

(1998) 12 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 19085 of 1993

U.P. State Sugar Corporation Ltd., Mahrajganj	APPELLANT
Vs	
Ambika Singh and another	RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : (1999) 1 AWC 887

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

Bench : Single Bench

Advocate : Remesh Kumar Shukla and R.D. Khare, for the Appellant; S.C., K.P. Agarwal and Arvind Kumar, for the Respondent

Final Decision : Disposed Of

Judgement

R.R.K. Trivedi, J.—In this petition counter-affidavit has been filed by respondent No. 1. Learned counsel for the parties agreed that the writ petition may be decided finally at the admission stage.

2. Mahabir Sugar Mills, Diswa Bazar, district Mahrajganj was acquired by the State of U. P. under the provisions of the U. P. Sugar Undertakings (Acquisition) Act, 1971 and after acquisition, its control and management vested in the U. P. State Sugar Corporation (hereinafter referred to as the Corporation) with effect from 28.10.1984.

3. Respondent No. 1 Ambika Singh, an employee of petitioner corporation, had joined as engine driver on 6.9.1947. In the particulars of service maintained by the erstwhile Mahabir Sugar Mills, his date of birth was recorded as 22.9.1929. The name of the post and department mentioned were engine driver in season and fitter Mazdoor in off season, engineering department. Respondent No. 1 was served with a notice dated 31.8.1989 intimating that he shall attain the age of superannuation on 31.10.1989 on completing 60 years of age and he will be relieved from service with effect from 1.11.1989. He was also intimated that

after being relieved from service, he may get his account cleared with regard to retrial benefits. The aforesaid notice of retirement, it appears, was served in compliance of the requirement provided in sub-clause (5) of clause LL of the Standing Orders governing the conditions of employment of workmen in Vacuum. Pan Sugar Factories of the State (hereinafter referred to as the Standing Orders). The Standing Orders were published in Official Gazette as Notification No. 5692 (H.D/36-2-110 (H.I) /77, dated 27.9.1988 under the order of the Governor under clause 3 of Article 348 of the Constitution of India. Respondent No. 1 challenged the notice of retirement before the Deputy Labour Commissioner, Gorakhpur, respondent No. 2, under sub-clause (6) of clause LL which was registered as S. O. Dispute No. 7 of 1990. The Deputy Labour Commissioner by his order dated 1.2.1993, Annexure-9 to the writ petition, accepted the claim of respondent No. 1 and directed the petitioner to correct the record by showing date of birth of respondent No. 1 as 20.4.1934 [in place of 22.9.1929). He set aside the notice of retirement dated 31.8.1939 and also directed that respondent No. 1 shall be entitled for all the benefits which he would have normally received had he been in service.

4. Aggrieved by the aforesaid order of respondent No. 2, the corporation has filed this petition under Article 226 of the Constitution of India.

5. I have heard Shri R. D. Khare, learned counsel for the petitioner and Shri K. P. Agarwal, learned counsel appearing for respondent No. 1. Respondent No. 2 was represented by learned standing counsel.

6. Learned counsel for the petitioner has submitted that respondent No. 1 joined Service as an employee of Mahabir Sugar Mills on 6.9.1947 and in service records maintained by Mahabir Sugar Mills (P.) Ltd., the date of birth recorded was 22.9.1929. A photo copy of the record has been filed as Annexure-1 to the writ petition. This document. Annexure-1, also contains a declaration and nomination form in which he had been shown as married, name of his wife had been shown as Smt. Lachhi Devi as his nominee and her age had been shown as 22 years. Annexure-1 bears signature of respondent No. 1 also. It has been submitted that looking to the facts mentioned in the service record prepared at the time when respondent No. 1 was employee of Mahabir Sugar Mills, the date of birth 20.4.1934 pleaded by him before respondent No. 2 could not have been believed. In this connection, further submission is that respondent No. 1 became member of the Provident Fund Scheme on 22.9.1956. This document has also been signed by Ambika Singh, respondent No. 1. His age had been shown as 27 years, wife's name mentioned is Lachhi Devi as nominee of respondent No. 1 and the age of the nominee was mentioned as 18 years. Learned counsel has submitted that there was no legal and valid reason to disbelieve this document. A copy of the declaration and nomination form has been filed as Annexure-2. Learned counsel has submitted that respondent No. 1 joined as engine driver and was a skilled worker. If his date of birth is accepted as 20.4.1934 at the time of joining service, he would have been minor aged 14 years. He was not employed

