

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5912/2005 & CM 16176/2011 (u/s 17B)

% Reserved on: 5th October, 2012
Decided on: 9th January, 2013

M/S HINDUSTANT PETROLEUM CORPN Petitioner
Through: Ms. Raavi Birbal, Advocate.

versus

N.S.RANE Respondent
Through Mr. S.M. Hooda, Advcoate.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the award dated 14th December, 2004 whereby the Petitioner was directed to regularize the Respondent/workman without back wages.

2. Learned counsel for the Petitioner contends that the Respondent initially filed a writ petition before this Court which was dismissed vide order dated 1st February, 2000 granting opportunity to the Petitioner to raise an industrial dispute. In the order dated 1st February, 2000 this Court clearly noted that the Respondent had produced a certificate in original which showed some corrections. Photocopy whereof was taken on record as Ex. 'A' by this Court. Thus the date of birth of the Respondent was 1st June, 1959 which he tampered and changed to 1st June, 1961 to come within the eligibility framework. The reference was for absorption of the Respondent, however, the relief of regularization was granted to the respondent. Thus the learned Trial Court went beyond the terms of reference, thus the impugned award is patently without jurisdiction. The onus to prove the age was on the respondent which he failed to prove as no date of birth certificate was

produced before the trial court. The learned Trial Court erroneously came to the conclusion that the terms of absorption were vague and granted benefit to the Respondent. The criteria of absorption was fixed after entering into a memorandum of settlement between the management of the Petitioner and the Workers Union of Petroleum Workers Labour and Contract Cooperative Society (PWLCC). In the same memorandum of settlement it was clearly prescribed that the workman should be 25 years of age as on the month of formation of the society, that is, should be born on or before June, 1985 which was relaxed in the case of Schedule Caste and Schedule Tribe candidates to 30 years. The Trial Court could not have altered the terms of settlement. The case of the Respondent was for absorption of contract labour and not regularization. For coming to the conclusion that the Respondent was required to be regularized the learned Trial Court ought to have returned a finding that the Petitioner was the principal employer and the contract was a sham or camouflage. Thus the impugned award be set aside.

3. Learned counsel for the Respondent on the other hand contends that for regularization age is not a relevant factor. Reliance is placed on *Rourkela Shramik Shangh vs. Steel Authority of India Ltd. and another, JT 2003 (1) SC 465* wherein it was laid down that contract labours should have been working for ten years continuously. The Respondent was a permanent labour like other labourers and thus could not have been discriminated on the point of age. There being no infirmity in the impugned award no interference is thus called for. The finding of the learned Trial Court that for regularization age is not relevant is as per law and the spirit of the settlement. It was not a statutory regularization but a regularization pursuant to the settlement arrived at between the parties.

4. I have heard learned counsel for the parties and perused the record.
5. Briefly the facts leading to the filing of the present petition are that the Respondent was employed at the Shakurpur Basti LPG Plant through a contractor M/s Ranjeet Singh and Company on 12th August, 1983 for the job of handling of LPG Cylinders and security of plants etc. In June, 1985 the Petroleum Workers Union (PWU) was formed as the contractor abandoned his work in 1984. As the contract labour system was abolished, the workmen formed a society called Petroleum Workers Labour and Contract Cooperative Society (PWLCCS) in June, 1985 and all the workers became members of the newly formed PWLCCS and thus the work of the contractor was entrusted to the PWLCCS. On 25th July, 1991 the Petitioner decided to re-site its LPG plant from Sakur Basti to Bahadur Garh and in August, 1993 the newly constructed plant started functioning. On 9th March, 1994 a settlement was signed between the Petitioner and PWU & PWLCCS as a welfare measure. Para (i) of the Memorandum of Settlement which is relevant for the present case reads as under:

“(i) It is agreed that the members of the Society engaged in handling cylinders and security at the Shakurbasti LPG Plant mentioned in Annexure-II, subject to meeting the eligibility criteria as laid down below in respect of age and educational qualification, will be absorbed on the permanent payroll of the Corporation and assigned at any location in Grade M-01 in NZ depending on the availability of vacancies.

