

(2002) 08 AHC CK 0087
In the Allahabad High Court
Case No : C.M.W.P. No. 12413 of 1990

U.P. State Sugar Corporation Unit Khadda	APPELLANT
Vs	
Ram Naresh Upadhyaya and Others	RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3
Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 — Rule 2

Citation : (2002) 4 AWC 3109

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : G.P. Mathur and V.B. Singh, for the Appellant; Shyam Narayan and A.K. Misra and S.C., for the Respondent

Final Decision : Allowed

Judgement

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

2. Petitioner, the erstwhile Vishnu Pratap Sugar Works Pvt. Limited (hereinafter called as the Secretary) carries on the business of manufacturing crystal sugar by vacuum pan process, situated at Khadda, district Deoria, After the acquisition of the Mill by U. P. State Sugar Corporation (hereinafter called as the Corporation), it became its unit and respondent No. 1 became employee of the Corporation. In the service records of the Sugar Factory, the date of birth of respondent No. 1 was 7.4.1926, Accordingly, he was to attain the age of superannuation at the age of 60 years on 7.4.1986.

3. Before his superannuation, respondent No. 1 was given a notice dated 19/27.9.1986 under Clause LL (4) of the standing orders informing him that he would retire from service on 31.10.1986. A representation was made by the respondent workman to the Labour Commissioner, U. P. Kanpur, challenging the retirement notice given by the General Manager of the Corporation. The Labour Commissioner vide order dated 15.9.1987, forwarded the representation to the

Deputy Labour Commissioner, Gorakhpur, for decision which was registered as S.O. Case No. 29 of 1987.

4. On receipt of notice from Deputy Labour Commissioner, Gorakhpur, the petitioner filed a written statement, inter alia, stating that the claim made by the workman was incorrect and that he had completed the age of 60 years and also that the respondent No. 1 had retired from service on 31.10.1986 in pursuance of the notice dated 19/27.9.1986. It is submitted that the retirement of the respondent No. 1 was based on the basis of the documents and the entry, made in the service record containing the date of birth, which were never disputed by him.

5. The workman-respondent No. 1 contested the claim on the ground that his date of birth was 27.3.1934 and as such, he had not completed 60 years of age and he was being prematurely retired from service. In support of his case, respondent No. 1 filed his horoscope and Kutumb Register and examined himself as a witness before the Deputy Labour Commissioner. He admitted that he had signed the P. F. form but could not prove any of the documents relied upon by him. He admitted that there were overwriting and cuttings in the Kutumb Register and that the original was never issued before him. He also admitted cuttings in horoscope and as such, he was not able to prove the copy of either the Kutumb Register or the horoscope.

6. The petitioner examined two witnesses in support of his case before the Labour Commissioner, namely, Ramesh Chandra Srivastava and Ram Bilas Singh, Ramesh Chandra Srivastava, an Assistant in the office of Provident Fund Commissioner, Kanpur, brought the original P.F. Form No. 2 and verified from it that the age of the respondent No. 1 was mentioned as 31 years on 8.4.1957. He further submitted that he had received the application dated 27.5.1965 for changing the name of the nominee from the petitioner.

7. Ram Bilas, clerk in the office of P.F. Section verified that the P.F. record is prepared on the basis of age given by the workman and thereafter, it is verified by the Doctor. He also proved the copy of letter dated 1.9.1987 sent by the General Manager of the Corporation to the Assistant Provident Fund Commissioner, U. P., Gorakhpur, by which it was certified that the age of respondent No. 1 Ram Naresh Upadhyay was 31 years as on 8.4.1957. Lastly, it was stated by him in his evidence that the concerned workman had never made any application for correction of his age during the tenure of his service in the mill.

8. The Deputy Labour Commissioner held that according to the entry made in the horoscope and the Kutumb Register, the date of birth of respondent No. 1 was 27.3.1934 and directed the petitioner to record this date of birth in the service record of respondent No. 1. He further granted all the benefits, which he would have received, had he been in service. Copy of the order dated 12.4.1990 impugned in this writ petition passed by the Deputy Labour Commissioner,

Gorakhpur, has been appended as Annexure-11 to the writ petition.

