No. 4827 of 1989 for deciding the matter was not extended further and up to January, 1986, respondent No. 2 was paid Rs. 3,74,762 under the interim order of the labour court. An application was also moved by the petitioner-Board on 18.5.1996 for concluding the case within the time frame allowed by this Court. However, on 2.9.1996 the labour court passed an order, which reads as under :

"In view of the above, I allow the request of the workmen and direct the employer to carry out the interim order passed by this Court on 20.3.1989 in the letter and spirit and withdraw the order superannuating the workman on 31.3.1989 with all its attendant benefits. This will, however, have no effect on the final orders on the adjudication proceedings....."

8. Thereafter the labour court passed the impugned award dated 20.2.1997, which was published on the notice board on 1.10.1997. The labour court relying

upon the certificates of training, i.e., Qualified Boiler Welder Certificate, issued in Form No. 13 under the Indian Boilers Regulation, 1950, held that the date of birth of the petitioner as 1.3.1931 was not correctly recorded in the service book and should be amended/ corrected as 1.3.1941.

9. The contention of the counsel for the petitioner is that in the own statement recorded before the labour court the workman has admitted that his date of birth recorded in his service book was 1.3.1931 and that the labour court has illegally and arbitrarily passed the award in favour of respondent No. 2. He submits that the labour court has wrongly allowed the prayer of changing the date of birth after a lapse of more than 17 years particularly in view of the fact that the Apex Court in a catena of judgments has clearly laid down the law that no application for correction in the date of birth can be filed by an employee after five years of his/her service. He submits that in the present case also the service record was duly signed regularly by the workman himself, which shows that he had full knowledge regarding his date of birth as 1.3.1931 in the service record. He further submits that the Civil Surgeon had also verified the date of birth of the workman and issued a certificate at the time of his initial appointment which too was signed by the workman and the dispute raised by him after 17 years is not tenable. It is also urged that the labour court has committed an error in law apparent on the face of the record in placing reliance upon a document which is not an incorrigible proof of date of birth and any dispute which is raised regarding correction of date of birth at the fag end of service should be not entertained at all. He submits that respondent No. 3 has no right to claim correction in his date of birth and delay in raising the dispute is fatal in these circumstances. The counsel has relied upon the decision rendered in *State of Orissa and Others Vs. Brahamarbar Senapathi*, .

10. Learned counsel for the respondents submits that a High Pressure Welder is required to get a qualified Boiler Welder Certificate from the National Test House, Alipore, Calcutta, which is valid for two years, i.e., from 28.2.1968 to 27.2.1970. He submits that the workman was sent for test and the relevant papers were forwarded by the petitioner in which the date of birth was mentioned as 1.3.1941. He further submits that when the workman came to know that his date of birth has wrongly been recorded in his service book, he moved an application for correction enclosing a certificate of age duly issued by the Secretary, Town Area, Kamalganj, district Farrukhabad and also the medical fitness certificate issued by the Senior Medical Superintendent, District Hospital, Fatehgarh, in support of his case. From the aforesaid documents it is evident that the date of birth of the respondent-workman was 1.3.1941.

11. I have given my anxious thought to the controversy involved in this case. It is not in dispute that the date of birth of the respondent-workman in his service book and all other relevant papers with the employer is 1.3.1931. It appears that while sending the respondent-workman for training of Qualified Boiler Welder a mistake in date of birth crept in and instead of 1.3.1931 it was written as,

1.3.1941 in the papers forwarded by the petitioner in this regard. It also appears from the record that the labour court did not proceed for the reason best known to it as per its own interim order even after a direction was given by this Court to conclude the case within three months. The Apex Court has time and again emphasized that in cases of superannuation no interim order ought to be issued by the Courts to continue the workman till he/she reaches the disputed date of superannuation and he/she must be retired on attaining the age of superannuation on the basis of date of birth recorded in the service book. In *Air Commodore S.K. Misra v. Union of India and Ors.* 1999 SCC (L&S) 949 the Apex Court has held that in case there is any dispute regarding retirement, he can always be granted payment of his/her salaries till his/her date of actual retirement as determined by the Court. The award of the labour court is therefore perverse and against the settled principles of law. The labour court has relied upon a certificate valid for only two years and was not incorrigible proof of the date of birth of the respondent-workman, in which the date of birth was wrongly described as 1.3.1941 instead of 1.3.1931. The labour court ought to have relied upon the date of birth of the respondent-workman as recorded in his service book, which he had signed time and again authenticating, the entries. The respondent-workman cannot be permitted to take advantage of a date of birth recorded by mistake in the papers forwarded with regard to sending the respondent-workman for training of Qualified Boiler Welder on the basis of which the certificate for having completed the training was issued to him. He cannot get benefit of 10 years of extra service on the basis of an obvious mistake. The workman has already been paid Rs. 3,74,762 even after his actual date of retirement on 31.3.1989

12. For the reasons stated above, this writ petition succeeds and is allowed. The impugned award of the labour court is quashed. The workman has already retired about 14 years back. Excess amount paid to him may be adjusted/recovered from him in accordance with law.