AGE: 25 years of age as on the month of formation of the society i.e. June, 1985 or joining the society by the members, if that is later. (Relaxed to 30 years for members belonging to SC/ST Community.)

Educational Qualification: Minimum 8th pass.

6. Thus for the absorption in the Petitioner management, age was one of the criteria and the members were required to meet the eligibility criteria by submitting the original certificate. Since the seniority was on the basis of regularization no age certificates of the workmen were called. The Petitioner issued a letter dated 23rd June, 1994 stating therein that the Respondent submitted a fake certificate of his qualification. Again on 18th July, 1994 the Petitioner sent a letter stating that the Respondent was metric pass and his date of birth was 1st June, 1969 and the age of the Petitioner was 26 years in June, 1985 whereas the maximum age for the job was upto 25 years. The Respondent continued working till 11th March, 1995 when the services of his juniors were regularized on the basis of cut of date. The Respondent challenged the said action of the Petitioner by way of Writ Petition being W.P. (C) No. 1127/1996 before this Court. This court vide its order dated 1st February, 2000 permitted the Respondent to raise an industrial dispute. The order dated 1st February, 2000 passed by this Court reads as under:

“01.2.2000

Present: Mr. R.K. Singh for the petitioner.
Mr. Raj Birbal, Sr. Advocate with Mr. Rajesh Kumar and Ms. Poonam Lao for the respondent.

CW. 1127/96

Rule.

Since short question is involved, with the consent of the parties the matter is taken up for disposal at this stage.

The petitioner was working with respondent no. 1 through a contractor M/s Ranjit Singh and Co. Settlement dated 11th March, 1994 was arrived at between the Management of Hindustan Petroleum Corporation Limited (HPCL) and petroleum workers union as per which the Management agreed to employ such contract workers on the terms and conditions stated in the agreement which included the condition that the concerned person should be 25 years of age on the month of formation of the society i.e. June 1985. There is a dispute about the age of the petitioner as on June 1985. Whereas the petitioner contends that he was 24 years of age, the stand of respondent no. 2 is that he was 26 years of age as on that date. The certificate which is produced by the petitioner in the original shows some corrections made in hand in the date of birth recorded therein. The certificate showing the date of birth of the petitioner is marked as Exhibit 'A' by Court Master in Court today and a copy of the same is taken on record. since the matter raises disputed question of fact it would be appropriate if the petitioner raises industrial dispute and the matter is adjudicated upon by the Labour Court/Industrial Tribunal which is even otherwise an efficacious alternate remedy available to the petitioner more so when the petitioner is pressing his rights on the settlement arrived at between the union and the respondent no. 1-Management. In view of this position, petition seeks permission to withdraw this writ petition with liberty to raise industrial dispute. His only prayer is that there should be a direction given to Labour Court/Industrial Tribunal for early adjudication of the matters as this writ petition was filed by him in 1996 and almost four years have passed in the process.

The writ petition is accordingly dismissed as withdrawn with liberty to the petitioner to raise industrial dispute. Keeping in view the delay which has already taken place it is hoped that the appropriate Government would consider the matter and it deems fit make reference expeditiously and the Labour Court/Industrial Tribunal to which the matter is referred for

adjudication would also try to dispose of the case promptly.
Writ petition dismissed as withdrawn.

Sd/-
A.K. Sikri, J.

February 01, 2000”

7. As the Respondent was not absorbed in view of the fact that according to the Petitioner the date of birth of the Respondent was 1st June, 1961 and he was 26 years of age, the following terms of reference was sent for adjudication:

“Whether the action of General Manager, Hindustan Petroleum Corp. Ltd, Jeevan Bharti Building, 11th Floor, Tower-I, 124, Indira Chowk, New Delhi-110001 in depriving absorption to Shri N.S. Ran in the HPCL as per the agreement dt. 09.03.1994 considering his date of birth as 01.06.1959 instead of 01.06.1961 ignoring the certificate of verification of date of birth dt. 04.12.2000 from the principal, Govt. Sr. Sec. School, Model Town, Sonapat, Haryana is justified, valid and reasonable? If not, what relief and benefits the workman is entitled to?

