
(2009) 07 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23642 of 1988

U.P. State Sugar Corporation Ltd. Pipraich, Gorakhpur

APPELLANT

Vs

DY. Labour Commissioner, Gorakhpur and others

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2009) 123 FLR 347

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : V.B. Singh, R.K. Srivastava and Yogendra Srivastava, for the Appellant; Sudhanshu Narain, Shyam Narain and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—In September, 1957, the respondent-workman was employed in the Sugar Factory, and his age in the Provident Fund Register was recorded as 33 years as on 5th of September, 1957. In this way, the service record indicated that the petitioner was born in the year 1924, and upon reaching the age of superannuation, a notice was served upon the workman intimating him that he would retire on 1st of November, 1983. The workman, being aggrieved by the decision taken by the employers, represented the matter immediately before the Deputy Labour Commissioner under Clause (LL) of the Standing Orders covering the conditions relating to the employment of the workmen in Vacuum-pan Sugar Factories in Uttar Pradesh. The Deputy Labour Commissioner, after considering the material evidence brought on the record, held that the date of birth of the workman was 28th of October, 1929, and that, he would reach the age of superannuation in 1989, and that, he had wrongly been retired on 1.11.1983. The Deputy Labour Commissioner, consequently, set aside the notice of retirement and further held that the workman was entitled for all the reliefs. The petitioner, being aggrieved by the said order, has filed the present writ petition.

2. Heard Shri Yogendra Srivastava, the learned Counsel for the petitioner and Shri Shyam Narain, assisted by Shri Sudhanshu Narain, the learned Counsel for the respondent-workman.

The learned Counsel for the petitioner submitted that under Clause (LL) of the Standing Orders, the Provident Fund Register is taken as the reliable record for the age of the workman, for the purpose of retirement, unless a School Leaving Certificate or a High School Certificate or a date of birth as certified by the Municipality, Cantonment Board, Notified Area or Town Area Committee or an Insurance Policy taken before 1st of November, 1960 or a Junior High School Certificate was filed. The learned Counsel submitted that in the absence of these documents, the Labour Commissioner committed an error in correcting the date of birth on the basis of an entry being kept in the Register maintained in the Collectorate, and that the said entry was neither reliable nor could be read in evidence in view of Section 35 of the Indian Evidence Act, 1872. The learned Counsel further submitted that, even otherwise, there was no evidence filed by the workman to prove that his date of birth was 28th October, 1929.

3. For appreciation of the submission made by the learned Counsel, it is necessary to consider the provisions of Clause (LL) of the Standing Orders, which reads as under:--

(1) A workman may be retired from service on reaching the age of superannuation which shall be 58 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 a workman for purposes of retirement.

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

(a) date of birth as given in the School Leaving Certificate or the High School Certificate.

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

(c) An Insurance Policy taken before November 1, 1960.

(d) Junior High School (VIII Class) Certificate (to be applicable in the case of future entrants only):

Provided that (i) where the date, month and the year of birth of a workman are recorded in Provident Fund Records, the date of birth as given in the Provident Fund records shall be taken as final:

(ii) Where only the month and year of birth are given, the date will 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;

(4) The management shall give at least one month's notice to a workman before retiring him and during this period the workman shall have the right to represent to the Labour Commissioner, U.P., Kanpur. Such representation shall normally be disposed of within a period of six weeks of the date of receipt of representation from the workman and the orders passed by the Labour Commissioner, U.P., regarding the question of age of the workman shall be final and shall not be questioned by any party before any Court. In case the Labour Commissioner, U.P. allows the representation, the employers shall reinstate the workman immediately on receipt of the said orders and also pay to him full wages for the period of involuntary unemployment.

(5) In the event of a workman retiring during the off-season he shall be paid retaining allowance up to the date of retirement.

