

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3752 OF 2014

Maroti Abhiman Shende Vs. Regional Director Central Mining Planning Nagpur & Ors.

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 Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

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 Shri D. A. Sonwane Adv for petitioner.
 Shri S. C. Mehadia Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: JULY 01, 2015.

Challenge in the present writ petition is to the order dated 12.04.2013 passed by the CGIT-Cum-Labour Court Nagpur whereby the reference as made was answered against the petitioner. According to petitioner his date of birth was 12.03.1942 and that he was to retire on attaining the age of superannuation in the year 2002. However, on 15.01.1993 itself the respondents directed that the petitioner had attained the age of superannuation as a result of which according to petitioner he lost service of almost 9 years. The petitioner initially approached the Central Administrative Tribunal challenging the said action and thereafter raised a dispute. After failure of the conciliation proceedings a reference was made, which did not accept the case of the petitioner.

Shri D. A. Sonwane, learned counsel for the petitioner submitted that though the correct date of birth of the petitioner was 12.03.1942 and said

fact was also evident from the identity card issued to the petitioner he had been asked to retire from service on 15.01.1993 itself. He submitted that no opportunity whatsoever was given to him to justify the fact that he was to retire in the year 2002. He submitted that the documents relied upon by the Tribunal were in English and they were duly signed by the petitioner without understanding the contents of the same. He further submitted that when the evidence was recorded the petitioner was aged about 72 years and he could not properly answer the questions in cross examination. He, therefore, submitted that these aspects were not considered while passing the impugned order. In that regard he placed reliance on *Tata Memorial Centre Vs. Tata Memorial Hospital Kamgar Sanghatana and others* 2006(4) *Maharashtra Law Journal* 461 as well as decision of the Supreme Court in *State of Punjab and others Vs. S. C. Chadha* 2004(3) *Maharashtra Law Journal* 688.

Shri S. C. Mehadia, learned counsel appearing for respondent nos. 1 to 3 supported the impugned order. According to him there was no evidence on record to indicate that the correct date of birth was 12.03.1942. He submitted that the identity card was filled on the basis of information furnished by the petitioner. However, the other documents that were considered by the Tribunal clearly indicated that the claim as made was not legally justified. He submitted that the petitioner has received all retiral benefits.

I have considered the respective submissions and perused the order passed by the Tribunal which indicates that various circumstances have been taken into consideration while arriving at the conclusion that the petitioner could not prove that he was born on 12.03.1942. The case as sought to be made out in the statement of claim was not duly proved in view of

various admissions given in the cross examination. The identity card which the petitioner himself has produced was found to mention his age as 54 years on 01.01.1995. After considering the entire evidence on record and after appreciating the same it was found that petitioner was rightly retired from service on 15.01.1993. These findings of fact are based on the material available on record and the same cannot be said to be perverse. The decision relied upon in *Tata Memorial Centre* (supra) does not assist the case of the petitioner in view of the fact that on the basis of documents relied upon by the petitioner himself the claim as regards the date of birth has not been duly proved. Similarly the observations of the Supreme Court in *State of Punjab and others* (supra) indicate that unless a clear case is made out on the basis of the material on record, change in the date of birth was not permissible.

Hence, considering reasons assigned there is no jurisdictional error committed by the Tribunal when it refused to grant relief to the petitioner. There is no case made out to interfere in writ jurisdiction. Petition is therefore dismissed. No costs.

JUDGE

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