8. In the statement of claim filed by the Respondent it was stated that he was working with the Petitioner since 12th August, 1983 through a contractor and when the contractor abandoned the work, the workmen approached the labour court wherein the petitioner agreed that they will appoint and regularize the services of the workmen if they got registered themselves as society and all the members of the cooperative society continued to work with the Petitioner.

9. In the written statement filed the Petitioner took the preliminary objection with regard to the certificate of the Respondent stating that the

High Court has already observed that there are some corrections made in the original. The Respondent was given various opportunities to furnish the certificate but he failed to furnish the same. The appropriate government erred in taking into consideration a certificate dated 4th December, 2000 issued by the Principal, Government of Senior Secondary School, Model Town, Sonapat, Haryana. It was contended that reliance placed on certificate issued in the year 2000 was wholly misplaced. The certificate was not in existence on the date when the settlement took place on 9th March, 1994. In the writ petition filed by the Respondent he filed a forged certificate. It was further stated that in view of the agreement between the management and the employee Union on 9th March, 1994 the absorption was being carried out and the respondent was not eligible for absorption. Since the settlement including the term that as on the cut of date the person was required to be of 25 years of age was not challenged, the same was binding on all the parties. The petitioner stated that after formation of the society the petitioner regularized the services of the workmen in accordance to the seniority.

10. The trial court held that the respondent had worked for 11 years and the requirement of 25 years of age was vague. The memorandum of settlement did not mention whether the candidate should be less than 25 years or more than 25 years. It was further held that since the workman had worked for 11 years of service he should be given relaxation of age otherwise he would not be able to gain employment anywhere else and on the basis of the fact that the Respondent had worked for substantial period the trial court directed that the petitioner will regularize the service of the respondent.

11. It may be noted that absorption/regularization of the candidate was subject to the terms and conditions in the agreement. The said terms were not challenged before the Tribunal. The onus was on the Respondent to prove that he was less than 25 years of age. No certificate was produced by the Respondent in his evidence. In fact the learned trial court totally brushed aside the said evidence on the ground that this term is vague and due to the fact that the workman had worked for 11 years directed regularization. The tribunal could not have granted regularization contrary to the terms of settlement arrived at between the parties. The reliance placed by the learned counsel for the Respondent on *Rourkela Shramik Shangh* (supra) is misconceived as in the said decision the only issue before the Hon'ble Supreme Court related to the interpretation of an order passed by it in *R.K. Panda & Ors. Vs. Steel Authority of India & Ors.*

12. Regarding the scope of interference in *Harjinder Singh Vs. Punjab State Warehousing Corporation* (2010) 3 SCC 192 their Lordships held:

“10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution — *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] and *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] . In *Syed Yakoob case* [AIR 1964 SC 477] , this Court delineated the scope of the writ of certiorari in the following words: (AIR pp. 479-80, paras 7-8)

“ The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be

issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC

233 : (1955) 1 SCR 1104] , *Nagendra Nath Bora v. Commr. of Hills Division* [AIR 1958 SC 398 : 1958 SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168]).

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

13. In view of the above, the finding of the learned Trial Court that the stipulation regarding 25 years of age is vague is erroneous as the same gets clarified further by the relaxation to 30 years for members belonging to SC/ST community on the month of formation of the society i.e. June 1985 or joining the society the members if that is later. Further the Respondent was clearly aware of the requirement due to which a certificate in which year of birth was tempered was filed before this Court. Clearly the onus was on the Respondent to prove that he fell within the four corners of the agreement which he failed to do. The impugned order cannot be sustained and is set aside accordingly.

14. The Petition and the application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2013
‘vn’