(2004) 05 AHC CK 0064

In the Allahabad High Court

Case No : C.M.W.P. No. 19554 of 1991

U.P. State Sugar Corporation Ltd. — APPELLANT

Vs

Salamat Mia and Another — RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 2
Constitution of India, 1950 — Article 226
Factories (Amendment) Act, 1948 — Section 67
Factories Act, 1948 — Section 67
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : (2004) 4 AWC 3180

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : R.D. Khare and Virendra Singh, for the Appellant; Shyam Narain, S.C., for the Respondent

Judgement

R.K. Agrawal, J.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, U. P. State Sugar Corporation Limited, Unit Siswa Bazar, District Maharajganj. seeks a writ, order or direction in the nature of certiorari quashing the order dated 12th June, 1991 passed by the Deputy Labour Commissioner, U. P., Gorakhpur, respondent No. 2. filed as Annexure-6 to the writ petition and other consequential reliefs. Vide order dated 12th June, 1991, the Deputy Labour Commissioner has directed the petitioner to correct the date of birth of the respondent No. 1, Salamat Mia, as "1935" and quashed the notice of retirement dated 31st August, 1989. He further directed for giving all consequential benefits by treating the respondent No. 1 to be in service.

2. Briefly stated, the facts giving rise to the present writ petition are as follows :

"M/s. Mahavir Sugar Mills, Siswa Bazar, District Gorakhpur (now district Maharajganj) (hereinafter referred to as "the Mill") which manufactures crystal sugar by vacuum pan process, was acquired on 28th October, 1984 by the State of U. P. under the provisions of the U. P. Sugar Undertakings (Acquisition) Act, 1971, as amended by the U. P. Act No. XX of 1985. According to the petitioner, the respondent No. 1 was appointed, in the year 1943, as a Machineman in the Mill. Subsequently, he was promoted as a Mate. The date of birth of the respondent No. 1 as recorded in the service book is "year 1929". When the respondent No. 1 became eligible under the Employees Provident Fund Scheme, he filled his declaration in which also the date of birth has been noted as "year 1929". On the basis of Paragraph LL of the standing orders applicable to the workmen in the Vacuum Sugar Pan Factories in Uttar Pradesh, which provides that where the provident fund record of the workman does not specify the date or month of birth, in that case the first November of the year shall be deemed to be the date of retirement, a notice was issued on 31st August, 1989 to the respondent No. 1 that he will be completing the age of 60 years on 31st October, 1989 and that he will be retiring on 1st November, 1989, On receipt of the retirement notice dated 31st August, 1989, the respondent No. 1 gave an application on 8th September, 1989 to the Labour Commissioner, U. P., Kanpur, which was subsequently transferred to the Deputy Labour Commissioner, Gorakhpur. In the application, it was stated that the notice dated 31st August, 1989 seeking to retire him on 31st October, 1989, is illegal and that his date of birth as recorded in the Parivar Register of the Gaon Sabha is 1935 and therefore, his date of birth has been wrongly recorded in the record of the petitioner as 1929. The petitioner contested the claim made by the respondent No: 1 on the ground that the respondent No. 1 had himself at the time of his appointment as also at the time of filling the declaration .form for joining the Employees Provident Fund Scheme has mentioned his date of birth as "year 1929" and he did not make any complaint or application for correction of his date of birth prior to issuance of retirement notice dated 31st August, 1989 and, therefore, the same cannot be corrected. The petitioner further raised a doubt about the correctness of the extract of the Parivar register filed by the respondent No. 1 as the respondent No. 1 had filed a photostat copy of the extract from the Parivar register. The respondent No. 1 examined himself. He did not admit that in the police record, his date of birth has been recorded as the year 1929. He has been working in the Mill for the last 30-35 years and prior to his employment in the Mill he had worked at the residence of Sri Bose (General Manager) for 10-12 years. He had further admitted that he started his services when he was a minor aged about 10-12 years and he did not make any complaint about his age having been wrongly recorded in the Mill''s record. The Deputy Labour Commissioner, by the impugned order, had accepted the entries made in the Parivar register and had accordingly directed the petitioner to correct the date of birth as 1935 in the records and to give him the benefit of service and wages."

3. I have heard Sri R. D. Khare, the learned counsel for the petitioner, and Sri Shyam Narain, the learned counsel appearing for the respondent No. 1.

