

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10121 OF 2013

Maharashtra Electricity Dist.Co.Ltd.,
Divisional Office, Beed, Dist.Beed,
Through its Authorised Signatory,
The Executive Engineer, MSEDCL, Beed

PETITIONER

VERSUS

Prabhakar Narhari Gharat,
Age-63years, Occu-Unemployed,
R/o Barshi Road, Beed,
Behind Hotel Sahyadri,
Beed, Dist. Beed

RESPONDENT

WITH
WRIT PETITION NO.251 OF 2014

Prabhakar Narhari Gharat,
Age-63years, Occu-Unemployed,
R/o Barshi Road, Beed,
Behind Hotel Sahyadri,
Beed, Dist. Beed

PETITIONER

VERSUS

Maharashtra Electricity Dist.Co.Ltd.,
Divisional Office, Beed, Dist.Beed,
Through its Authorised Signatory,
The Executive Engineer, MSEDCL, Beed

RESPONDENT

Mr.D.P.Deshpande, Advocate for the petitioner/Management.
Mr.U.S.Sawaji, Advocate for the respondent/workman.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/08/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. These petitions have been filed by the Management and the employee respectively. Both have assailed the judgment of the Industrial Court dated 04/09/2013 in Revision (ULP) No.55/2012.
3. The litigating sides henceforth will be referred to as the Management and the Workman for the sake of brevity and to avoid repetition.
4. The contentions of the workman are as follows :-
 - a. The workman joined the Management as a "Line Helper" from 16/12/1969.
 - b. In 1978, he was called upon to submit evidence of his date of birth.
 - c. He produced a birth certificate dated 20/05/1978 which indicated his date of birth as 26/05/1950.
 - d. Concerned Clerk carried out the entry in the service book on the basis of the said certificate and the petitioner's date of birth 26/05/1950 was entered in the records.
 - e. By a communication dated 31/05/2006, the workman was intimated by the Management that he was retiring in the afternoon on the same day since his date of birth is 28/01/1948.

- f. The workman therefore stood retired instantly.
- g. The workman preferred Complaint (ULP) No.102/2009 before the Labour Court alleging forceful retirement amounting to termination.
- h. The complaint was dismissed by judgment and order dated 07/09/2012.
- i. The workman preferred Revision (ULP) No.55/2012 before the Industrial Court which was allowed by judgment and order dated 04/09/2013.
- j. The Industrial Court directed the Management to pay an amount of Rs.71,020/-, refund an amount of Rs.7,881/-, pay an amount of Rs.1,00,000/- as compensation for forceful termination in violation of Section 25(F) of the Industrial Disputes Act and Rs.10,000/- as costs.
- k. The workman is aggrieved by both the impugned judgments since his claim was by way of an entitlement to work upto 31/05/2008 considering his date of birth as 26/05/1950.
- l. The Management is aggrieved by the judgment of the Industrial Court.

5. The workman submits that he was actually born on 26/05/1950 going by the birth certificate issued by the Sarpanch, Gram Panchayat, Sakhare Borgaon, Tal.& Dist.Beed. He is not aware as to what was the entry made by the Management in the service record. He was called upon by the Management to submit a certificate indicating his date of birth. The Sarpanch of the Gram Panchayat issued the certificate in 1978 on the basis of the birth

record maintained at the said village. He has merely submitted the certificate to the Management which carried out an entry in the service book.

6. He further submits that he was retired on 31/05/2006 contrary to his actual retirement on 31/05/2008 going by his birth certificate.

7. The employee further submits that the Civil Surgeon of Dist.Beed issued a certificate dated 28/01/1971 after conducting a medical examination. The said examination was only with regard to finding out whether he had any physical disability or ailment or infirmity. It was not an Ossification Test so as to determine the age of the workman. This certificate was required by the Management since the petitioner was to be regularized in employment after having joined duties in 1969.

8. He further states that the Management itself has made the correction in 1978 after the workman submitted his birth certificate issued by the Sarpanch. The Industrial Court has lost sight of this fact and instead of granting entire wages for the said period of 2 years after the Labour Court dismissed the complaint, it granted

compensation of Rs.1,00,000/-. He, therefore, submits that he has challenged the judgment of the Labour Court as well which is dated 07/09/2012 by which his complaint (ULP) No.102/2009 has been dismissed.

9. Learned Advocate for the establishment submits that the workman had never applied for correcting the service book. The Management is unaware as to when and how was the service book corrected for recording the entry of the workman's date of birth as 26/05/1950. The Management accidentally noticed that the workman had worked beyond 28/01/2006 and therefore the Management promptly initiated steps so as to retire the petitioner on 31/05/2006. By which time, the Management had paid the monthly salary to the workman and which, therefore, deserved to be recovered.

10. Mr.Deshpande further submits that the subsequent correction in the service book of the workman has been a surreptitious act. The Management was oblivious to the said correction in the service book. The service books of the employees are not frequently opened or read. Consequentially, if the said entry was made in 1978 and was noticed in only 2006, no fault can be found with the Management as

such entries once made are never re-checked frequently.