as an ordinary unskilled worker. Learned counsel has further submitted that school leaving certificate filed by respondent No. 1 and relied on by respondent No. 2 was not countersigned by any education authority. It was also submitted that the document filed was only a photostat copy which was inadmissible and could not be read as evidence. Learned counsel for the petitioner has further submitted that under sub-clause (6) of clause LL of the Standing Orders respondent No. 1 could get the age record modified within one year of the enforcement of the Standing Orders but respondent No. 1 never made any such attempt and he challenged the date of birth mentioned in the service record only after receipt of the notice of retirement. Such a stale claim could not have been entertained by the Tribunal as held by Hon'ble Supreme Court and this Court in number of judgments. It has also been submitted that after expiry of the period of one year from the date of enforcement of the Standing Orders, it was not open to the respondent No. 1 to challenge the correctness of the date of birth shown in the Service Record. Respondent No. 2 has failed to consider this material aspect of the case. Learned counsel has submitted that respondent No. 1 had already retired from service from 1.11.1989 and he was not entitled for any relief. The impugned order suffers from manifest errors of law and is liable to be quashed. Learned counsel has placed reliance on the Unreported Judgment of this Court dated 12.12.1993 in Writ Petition No. 42485 of 1992. *L. H. Sugar Factories Ltd. v. Shri Jacob and others* ; *M/s. Tannery footwear Corporation of India Ltd. v. Labour Court III, Kanpur* (1995) 3 UPLBEC 1427 ; *Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and others* (1995) 3 UPLBEC 1304 ; *Omkar Nath Srivastava v. State of U. P. and others* 1990 ACJ 657 and *Union of India v. Ram Sua Sharma JT 1996 (13) SC 72*.

7. Learned counsel for the respondents, on the other hand, submitted that the Standing Orders have been framed by the State of U. P. in exercise of its powers u/s 3 (b) of U. P. Industrial Disputes Act, 1947 in exercise of delegated legislative functions. The Standing Orders are service rules applicable to all the Pan Vacuum Sugar Mills in the State of Uttar Pradesh. These Standing Orders are not ordinary standing orders framed under the industrial Employment (Standing Orders) Act, 1946. Learned counsel has further submitted that clause LL of the Standing Orders provides for a complete adjudication of the dispute arising out of the notice of retirement of an employee of a sugar factory. It has been submitted that on reading of clause 6, it does not appear that if the modification of the age record is not claimed within a year from the date of enforcement of the Standing Orders, the workmen shall be debarred from raising the dispute on receipt of the notice of retirement. It has also been submitted that the judgment of the learned single Judge of this Court in case of *L. H. Sugar Factories (supra)* is not applicable to the facts of the present case where the statute itself gives the right to workmen to invoke the jurisdiction of the Labour Commissioner at the fag end of his retirement on receipt of the notice of retirement received from the employer. When the Statute gives right to challenge such a notice, the claim cannot be rejected as stale. The right to challenge date of birth recorded in the

service records and right to challenge the retirement are not synonymous. The service documents could only be piece of evidence and they could be rebutted by the evidence adduced by respondent No. 1. It has also been submitted that Labour Court has power to appraise and assess evidence adduced by the parties and can record a finding of fact which cannot be interfered with by this Court. The findings recorded by the Deputy Labour Commissioner cannot be challenged in the present proceedings under Article 226 of the Constitution of India. The documents prepared at the time the workman became member of the Employees Provident Fund Scheme, may be presumed to be true but the presumption is rebuttable and it was always open to the respondent No. 1 to prove his correct date of birth by better evidence. The findings recorded by the Deputy Labour Commissioner are findings of fact and cannot be interfered with in the present proceedings. The writ petition is liable to be dismissed. Shri K. P. Agarwal has placed reliance on a Division Bench judgment of this Court in the case of M/s. Deoria Sugar Mills Ltd. v. Deputy Labour Commissioner, Allahabad. 1976 (33) FLR 80.

8. I have carefully considered the submissions of the learned counsel for the parties. Clause LL of the Standing Orders contains provisions for retirement of workmen reaching the age of superannuation. As clause LL is relevant, for convenience and ready reference, sub-clauses (1) to (6) are being 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 purposes of retirement.

3. This record of age shall stand modified 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 November 1, 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 ;

(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 ; and

(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. The age of new entrants shall be accepted on the following basis ;

(i) Date of birth given in the High School Certificate/Transfer Certificate ;

(ii) Date of birth as certified by Nagar Mahapalika/Nagar Palika/Cantonment Board/ Notified Area Committee/ Town Area Committee/ Gram Panchayat:

Provided that the new entrant shall furnish proof of his age within three months of the date of his appointment and the management shall accept it. within six months of the date of appointment. The date of birth so accepted shall be final.