4. The learned counsel for the petitioner submitted that the respondent No. 1 at

the time of entering into service in the year 1943, had mentioned the date of birth as the year 1929. Thus, he was at that time about 14 years of age. If his date of birth, as claimed to be the year 1935, is taken to be correct, then he would be only 8 years at the time of joining of service as Machineman, which is highly improbable. Further, according to the own admission of respondent No. 1, he had worked for about 30-35 years in the Mill and prior to it about 10-12 years at the residence of Sri Bose, which means that at the time when he started working at the residence of Sri Bose, he was only about 2 years of age, which by any stretch of imagination cannot be believed. He further submitted that the Parivar register filed by the respondent No. 1 was inadmissible in evidence as he had only filed a Photostat copy and not the original Parivar register. Further, there has been overwriting on the figure "5" in the year "1935" noted against the respondent No. 1. This is also false as Hanif son of Salamat Mia was shown to be born in the year 1948. If it is taken to be correct, then the fact would be that the respondent No. 1 became a father at the age of 13 years, which is impossible. According to Sri Khare, it is not clear as to when the copy of the Parivar register was issued, who issued it and from which register the same was copied and no such endorsement that the extract has been correctly copied from the Parivar register has been made and, therefore, it is not worthy of reliance. The petitioner had examined Sri Vinod Biharl Srivastava, Upper Division Clerk in the Provident Fund Office of the Mill who brought the original provident fund declaration form and proved that on 22nd March, 1958, the age of respondent No. 1 was recorded as 1929, which was also signed by him. Two other witnesses, Sri Ram Narain, chief time keeper and Sri Achyutanand Misra, clerk, dealing the provident fund, were also examined, who corroborated the statement of the petitioner. Thus, he submitted that the respondent No. 2 has committed a manifest error of law in directing the age of the respondent No. 1 to be corrected as "1935" in place of "1929".

5. Sri Khare relied upon a decision of this Court in the case of C.M.W.P. No. 19085 of 1993, U. P. State Sugar Corporation Limited, Unit Siswa Bazar, District Maharajganj v. Ambika Singh and Anr., decided on 4th December, 1998, wherein this Court has held that where a person has been engaged for a skilled work either as a Pump Driver or as a Engine Driver, such a technical job could not have normally been assigned to a minor of 14 years and, therefore, the date of birth as mentioned 22nd September, 1929 at the time of entering into the service on 6th September, 1947, should not have been corrected to 20th April, 1934. He has also relied upon another decision of this Court in the case of C.M.W.P. No. 42485 of 1992, L. M. Sugar Factories Ltd., Unit Pilibhit Sugar Factory, District Pilibhit v. Sri Jacob and Ors., decided on 19th December, 1996, wherein this Court has held that the certificate obtained from the Chief Medical Officer regarding the age, in the circumstances cannot be relied upon for correcting the date of birth. Sri Khare further submitted that the respondent No. 1 had approached for correction of his date of birth only after the notice of retirement had been issued and, therefore, it was not proper for the Deputy Labour

Commissioner to entertain the application. He relied upon a decision of the Hon''ble Supreme Court in the case of the Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, , wherein the Hon''ble Supreme Court has held that where an application for correction of the date of birth was filed one year before the date of superannuation, the Tribunal has committed an illegality in entertaining and allowing that application. He further relied upon a decision of this Court in the case of Tannery Footwear and Corporation of India Limited Vs. Labour Court III, , wherein this Court has held that if there is no interpolation in the service record, the date of birth mentioned which has been signed by the workman, is to be taken as correct.

