
(2002) 04 AHC CK 0129
In the Allahabad High Court
Case No : C.M.W.P. No. 30924 of 1995

U.P. State Sugar Corporation Ltd.

APPELLANT

Vs

Deputy Labour Commissioner, Moradabad and Another

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 AWC 1702 : (2002) 93 FLR 901 : (2002) 3 UPLBEC 2446

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Rajesh Dayal Khare, for the Appellant; Deo Raj, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of the present writ petition under Article 226 of the Constitution of India, petitioner-employer has challenged the order passed by the Deputy Labour Commissioner, Moradabad, dated 3.2.1995. Annexure-5 to the writ petition, who under the purported exercise of powers under Clause (LL) of the standing orders have directed the employer to correct the date of birth of the workman, which was recorded in the service record.

2. The facts leading to the filing of present writ petition are that the respondent-workman Chandru Singh, son of Ghaseeta was employed with the petitioner-employer. According to his own case, his date of birth as entered in Provident Fund record and other service record was 1933. The date is not very relevant, therefore, is not being discussed. The employer served a notice dated 30.8.1993 informing the aforesaid respondent-workman that according to the Provident Fund record, he would be completing 60 years of age on 31.10.1993. therefore, he would be retired w.e.f. 1.11.1993. It is this notice which has given rise to the present dispute. The said workman has filed an application before the Deputy Labour Commissioner, Moradabad, purported to be an application under Clause (LL) of the standing orders applicable to sugar industry of the State of U. P.

Clause (LL) of the standing orders, which is relevant, is reproduced below :

"LL. Retirement of workmen on reaching the age of superannuation :

(1) A workman may be retired from service on reaching the age of superannuation, which shall be 60 years.

(2) The Provident Fund record of the factory specifying the workman's age should, to being with, be taken as the reliable record of the age of a workman for purposes of retirement."

3. A perusal of Clause (LL) would demonstrate that the workman shall be retired from service on reaching the age of superannuation, which is 60 years. It further provides that the Provident Fund record of the factory specifying the workmen's age should, to being with, be taken as the reliable record of the age of a workman for the purposes of retirement. Clause 3 of the aforesaid Clause (LL) of standing orders provides that this record of the age stands modified warranted by the following :

"(a) Date of birth as given in the High School certificate. If the school leaving certificate is below High School then such certificate must be authenticated by the District Inspector of Schools or District Education Officer, as the case may be.

(b) Date of birth as certified by a Municipal Corporation. Municipal Board, a Cantonment Board, a Notified Area or a Town Area Committee.

(c) An Insurance policy taken before November 1, 1960. provided that :

(i) Whether the date, month and the year of birth of a workman are recorded in Provident Fund records shall be taken as final ;

(ii) Where only the month and year of birth are given, the date shall be taken as the 1st of that month ; and

(iii) Where the Provident Fund record of the workman does not specify the date or month of birth, in that case the 1st November of the year shall be deemed to be the date for retirement ;

(iv) The foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these standing orders."

4. Clause 6 of the aforesaid Clause (LL) speaks that "The workman who are in employment at the time of enforcement of these standing orders shall have the right to get their age record modified as per Clause 3 above within one year of enforcement of these standing orders. He shall have the right to represent to the Regional Additional/Deputy Labour Commissioner of the area concerned within one month of notice of retirement such representations shall normally be disposed off within a period of one month of the date of receipt of representation from the workmen, and the orders passed by the Additional/Deputy Labour Commissioner regarding the age of the concerned workman shall be final and shall not be questioned by any party before any Court." The workman has

submitted that he has filed a representation on receipt of the notice of retirement, as stated above, before the Deputy Labour Commissioner, who after discussing the relevant evidence produced by the parties arrived at the conclusion that the date of birth of the workman is not 1933, therefore, the notice of retirement served on him is not legal.

5. Learned counsel for the petitioner Sri Rajesh D. Khare has relied upon the decision of learned single Judge of this Court passed in Writ Petition No. 19085 of 1993, V. P. State Sugar Corporation Ltd. v. Ambika Singh and another, decided on December 4, 1998, wherein this Court was of the view that if the workman concerned has not got his date corrected as prescribed under Clause (LL) of the standing orders, referred to above, within one year of the enforcement thereof, i.e., within one year from the year 1960, he shall not be entitled for the correction of the date of birth on the ground or evidence enumerated under Clause (LL). With the aforesaid Judgment and the reasoning given therein, I am in full agreement and deciding the present impugned order on the strength of the law laid down by this Court, it is clear that the order passed by the Deputy Labour Commissioner dated 3.2.1995 deserves to be quashed and is hereby quashed.

6. For the reasons stated above and also given in the judgment dated 4.12.1998 with which I am in full agreement, this writ petition deserves to be allowed and the order Impugned in the present writ petition deserves to be quashed.

7. In view of what has been stated above, this writ petition is allowed. The order dated 3.2.1995 passed by the Deputy Labour Commissioner is quashed. However, the parties shall bear their own costs.