

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.12358 of 2006**

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Siya Ram Singh son of late Chandrika Singh resident of village Marachi P.S.
Marachi District Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. General Manager, Bihar Cooperative Weavers' Spinning Mills, Mokama

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. RAVI KUMAR
Mr. Shashi Ranjan Thakur

For the Respondent/s : Mr. (AAG6)
Mr. K.N.Gupta

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 26-02-2015

1. This petition under Article 226 of the Constitution of India has been filed for quashing the award dated 03.01.2006 passed by the learned Labour court in Reference case no.40/1996 by which and whereunder learned Labour court gave affirmative answer to the first part of the reference made to learned Labour court under section 10(1) (C) of the Industrial Disputes Act, 1947 and accordingly, refused to recognize date of birth of the petitioner as registered in the ESI identity card by the Management of Bihar Cooperative Weavers' Spinning Mills, Mokama and furthermore, for issuance of direction to the respondents to consider date of birth of the petitioner registered in the ESI identity card for his retirement and to give all consequential benefits thereof.

2. Petitioner was appointed in Speed Framed Section of Bihar Cooperative Weavers' Spinning Mills, Mokama in the year 1965 and after his joining, his ESI identity card was prepared and in the aforesaid ESI identity card, his date of birth was entered as 06.01.1944 but in Employees' Provident Funds Declaration and Nomination form, his date of birth was entered as 15.07.1945.



The date of birth of the petitioner at the time of his joining was entered as 06.01.1944 in his service book. The aforesaid mill was shut down for a number of years and the workmen employed in the said mill were out of employment but in the year 1972, aforesaid mill was nationalized and it became operative and accordingly, petitioner was taken back in service of the aforesaid mill. At the time of his second joining, all relevant documents, namely, original service book, ESI identity card, EPF form were with the Management. The retirement age of employees of the aforesaid mill was of 58 years. Petitioner came to know in course of his employment that in provident fund form, his date of birth was entered as 15.07.1939 after making cutting in provident fund form. Furthermore, case of the petitioner is that no notice or information was given to him prior to making cutting in the provident fund form and without initiating any proceeding for making cutting in respect of date of birth of the petitioner, the above stated cutting was made. The union of the aforesaid mill raised dispute in respect of the aforesaid matter before the Management but the matter could not be resolved and thereafter, State of Bihar, department of Labour Employment and Training, Patna vide its notification no. 3/11-9019/96 I & E 920 dated 04.10.1996 made reference to the Labour court as follows:-

“Whether not to recognize date of birth as registered in the ESI identity card by the Management of Bihar Cooperative Weavers’ Spinning Mills, Mokama, to its workmen Sri Siyaram Singh and Sri Garib Yadav is justified ? If not, what should be the basis of age consideration of both workmen, either the date of birth registered in PF form or as marked in the ESI identity card”.

3. On receipt of the aforesaid notification, learned Labour court issued notice to the concerned parties but a workman, namely, Sri Garib Yadav did not



raise any dispute nor his matter was pursued by the union but the petitioner filed his written statement placing his case before learned Labour court. The Management also filed his written statement pleading therein that originally, mill was under the Management of Cooperative Society but later on, mill became nationalized and came under the Management of Nationalized Textile Corporation (WBAB and company limited). The aforesaid mill came under the Management of Nationalized Textile Corporation in the year 1972 and the personal data of employees including the petitioner was taken. The personal data was duly signed by the employee concerned and countersigned by the Management of the said mill. So far as the personal data of the petitioner is concerned, in his personal data, his date of birth was shown as 15.07.1939 and the petitioner never represented before the Management for correction/ rectification of his date of birth but at the fag end of his service, petitioner raised dispute regarding entry of his date of birth in his personal data. Furthermore, Management pleaded before labour court that the ESI identity card of the petitioner was issued by the Medical officer or Management of ESI and the Management of mill was nothing to do with entry made in the ESI identity card and, therefore, Management of mill was not responsible for making entry in the ESI identity card.

4. Petitioner as well as the Management adduced their oral and documentary evidences respectively and learned labour court, having heard the parties, passed the impugned award against which this writ petition has been filed.

5. Learned counsel appearing for the petitioner challenged the impugned award arguing that admittedly, petitioner joined in the concerned mill in the year 1965 and he submitted Employees State Insurance Corporation Declaration form on 18.6.1965 and in the said form, he mentioned his year of



birth as 1944 and the aforesaid year of birth was accepted by the Management of the said mill and on the basis of the aforesaid Employees State Insurance Corporation Declaration form, ESI identity card was issued to the petitioner. In the aforesaid ESI identity card, date of birth of the petitioner was shown as 06.01.1944. Furthermore, petitioner submitted Employees' Provident Funds Declaration and Nomination form in the year 1967 and in the aforesaid form, he gave his date of birth as 15.07.1945 but a cutting was made in the aforesaid Declaration and Nomination form of P. F and in place of 1945, it was written as 1939. Learned counsel for the petitioner submitted that no notice or information was given to the petitioner before making the above stated cutting in the said Declaration and Nomination form of P.F. It is further contended by him that admittedly, the above stated documents were in possession of the Management and no opportunity was given to the petitioner before making the above stated cutting in the said Declaration and Nomination form of P.F.