6. Sri Shyam Narain, the learned counsel appearing for the respondent No. 1, has, however, submitted that since all the vacuum sugar pan factory including the present one have been established in rural area, most of its workmen came from the villages and were mostly illiterate and poor. Initially, there were no rules and regulations regarding employment and retirement. The Indian Factories Act (Act No. XV of 1881) prohibited employment of child under seven years of age, which age of employment was raised to 9 years by the Act No. XI of 1891. By an amendment made in the year 1922, the age of child labour was raised to 12 years, which continued in the Act No. XXV of 1934. Subsequently, the age of labour was raised to L4 years as per Section 67 of the Indian Factories Act, 1948. Even Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986, defines a child as a person who has not completed his 14th year of age, meaning thereby that at present there is no bar from employing a child in any factory, who has completed 14 years. The Indian Factories Act, however, does not provide for the age of retirement and, therefore, the State Government issued a notification on 3rd October, 1958 purporting to be u/s 3 of the U. P. Industrial Disputes Act, 1947, which is known as the standing order applicable to the workmen of the vacuum pan sugar factories of the State of U. P. It did not provide for any age of recruitment and retirement. However, vide notification dated 27th April, 1961, in paragraph 3 of Appendix V, the age of superannuation as 58 years was provided for employees/workman in vacuum pan sugar factories. The age of retirement was increased to 60 years vide notification dated 27th November, 1970. According to him, Clause LL of the Standing Order provided a machinery for determining the age of workman by the Labour Commissioner, U. P. Kanpur. It was a separate forum. Relying upon a decision of this Court in the case of M/s. Deoria Sugar Mills Ltd. v. Deputy Labour Commissioner, Allahabad Division, Allahabad 1977 LIC 102, which has also been followed in the case of the U.P. State Sugar Corporation Ltd., Unit Ramkola, Deoria, District Deoria v. Deputy Labour Commissioner, Gorakhpur Region, Gorakhpur and Anr. (1990) 2 UPLBEC 1033, he submitted that the presumption in favour of''the provident fund record as provided under Clause LL (3) is rebutable not only by document mentioned in Clause (3), which are treated as conclusive evidence, but also by other documents. He also relied upon a decision of the Hon''ble Supreme Court in the case of Cement Corpn. of India Ltd. Vs.

Raghbir Singh and Another, , wherein the Hon''ble Supreme Court has declined to interfere in the date of birth corrected by the labour court and affirmed by the High Court on the basis of the certificate issued by the Registrar of Births and Deaths. He also referred to a decision of the Hon''ble Supreme Court in the case of Chief Medical Officer Vs. Khadeer Khadri, , where the Apex Court has held as follows :

"4. No doubt, Sub-rule (5) of Rule 2 of the Andhra Pradesh Public Employees (Recording and Alteration of Date of Birth) Rules, 1984, provides power for correction of the bonafide mistake in recording the date of birth. It cannot be said that it is a clerical mistake. The date of birth having been given and recorded in the service register as early in 1951, it was not a bona fide mistake. The respondent claimed that he discovered the mistake in 1991 that his date of birth instead is July 15, 1934 but it was recorded as November 14, 1933. This is only a ruse to get over the bar of limitation to have the date of birth entered in the service record corrected. The rules prescribe the procedure for laying the application within three years from the date of entering into service. In 1976, executive instructions were issued for correction of date of birth which were replaced by statutory rules issued in 1984. The latter also prescribes the procedure. He did not avail of the opportunity when, twice, it was available to him to have it corrected. It would clearly show that subsequent belated attempt is not a bona fide one but to have the correction made to this advantage after the bar of limitation created by the rules. The Tribunal has not properly considered the matter in this perspective. The appeal is allowed. O.A. stands dismissed.

No costs."

7. Having heard the learned counsel for the parties, I find that it is not in dispute that the respondent No. 1 entered into service in the year 1947 as would be seen from the service book filed as Annexure-1 to the writ petition and not in 1943 as claimed by the petitioner. His date of birth as mentioned In the service record at the time of entry as also in the provident fund is "year 1929". After the notice of retirement was Issued on 31st August, 1989 seeking to retire the respondent No. 1 on 1st November, 1989, he made an application for correction of his date of birth. In his own statement, he has stated that it Is wrong to say that In the police record his date of birth has been mentioned as "year 1929" and, therefore, he has not filed the same. However, In the Parivar register extract, his year of birth has been mentioned as 1935 and he has filed a photostat copy. According to him, he had worked for about 30-35 years in the Mill and prior to It he had worked for 10-12 years at the residence of Mr. Bose and he does not remember that he has started working In the Mill from 1947. Photostat copy of the extract of the Parivar register filed by the respondent No. 1 has been filed as Annexure-4 to the writ petition, which has not been disputed. Before the Deputy Labour Commissioner, the petitioner did not raise any such plea that In the column of the year of birth mentioned against the respondent No. 1 there is an overwriting

In the figure "5" or the year of birth of his son Hanif has been mentioned as 1948, i.e., his son was born when the respondent No. 1 was only 13 years of age. The original Parivar register had not been summoned by the Deputy Labour Commissioner inspite of the request made by the respondent No. 1 in his statement. Viewed in this background, if the Deputy Labour Commissioner has accepted the entries made in the Parivar register and had directed for correction of the date of birth in the Mill''s record, it cannot be said that he has acted arbitrarily or has committed any illegality. So far as the submission that the entries in the Parivar register could not have been made the basis for correction is concerned, it may be mentioned that Clause LL of the Standing Order provides for retirement of workman on reaching the age of superannuation. It reads as follows :

"LL. Retirement of workman 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 begin with, be taken as the reliable record of the age of workman for purposes of retirement.

