

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.843 OF 2008

Mr. Krishnanath R. Naik Petitioner

Vs.

Mr. V. S. Dempo & Co. Ltd. & Anr. Respondents

Mr. V.A. Pai, Advocate for the Petitioner.
Mr. S.S. Pakale, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.
Date : 10th July, 2015

P.C.

1 This petition arises out of the order dtd. 26th October, 2007, by which Central Government Industrial Tribunal No.2, Mumbai ("CGIT" for short) rejected the reference made to it in the following terms :

“Whether the industrial dispute raised by Shri. Krishnanath R. Naik against the management of M/s V.S. Dempo & Co. Pvt. Ltd. over alleged illegal premature superannuation is justified? If so, to what relief the workman is entitled ?

2 In the year 1964, the petitioner started working with the respondent-company as a Helper/Labourer and from the year 1967,

was made a Driver with a permanent posting. The dispute raised is about the birth date of the petitioner. He claims that, his date of birth is 20th February, 1949, whereas the record of the respondent shows his date of birth as 20th February, 1944. As per it's record, the respondent retired the petitioner on 19th February, 2002 on attaining the age of superannuation. This act, the petitioner alleges to be illegal. He contends that he ought to have been retired on 19th February, 2007.

3). The petitioner claims to have been in possession of document of his birth certificate, which according to him is the best evidence of his date of birth. However, as seen from the impugned order, there are two documents, which are not consistent with the date of birth as pleaded by the petitioner. The driving license, which is relied upon by the petitioner was issued to him in the year 1965. If the correct date of birth of the petitioner is to be accepted as 20th February, 1949, in view of Section 4 of the Motor Vehicles Act, 1988, the petitioner would not have been eligible for issuance of his license for four wheeler vehicle in that year. There is no explanation given by the petitioner for the date on which the driving license was issued to him. The second document is the document of Form 'B' by which the petitioner furnished his personal information to the respondent. The document shows his date of birth as of the year 1944. Much has been argued on the overwriting in the date of birth in Form "B" maintained by the respondent. The record however shows that it is not even the case of the petitioner that the overwriting thereon has been done by

the respondent for any reason. In any case, the document bears the signature of the petitioner. Therefore, whatever has been mentioned therein must be accepted by the petitioner. It is not even the case of the petitioner that the document has subsequently been tampered with by any person from the respondent office. Admittedly, the petitioner started claiming his date of birth as of the year 1949 only when his date of retirement from service was drawing nearer. There is no explanation as to why he did not raise the issue earlier. The Tribunal has next noted that, the petitioner subsequently acquired Heavy Motor Vehicle license, which can be issued only to a person who has attained age of 20 years. The date of issuance of the second license corresponds to the date of birth of the petitioner as 20th February, 1944 and not 20th February, 1949.

4 Mr. Pai, the learned advocate for the petitioner has relied upon the following decisions :

- i) Ahmad Husain vs. The Managing Director, U.P. State Road Transport Corporation & Ors., reported in 1992 I CLR, page 105;
- ii) N.D. Dawda vs. Gujarat Electricity Board, reported in 2003 I CLR, page 140;
- iii) Sarjoo Prasad vs. The General Manager and another, reported in AIR 1981 Supreme Court, page 1481.

The above decisions are of no use to the facts of the present case,

5 In all probability, in order to secure employment, the petitioner had shown himself to be older but when the age of superannuation started drawing closer, he raised the dispute of his date of birth.

6 Hence the Writ Petition is dismissed.

(Smt. R.P. SondurBaldota, J.)