9. Aggrieved by order dated 12.4.1990, the petitioner contends that the impugned order is wholly illegal and the findings recorded by the Deputy Labour Commissioner are perverse and beyond the scope of enquiry under Clause LL (4) of the standing order.

10. For appreciating the controversy involved in this writ petition, U. P. Clause (LL) of the standing orders is quoted below :

"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 a workman for purposes of retirement."

(3) 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 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) 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/ 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 Additional/ Deputy 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 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. In case the Regional Additional/ Deputy Labour Commissioner allows the representation, the employer shall modify the record of age of the workman immediately on receipt of the said, orders."

11. A perusal of Clause LL (2) would show that the standing orders clearly provides that the P.F. record of the factory specifying the age of the workman is to be taken as reliable record of the age. Therefore, there is presumption about the correctness of the P.F. record. Clause LL (3) provides that the age of workman once recorded in the service record can only be modified on the basis of either (i) High School Certificate or (ii) School Leaving Certificate. On the basis of the provisions of the certified standing orders, it has been contended that the standing orders cannot be modified on the basis of age given in horoscope and Kutumb Register filed by the respondent No. 1 which has been relied upon by the Deputy Labour Commissioner.

12. My attention has been drawn to paragraph 12 of the writ petition, which is quoted below :

"That admittedly the respondent No. 1 is working in the sugar mill since, 1945. This fact is admitted by respondent No. 1 in his statement before the Deputy Labour Commissioner. He has been retired from service on 31.10.1986 and thus he has worked for more than 41 years in the sugar factory. According to Kutumb Register filed by respondent No. 1, his age was only 49 years in 1988, which means he was 47 years in 1986 when he was retired from service. Since admittedly he had worked in sugar factory for 41 years, it means that he entered service in the sugar factory when he was only 6 years of age. Similarly according to horoscope filed by respondent No. 1, his date of birth is 27.3.1934, which means he was 11 years of age when he joined the sugar factory in the year 1945. It is impossible to believe that respondent No. 1 joined service in the sugar factory either at the age of 6 years or at the age of 11 years. According to the petitioner's record, the date of birth of respondent No. 1 is 7.4.1926, which means he was 19 years of age when he joined sugar factory in 1945. The facts mentioned above would show that the documentary evidence filed by respondent No. 1 are forged and fictitious and have been manufactured for the purpose of present case. The documents filed by respondent No. 1 give absolutely wrong

age which is apparent on the face of the record."

13. On the basis of the aforesaid averments, it has been contended that the documents filed by the respondent No. 1 were not genuine and were forged. There were number of cuttings and manipulations in the documents. In the horoscope, the figure "38" has been altered to "48" and in the "nachchatra Chakra", there is overwriting on all the six figures. The copy of Kutumb Register filed by respondent No. 1 was also not a certified copy thereof. Neither the original Kutumb Register was produced to prove the entry nor the Secretary has charged any fee for issuing the same.

14. In *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, the Apex Court held that the date of birth declared by an employee at the time of his appointment and accepted by the employer should be taken as reliable date of birth for the purposes of superannuation. In this case. the employee filed a writ petition for correction of his date of birth till he attained the superannuation age on the basis of his date of birth found in his Matriculation Admit Card. The Apex Court held that :

"The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others."

The Court further held that in such matters, interim mandamus should not be granted for continuance in service.

15. In the instant case, the petitioner has already retired from service. Thereafter he applied for change in his date of birth on the basis of the horoscope and the Kutumb Register. The findings given by Deputy Labour Commissioner regarding date of birth of the respondent, as 27.3.1934 are perverse and against the material on record. He has committed illegality in relying upon records, which were neither proved by evidence nor were authentic. The law is well entrenched in this regard. The date of birth cannot be changed at the fag end of service much less after the retirement. The respondent No. 1 during his tenure of service never made any application for change of his date of birth and he approached the Deputy Labour Commissioner only after his retirement.