11. He submits that the Labour Court had rightly assessed the dispute between the litigating sides and had taken into account the oral and documentary evidence placed on record while dismissing the complaint. He, therefore, submits that the impugned judgment of the Industrial Court be set aside and the conclusions arrived at by the Labour Court in its judgment dated 07/09/2012 deserve to be upheld.

12. I have considered the submissions of the learned Advocates and have gone through the petition paper book.

13. Issue is as regards what could be said to be the correct date of birth of the workman.

14. The workman was subjected to the medical examination on 28/01/1971. He himself made a statement during the examination that he was 23 years old (when he underwent the medical examination). He himself intimated to the Civil Surgeon his age on the basis of which the Civil Surgeon has endorsed on the certificate that the workman was born on 28/01/1948.

15. The dispute as regards the actual date of birth was not raised by the Management. It is only for the first time in 2006 that the Management realized that the workman had worked beyond 28/01/2006 and hence he was sought to be retired w.e.f. 31/05/2006 after the Management discovered that he had been inadvertently continued in service.

16. The workman has relied upon the judgment of the Apex Court in the case of Cidco Vs. Vasudha Gorakhnath Mandevlekar, 2009 SCLJ 289. The Apex Court, has come to a conclusion that the employer is bound by its own records. If any fraud is alleged, it has to be proved. Only because there appears to be a so called interpolation, the same by itself would not lead to a conclusion that the respondent had supplied a wrong date of birth.

17. The workman also relies upon the judgment of the Apex Court in the case of Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat VIJ Co.Ltd. and another, {(2014) 6 SCC 434}. It was concluded by the Apex Court that the employee was wrongfully retired by an order. The employee is entitled to full back wages and other consequential monetary benefits from the date of termination of his service, which

has resulted in his pre-mature superannuation.

18. I find that the entry as regards the age of the workman was recorded on 28/01/1971. There has been no evidence before the Labour Court as regards when was the entry of correcting the date of birth made in the service book and by whom. The stamp affixed is of the Head Clerk. Signature is not visible. Date and month is indicated, but the year is missing. The Management is suspicious about the manner in which such entry is made on the first hand and on the other hand the workman is not able to explain that the said entry of correcting his birth date was carried out under whose orders.

19. I find the above circumstances to be quite weird. It is, however, undisputed that the workman has retired from service in 2006 which he would have in 2008 in the event his date of birth would have been corrected in the service book by following the due procedure of Law.

20. The Industrial Court, by its judgment and order dated 04/09/2013 has considered the record and proceedings in relation to Complaint (ULP) No.102/2009 before the Labour Court. It arrived at

a conclusion that the revision petition deserves to be allowed and by setting aside the judgment of the Labour Court, it has directed the workman to refund an amount of Rs.7,881/-. The Management was directed to pay an amount of Rs.71,020/- till 31/05/2006 since the workman had worked till this date and also pay an amount of Rs.1,00,000/- for breach of Section 25-F with costs of Rs.10,000/-.

21. I find from the impugned judgment of the Industrial Court that the Management did not produce any document before the Labour Court. Even the original service book was not produced as well as the certificate of the Civil Surgeon dated 28/01/1971. The Industrial Court also noted that instead of causing an Ossification Test, the workman was referred to the Civil Surgeon for his physical medical examination and not for determining his approximate age.

22. Considering the fact that the Management was evidently reluctant to assist the Labour Court, the Industrial Court noticed the perversity in the conclusions of the Labour Court, which dismissed the complaint. So also, the order of retirement dated 31/05/2006 was made effective with retrospective effect from 31/01/2006 which is unforeseen in Law in the light of the judgment of the Division Bench of this Court in the case of Aasaram Dhage Vs. Executive

Engineer, 1989 (2) CLR 331.

23. With due circumspection and considering the fact that the service book of the workman was corrected under mysterious circumstances, the directions of the Industrial Court by which the Management is to pay Rs.1,00,000/- as compensation, appears to be just, proper and reasonable. However, the order of refund needs to be interfered with. The other directions by the Industrial Court, by which the Management is to pay the salary of the workman amounting to Rs.71,020/- till 31/05/2006, does not call for any interference. The order of costs also need not be interfered with.

24. In the light of the above, the petition preferred by the Management is dismissed. Rule is discharged. The petition filed by the Workman is partly allowed. The 4th direction below paragraph No.23 of the impugned judgment is modified and shall read as under :-

“The respondent is directed to pay to the revision petitioner an amount of Rs.71,020/- towards the wages for the period for which the revision petitioner rendered service upto 31/05/2006.”

25. In the result, Rule is made partly absolute in the above terms.

The Management is liable to pay an amount of Rs. 1,00,000/- as compensation, with the monthly salary of Rs.71,020/- till 31/05/2006 for the service rendered and costs of Rs.10,000/-. Since an amount of Rs.1,88,901/- has been deposited by the Management in this Court by order dated 06/07/2015, the workman is at liberty to withdraw the said amount by producing tangible identity proof and address proof, without conditions.

(RAVINDRA V. GHUGE, J.)