5. The management shall give two months notice to a workman before retiring him.

6. The workmen 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 Addl./Dy. Labour Commissioner of the area concerned within one month of notice of retirement such representations shall normally be disposed of within a period of one month of the date of receipt of representation from the workmen, and the orders passed by the Addl./Deputy Labour Commissioner regarding the age of the concerned workman shall be final and shall not be questioned by any party before any Court. In case the Regional Addl./Dy. Labour Commissioner allows the representation, the employer shall modify the record of age of the workman immediately on receipt of the said orders. *****

9. It has not been disputed before me that the Standing Orders have been framed by the State Government in exercise of powers u/s 3 (b) of U. P. Industrial Disputes Act. 1947. Thus, the Standing Orders have statutory force. From perusal of sub-clauses (1) to (4) of clause LL, it is clear that the Standing Orders contain rule of evidence to be observed for purposes of modifying the age record, and for purposes of recording of the date of birth of the new entrant, and for modification of the date of birth in respect of the employees of the sugar factories. Sub-clause (2) says that the Provident Fund record of the factory specifying the age of the workman shall be taken as reliable record for the age of workman for purposes of retirement. Sub-clause (3) provides that the record of age shall stand modified if warranted by certain documents mentioned in clause (a), (b) and (c). However, the proviso says that the foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these Standing Orders. Sub-clause (4) provides that the workmen who are in employment at the time of enforcement of these Standing

Orders shall have right to get their age record modified as per clause 3 within one" year of the enforcement of the Standing Orders, From a conjoint reading of sub-clause (4) and proviso of sub-clauses (iii) and (iv), it is abundantly clear that limitation for right to get the age record modified was one year from the date of enforcement of the Standing Orders which came in force on 27.9.1988. Thus, it was open for respondent No. 1 to get his, age record modified by 26.9.1989. The notice of retirement was served on respondent No. 1 in the month of August, 1989. As clear from the impugned order, the application raising the dispute was moved by the respondent No. 1 on 8.9.1989 which was within the period of one year. Though in the objection filed before the Deputy Labour Commissioner in para 15 the respondent No. 1 challenged the correctness of the date of filing of the application on 8.9.1989 but he could not mention any other date of filing of the application either in the objection or in evidence. Thus, the submission of the learned counsel for petitioner that the dispute raised by the respondent No. 1 with regard to the date of birth was barred by limitation cannot be accepted.

10. Now coming to the merits of the claim of respondent No. 1 regarding modification of his date of birth shown in the service record. It has to be seen whether the respondent No. 2 committed any error of law in accepting his claim. It is not disputed that respondent No. 1 joined service on 6.9.1947 and at the time of joining service, his date of birth recorded in the service record was 22.9.1929. He was thus above 18 years of age. Respondent No. 1 has admitted in his statement on oath that in 1947 he was appointed as a pump driver. He was a permanent employee from the very beginning. Later on he was made engine driver. As already observed earlier, in the service records maintained by Mahabir Sugar Mills, respondent No. 1 had been shown as engine driver in season and fitter Mazdoor in off season in engineering department. Thus from the very beginning, he was engaged, on his own showing, for skilled work either as a pump driver or as engine driver. Such a technical Job could not have normally been assigned to a minor aged 14 years. This material circumstance which was borne out from the record has been totally ignored by respondent No. 2 while appreciating the claim of respondent No. 1. Even assuming that in 1947 there was no minimum age prescribed for employment and the child labour could be engaged for work in factories, such engagements could be for unskilled jobs. Respondent No. 1 became a member of the Employees Provident Fund Scheme in 1956. The declaration and nomination form was filled on 22.9.1956. It was admittedly signed by respondent No. 1. Respondent No. 1, however, stated that he was not asked about the date of birth and his age 27 years was mentioned on the basis of guess work. Respondent No. 1 again failed to test the statement of respondent No. 1 on the basis of the facts available on record. The date of birth of respondent No. 1, in the service record mentioned was 22.9.1929. This document was also signed by respondent No. 1. Age 27 years in 1956 was not on the basis of, guess work but on the basis of the date of birth already mentioned in the service record. In 1956 when the declaration and nomination form was filled, nine years had passed and respondent No. 1 was shown 27 years of age.

In view of the fact that service record as well as declaration and nomination form for becoming member of the Employees Provident Fund Scheme were signed by the respondent No. 1, it could be assumed that he had knowledge of the date of birth and the denial of this fact after 44 years could not have been accepted lightly as has been done by respondent No. 1. There is a complete absence of any kind of protest, on the part of respondent No. 1 during his long service of 42 years in the Mill, against the date of birth shown in his service record. Under sub-clause (2) of clause LL for purposes of retirement age mentioned in the Provident Fund record could be accepted as reliable and the petitioner rightly served notice of retirement on the basis of the age shown in the Provident Fund record.