4. The said provision has been explained by a Division Bench of this Court in the case of *M/s. Deoria Sugar Mills Ltd. v. The Deputy Labour Commissioner, Allahabad Division, Allahabad 1977 Lab. I.C. 102.*, wherein the Court, upon reading the Standing Orders and considering its objects and effects, concluded 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.

5. The Division Bench held that the presumption in favour of the age of the workman mentioned in the Provident Fund Register is rebuttable by production of various documents enumerated in Sub-clause (a), (b), (c) and (d) of Clause 3 of Clause (LL) of the Standing Orders. The Division Bench further found that if such documents, as mentioned in Sub-clause (a), (b), (c) and (d) are not available, then it would be permissible for the workman to produce such other evidence which would be considered appropriately by the authority.

6. Consequently, the submission of the learned Counsel for the petitioner that only the documents mentioned in Sub-clause (a), (b), (c) and (d) of Clause 3 could be taken into consideration is patently erroneous.

7. In Writ Petition No. 19554 of 1991 (U.P. State Sugar Corporation Limited v. Salamat Mia and another) decided on 21.5.2004, a similar view was taken by the Court.

In U.P. State Sugar Corporation Limited v. Deputy Labour Commissioner, Gorakhpur Region, Gorakhpur and another 1990 (61) FLR (All) 496 : 1990 (2) UPLBEC 1033., the Court held that presumption created under Clause (LL) was rebuttable and held:

Clause (LL) embodies an important term of service, as it confers a right upon a workman to continue in service till he attains the age of 60 years. Correspondingly, it entitles an employer to serve the relationship of master and servant or employer and employee of a particular workman on his reaching the age of 60 years. Clause (LL) envisages that an entry of the date of birth of a workman in the records pertaining to the Provident Fund Scheme is presumed to be correct. This intent is conveyed by the expression to begin with. An entry of the date of birth in any of the documents referred to in Sub-clauses (a) to (d) Clause (LL) (3) will outweigh the corresponding entry in the provident fund papers. To put it differently, the presumption created under Clause (LL) (2) will stand rebutted conclusively by an entry in any of the documents referred to in Sub-clauses (a) to (d). It is thus clear that the presumption attached to the correctness of an entry of the date of birth in the provident fund papers is rebuttable one.

8. Similarly, in U.P. State Sugar Corporation Limited v. Salamat Mia and another (supra) the Court relied upon a decision of the Division Bench in Deoria Sugar Mills (supra) and held that the entries in the Parivar Register was rightly accepted as evidence by the Deputy Labour Commissioner. In Deoria Sugar Mills Limited (supra), the Division Bench accepted the entries of the date of birth in the Register kept at the Police Station as a piece of evidence.

9. In the light of the aforesaid, the Court finds that in the present case the workman produced a certified copy of an entry from a Register kept in the Collectorate. The original Register was also produced by a clerk of the Collectorate. This Register was of the year 1928-1929 and the aforesaid Register produced by the clerk indicated that this was a Birth and Death Register, maintained at the Police Station, which was, subsequently, kept in the Collectorate for safe custody. Entries made in this Register, which is of the year 1929, and which comes from a reliable source, cannot be doubted, and such entries would be presumed to be correct in view of the provisions of Sections 90 and 90-A of the Evidence Act read with Section 114 Illustration (e). In this Register, it was recorded that a son of Jagai was born on 28th October, 1929. The workman also produced a witness Ram Kishore, who stated that he knew Jagai

and that the workman was the only son of Jagai. The statement of the workman's witnesses has not been refuted in any manner by the employers. The only stand adopted by the employers was that an entry in the Provident Fund Record was the only reliable piece of evidence, which can only be modified by production of such documents as mentioned in Sub-clause (a), (b), (c) and (d) of Clause 3 of Clause (LL) of the Standing Orders.

10. In view of the aforesaid, this Court is of the opinion that the Deputy Labour Commissioner was justified in correcting the date of birth of the workman. This Court does not find any error in the impugned order. The writ petition fails and is dismissed.