6. Learned counsel for the petitioner referred decision of **Baidya Nath Singh vs B.C.C.L. Dhanbad and others reported in 2000 (2) PLJR page 556** in which a coordinate bench of this court held that any interpolation in service book or other relevant documents of the employee without giving notice and behind back of the employee is mala fide and without any basis and even if any dispute in respect of interpolation in service book or any other relevant documents is raised at the fag end of service, then also, the aforesaid dispute can not be rejected only on the ground that the dispute has been raised at a belated stage. Learned counsel for the petitioner also relied upon the decision of **Kapileshwar Mahto vs The State of Bihar & ors reported in 2008 (3) PLJR page 523** in which it has been held by a coordinate bench of this court that any cutting or interpolation in service book make service book unauthentic.

7. It is also submitted on behalf of the petitioner that at the time of joining of the petitioner, his service book was prepared and in his service book, his date of birth was shown as 06.01.1944 but intentionally, Management suppressed the service book of the petitioner and it is well settled principle of law that entry in service book regarding date of birth of employee shall prevail over other documents.

8. Learned counsel for the petitioner referred the decision of **Sohmati Devi vs The State of Bihar & ors reported in 2003 (1) PLJR page 553** in which a coordinate bench of this court held that entry made in the service book will prevail upon all documents and for all practical purposes, date of birth as entered in service book should be accepted.

9. Learned counsel for the petitioner submitted that the learned labour court failed to appreciate the materials available on record in right perspective and committed error in passing the impugned award.

10. On the other hand, learned counsel for the respondents refuted the above stated submissions arguing that the ESI identity card was not issued by the Management and any entry in the aforesaid card is not binding upon the Management. It is further contended by him that admittedly, petitioner joined mill in the year 1965 but from bare perusal of annexure 2 to the supplementary affidavit, it would appear that so-called ESI identity card was issued in the year 1953 i.e. much prior to joining of the petitioner. He further submitted that Employees' Provident Funds Declaration and Nomination form was filled up by the petitioner and in the said form, his date of birth was shown as 15.07.1945. He further submitted that no doubt, after making cutting in date of birth of the petitioner in the said form, his date of birth was shown as 15.07.1939 but admittedly, petitioner did not raise any objection at the time of making the



aforesaid cutting. He further submitted that when mill became nationalized, the personal data of each of the employees of the aforesaid mill was prepared and the petitioner, himself, prepared his personal data in which he gave his date of birth as 15.07.1939. He further submitted that at the time of preparation of the personal data, again, petitioner failed to raise any dispute. He further submitted that in master roll also date of birth of the petitioner was shown as 15.07.1939. He further submitted that the petitioner himself was not clear as to what was his exact date of birth and, therefore, the learned labour court rightly passed the impugned award. It is further contended by him that labour court can not go beyond reference and the present reference was only made to give answer as to whether non- recognition of date of birth of the petitioner entered in the ESI identity card by the Management of Bihar Cooperative Weavers' Spinning Mills, Mokama was justified or not and if not what should be the basis of age consideration of both workmen, either the date of birth registered in PF form or as marked in the ESI identity card. He further submitted that the learned labour court came to the conclusion that non- recognition of date of birth of the petitioner as entered in the ESI identity card was justified and, therefore, there was no occasion before labour court to give answer to the second limb of the reference. It is further contended by him that no reference regarding cutting in respect of date of birth of the petitioner was made to the learned labour court and, therefore, there was no occasion before labour court to give any finding in respect of cutting made in Declaration and Nomination form of P.F and, therefore, the learned labour court rightly passed the impugned award.