(3) This record of age shall stand modified as may be warranted by the following :

"(a) Date of birth as given in 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 by the 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 1st November, 1960 :

Provided that :

(i) where 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 of 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."

8. From a perusal of the aforesaid Clause (2), it is seen that the age of a workman mentioned in the Provident Fund record of the factory is taken to be

reliable record for the purpose of retirement. However, Sub-clause (3) provides that the record of age can be modified under the following circumstances :

"(i) date of birth given in the High School certificate and if the school leaving certificate is below the High School then such certificate must be authenticated by the District Inspector of Schools or District Education Officer, as the case may be ;

(ii) date of birth as certified by the Municipal Corporation, Municipal Board, a Cantonment Board, a Notified Area or a Town Area Committee ;

(iii) an insurance policy taken before 1st November, 1960. and this provision regarding modification of age shall lapse on expiry of one year from the date of enforcement of the standing order. The respondent No. 1 did make the application for correction of his date of birth within one year from the date of the enforcement of the standing orders as these provisions were enforced on 27th September, 1988 and the application was made on 8th September, 1989.

9. This Court in the case of Deoria Sugar Mills (supra) has held that there is nothing in the standing order (Clause LL) to indicate that no evidence other than that mentioned In Sub-clause (3) will be admissible for the purposes of correction of age. It has held as follows :

"Therefore, on a reading of the standing order and upon a consideration of its object and effect, we have come to the conclusion that :

(1) There is a presumption in favour of the age of the workman concerned mentioned in the Provident Fund records but this presumption is rebuttable.

(2) The presumption mentioned above shall stand rebutted by the production of one or more of the documents enumerated in Sub-clauses (a), (b), (c) and (d) of Clause (3) and these documents are conclusive evidence of the age of the workman concerned.

(3) If more than one of the documents mentioned in Sub-clauses (a), (b), (c) and (d) are produced and there is difference in the age given in them, then it is for the Labour Commissioner to decide which of these documents is the most reliable and that document will have the status of conclusive evidence.

(4) If none of the documents mentioned in Sub-clauses (a), (b), (c) and (d) are available, then it is permissible for the workman concerned to produce any evidence of his age and in that event it will be for the Labour Commissioner to decide whether the evidence is relevant, whether it relates to the workman concerned and what is its probative value and whether It is sufficient to rebut the initial presumption in favour of the entry in the Provident Fund Records."

10. The aforesaid decision has been followed by this Court in the case of U. P. State Sugar Corporation, Unit Ramkola (supra). Thus, the entries made in the Parivar register can be taken into consideration for correction of the date of birth.
11. In the case of U. P. State Sugar Corporation, Unit Siswa Bazar, Maharajganj

(supra), this Court has held that the standing order came into force on 27th September, 1988 and correction could have been made within a year. In the present case, the date of the application has been mentioned as 8th September, 1989 and, therefore, it is within one year and was maintainable. The decision of the Hon''ble Supreme Court in the case of Secretary and Commission, Home Department (supra) and this Court in the case of M/s. Tannery and Footwear Corporation of India Ltd. (supra) would not be applicable to the facts of the present case as under Sub-clause (iv) of Para LL of the standing order, the application could have been made within one year from the date of enforcement of the standing orders.

12. So far as the contention that if the year of birth of respondent No. I as 1935 is accepted, then, according to his statement, that he had worked for 30-35 years in the Mill and prior to it for 10-12 years at the residence of Mr. Bose, his age at the time of employment would be only 2 years is concerned, it may be stated that, according to the service book, the respondent No. 1 has been employed in the year 1947 and if his year of birth is taken to be 1935, his age at the time of employment would, be only 12 years, i.e., the minimum age prescribed under the relevant laws and he had 42 years of service in the year 1989, which corroborates his aforementioned statement. Thus, the submission is misconceived.

13. In view of the foregoing discussions, the writ petition fails and is dismissed.