16. It is well-settled that the date of birth on retirement or at the fag end of service cannot be changed. Applying the ratio of *Burn Standard's* case (*supra*), the respondent could not have been in employment if the date of birth given by him in his horoscope is accepted and certainly extending his service would be detrimental for promotion of others who have come after his retirement. Photocopy of the service book has also been filed in which the date of birth of the respondent has been shown as 7.4.1926.

17. In *Jagdish Paswan v. Chairman-cum-Managing Director Eastern Coal Fields Ltd. and Ors.*, ESE Part 8 (Vol I) p 372, the Calcutta High Court has held that the date of birth after retirement cannot be changed. Any relationship between the employee and the employer having ceased or terminated, the employee cannot enforce anything which is not flowing from the contract as it stood on the date of retirement.

18. In *U. P. State Sugar Corporation Ltd. v. Ambika Singh and Anr.* 1999 AWC 887, this Court considered the question of retirement of age under modified Clause LL of the standing orders and it held in para 9 that:

"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 the purposes of modifying the age of 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 the purposes of retirement. Sub-clause (3) provides that the record of age shall stand modified if warranted by certain documents mentioned in Clauses (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 workman 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 the age record modified by 26.9.1989."

19. In the present case, the respondents gave notice of retirement to the petitioner on 19/27.9.1986 under Clause LL of the standing orders w.e.f. 31.10.1986, the petitioner made representation in this regard after the date of retirement.

20. The Court further held, that :

"if the workman concerned has not got his date of birth 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 1980, he shall not be entitled for the correction of the date of birth on the ground or evidence enumerated under Clause (LL) of the certified standing orders."

21. In this case neither the respondent has got corrected his date of birth as prescribed under Clause (LL) of the standing orders within one year of the

enforcement thereof nor the respondent has got the authenticated copies of the horoscope and Kutumb Register proved in evidence. He has also not got his date of birth corrected as laid down in the judgment in U. P. State Sugar Corporation Limited v. Ambika Singh (supra).

22. In State of Uttaranchal and Ors. v. Pitamber Dutt Semwal. 2002 (1) AWC 429 (SC) : 2002 (92) FLR 773, the Apex Court while Interpreting Rule 2 of U. P. Recruitment Service (Determination of the Date of Birth) Rules, 1974, held that the date of birth as recorded in service book cannot be changed at highly belated stage on receipt of notice for superannuation. It further held that:

"no application or representation shall be entertained for correcting any date or age record and the entry made in the service book shall be deemed to be the correct date of birth. Be that as it may. even de hors the said rule, we are of the opinion that the plea of the respondent that the "date of birth was wrongly recorded was highly belated

In any case, the plea of the wrong recording of the age in the service book has been taken, nearly thirty years after the service book was prepared. In our opinion, the Division Bench was in error in ignoring the provisions of the said Rule 2 and even otherwise, in the facts of this case, there was no occasion for the High Court to have interfered with the decision of the appellant."

23. After amended Clause LL which came into force on 27.9.1988, it was open for the respondent to get his age record modified by 26.9.1989. The Deputy Labour Commissioner, Gorakhpur, thereafter has no authority or even jurisdiction to amend the date of birth in proceedings under Clause LL of the standing orders of the sugar factory and the impugned order passed by him is without jurisdiction, perverse and beyond the scope of enquiry under the aforesaid provisions.

24. In view of the above, the impugned order dated 12.4.1990 is wholly illegal and without jurisdiction. It is held that the respondent has rightly been retired from service on the attaining the age of superannuation w.e.f. 31.10.1986.

25. In view of the aforesaid discussions, the impugned order dated 12.4.1990, is liable to be quashed and the same is hereby quashed. The writ petition is allowed.

26. No order as to costs.