11. It is an admitted position that the petitioner joined in the mill in the year 1965 and at the time of his joining the aforesaid mill was under the Management of Bihar Cooperative Weavers' Spinning Mills, Mokama. It is also



an admitted position that the aforesaid mill was shut down for certain period and later on, said mill became nationalized and thereafter, personal data of employees of the aforesaid mill was collected. Furthermore, it is an admitted position that when the petitioner joined in the said mill, he submitted declaration form to Employees' State Insurance Corporation and in the said form, he mentioned his year of birth as 1944 because in the said declaration form, there was only column of year of birth. It appears that at the time of filling up the aforesaid form, the petitioner did not give date and month of his birth as there was no column in the said form for giving date and month of birth of applicant. It is also an admitted position that the above stated application form was submitted by the petitioner on 18.6.1965 and the aforesaid form was countersigned by factory manager. It is also an admitted position that at the time of submission of the aforesaid application, mill was under the Management of Bihar Cooperative Weavers' Spinning Mills, Mokama and factory manger of the aforesaid mill also countersigned the above stated form of the petitioner. Furthermore, It is also an admitted position that the petitioner submitted Employees' Provident Funds Declaration and Nomination form on 17.8.1967 and gave his date of birth in the said form as 15.07.1945. The aforesaid form was countersigned by the authorized officer of the factory. It is also an admitted position that a cutting was made in column no. 7 of the aforesaid form and accordingly, date of birth of the petitioner was changed from 15.07.1945 to 15.07.1939. It is also an admitted position that in the year 1971 when the mill became nationalized the personal data was collected and the personal data was prepared on the basis of entry made in Employees' Provident Funds Declaration and Nomination form and accordingly, in the personal data of the petitioner, his date of birth was entered as 15.07.1939 as it had been entered in Employees' Provident Funds Declaration and Nomination form after cutting in the aforesaid



form. It is also an admitted position that no notice or any information was given to the petitioner at the time of making cutting in Employees' Provident Funds Declaration and Nomination form but initial was made below the aforesaid cutting. The aforesaid initial appears to be authorized employee of the concerned mill.

12. Admittedly, cutting was made in respect of date of birth of the petitioner in Employees' Provident Funds Declaration and Nomination form but it is not clear as to when the aforesaid cutting was made. It is an admitted position that before making the above stated cutting neither any notice nor any information was given to the petitioner. Although it is stated on behalf of the Management that the above stated cutting was made at the time of filling up the above stated form but there is nothing on record in support of the aforesaid contention.

13. It is well settled principle of law that if any cutting or interpolation in service book or other relevant document is made without giving any notice or opportunity to make objection in respect of the above stated cutting, the said document becomes unauthentic and no reliance can safely be placed on the said document.

14. In the instant case, admittedly, reference was made to consider as to whether not to recognize date of birth of as registered in the ESI identity card by Bihar Cooperative Weavers' Spinning Mills, Mokama was justified or not? Although learned Labour court came to the conclusion that the Management was justified in not recognizing date of birth of the petitioner as registered in the ESI identity card but, in my view, learned Labour court committed an error in coming to the above stated conclusion because admittedly, Management prepared the personal data of the petitioner on the basis of Employees Provident Funds Declaration and Nomination form which was not an authentic document in the

eye of law as a cutting had been made in the aforesaid document without giving any notice or opportunity to the petitioner and, therefore, the Management was bound to recognize date of birth of the petitioner entered in other relevant documents.

15. Admittedly, in Employees State Insurance Corporation Declaration and Nomination form only year of date of birth of the petitioner was shown as 1944 as I have already stated above that in the aforesaid form only column of year of birth was given and that was the reason only year of birth was entered in the said form.

16. Admittedly, in the ESI identity card date of birth of the petitioner was shown as 06.01.1944 and except the aforesaid the ESI identity card as well as service book of the petitioner, there was no any other reliable documents to recognize date of birth of the petitioner. It is an admitted position that service book of the petitioner has not been brought on record and the Management witness has admitted at para 12 of his cross-examination that date of birth is entered in service book but service book of the petitioner was not with the Management. Therefore, in absence of service book only reliable document was of the ESI identity card of the petitioner and, therefore, in view of the aforesaid facts and circumstances, learned Labour court ought to have given answer in negative to the first part of the reference and simultaneously, in respect of second part of the reference, learned Labour court ought to have given direction to the Management to consider date of birth of the petitioner as entered in the ESI identity card.

17. No doubt, the ESI identity card was not prepared by the Management of the concerned mill but when there was no authentic or reliable document except E.S.I card to recognize date of birth of the petitioner,

Management was duty bound to recognize date of birth of the petitioner as entered in the ESI identity card.

. 18. On the basis of the aforesaid discussions, this writ petition is allowed and accordingly, impugned award dated 03.01.2006 passed by the learned Labour court in Reference case no.40/1996 is, hereby, quashed and the respondents/ respondent no.2 are/is directed to calculate superannuation age of the petitioner taking his date of birth as 06.01.1944 and pay all monetary benefits consequential thereof to the petitioner till date of his retirement i.e. 06.01.2002 including retiral benefits within three months from the date of receipt/production of a copy of this order.

Shahid/-

(Hemant Kumar Srivastava, J)

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