11. Now, it has to be seen whether the respondent No. 1 could establish his date of birth 20.4.1934 by more reliable and cogent evidence. As clear from the impugned order, on 13.2.1991 respondent No. 1 filed one document, i.e., the school leaving certificate which was only a photostat copy. On behalf of petitioners, it has been argued that this document could not be legally read in evidence as the original was not there and it was not signed by the District Education Officer. In para 3 of the counter-affidavit respondent No. 1 has stated that the photostat copy was sufficient piece of evidence and the Deputy Labour Commissioner could peruse the same for coming to the conclusion in proceedings pending before him. In my opinion, though rules of evidence provided in the Evidence Act may not be strictly applicable but as a general rule of precaution, a photostat copy of the certificate could not be read in evidence as primary or secondary evidence. No body appeared from the office which had Issued the certificate, to prove that the original of any such certificate was Issued by proper authority. Respondent No. 2 without making any analysis about the nature of evidence exhibited this document and relied on it for accepting the claim of respondent No. 1. In any case, the minimum requirement on the part of respondent No. 2 was that he ought to have Insisted and asked respondent No. 1 to bring the original certificate on record. In my opinion, the procedure adopted by respondent No. 2 was wholly erroneous and cannot be termed as legal in any manner. Before respondent No. 2 case of petitioners was that if the date of birth 20.4.1934 is accepted, the respondent No. 1 could be of only 14 years of age and this rendered the claim of respondent No. 1 wholly improbable as a person below 18 years of age could not be taken on employment. Respondent No. 2 has only said in the order that In 1947, Factories Act. 1948 was not In force and there was no age bar and respondent No. 1 could be appointed though he was minor. As already observed, before recording this finding respondent No. 2 completely ignored the nature of the job in which respondent No. 1 was engaged, which was as engine driver. Such a job could not be assigned to a minor. The finding of respondent No. 2 thus on this score also suffers from a manifest illegality. Similarly, respondent No. 2 rejected the statement of the clerk who proved Form No. 2 regarding Provident Fund Scheme on the ground that the witness of petitioner could not state that the Form was filled in his presence. The declaration and nomination Form was filled on behalf of respondent No. 1. His

wife's name and age was mentioned in the Form. His age was also mentioned and thereafter he signed on it which is not disputed. The bare statement after such a long time of 44 years that a blank form was got signed from him could not have been believed by respondent No. 2. The nature of information contained therein could be given only by respondent No. 1 which was sufficient to disbelieve his statement. However, respondent No. 2 has miserably failed to make an analytical assessment of the material on record and accepted the claim, of respondent No. 1 regarding the correction of date of birth in the service record, which could not have been accepted in view of the overwhelming facts and circumstances available on record mentioned above. In the circumstances, the order of respondent No. 2 is not sustainable.

12. Another important aspect of the case is that this Court and Hon''ble Supreme Court in number of judgments have cautioned not to accept such stale claims lightly which are raised at the fag end of the service. In case of Union of India v. Ram Sua Sharma (supra), Hon''ble Supreme Court held as under :

"The controversy raised in this appeal is no longer res 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 par se illegal."

In my opinion, the aforesaid view expressed by Hon''ble Supreme Court is squarely applicable in the facts of the present case. Respondent No. 1 joined service in 1947 mentioning his date of birth as 22.9.1929. He retired from service on 1.11.1989 after serving for 42 years and a few days before his retirement on 8.9.1989, he raised a dispute that his date of birth is 20.4.1934. The Tribunal accepted the claim and directed the correction of the service record with regard to date of birth. In Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, , Hon''ble Supreme Court while reversing the direction given by the High "Court held as under :

"The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, Hon''ble Supreme Court observed in para 5 of the report as under:

"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book,"

13. If the impugned order is tested and analysed on the basis of the principles laid down by Hon"ble Supreme Court in the cases referred to above, the only conclusion, which is possible, is that respondent No. 2 accepted the claim on the basis of the evidence filed before him which could not even be read in evidence nor could it, in any way, be termed to be an irrefutable evidence so as to render the long standing entries in the service record as incorrect. Viewed from any angle, the order passed by the respondent No. 2 cannot be sustained.

14. Learned counsel for respondent No. 1 placed reliance on the case M/s. Deoria Sugar Mills Ltd. (supra). However, on facts the case is clearly distinguishable and does not help respondent No. 1 in any way.

15. For the reasons stated above, this petition is allowed. The impugned order dated 1.2.1993, Annexure-9 to the writ petition, is quashed. There will be no order as to costs.