

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.22640 of 2015

Date of Decision: 20.10.2015

Dhyan Singh

... Petitioner

Versus

Presiding Officer, Labour Court-III,
Faridabad & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Shukla, Advocate,
for the petitioner.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

It is well settled that a plaintiff in a civil suit and the claimant before the Labour Court are in the same position as regards burden and onus to prove facts which would entitle them to a decree or an award by bringing the best evidence available to them in support of their claim/s but they cannot depend on the strengths and weaknesses in the defence of the opposite party.

The dispute in the present case relates to the date of birth of the petitioning workman. He says he was born in 1957 and not 1953. He seeks to establish his correct date of birth on the sole strength of an Employees State Insurance Identity Card (Ex.W-1) issued to him in the year 2003 which records his year of birth as in the year 1957 but without day and month. The workman failed to summon any witness from the ESI Corporation to try and establish his date of birth as asserted before the labour court on the basis of original record maintained in the ESI

Corporation.

On the other hand, the management produced a declaration form (Ex. M-1) submitted by it to the Employees Provident Fund organization with respect to the workman to establish the date of birth recorded as February 14, 1953. The management went by the date of birth as entered in the records of the Employees' Provident Fund Corporation and retired the petitioner from service when he reached the age of superannuation in the year 2011 on having attained the age of 58 which was as per record maintained by the management.

Aggrieved by retirement before time, the workman raised a dispute that his year of birth was 1957 and he was retired from employment pre-maturely and this act amounted to illegal termination or retrenchment. He alleged violation of the provisions of section 25F of the Industrial Disputes Act, 1947. The demand notice served on the management invoked the jurisdiction of the conciliation officer who entered settlement proceedings which effort failed to produce any positive result. The conciliation officer submitted his failure report to the appropriate government which led to the reference before the Labour Court to adjudicate the dispute whether the termination was justified and in order.

On notice, the management contested the reference and asserted that the date recorded in the declaration form under Employees' Provident Funds Act was the correct factual position as to age of the employee and they committed no wrong in retiring the petitioner from service in the year 2011 on the basis of the date of birth recorded in its papers.

Labour Court has not relied on the ESI Identity Card as dependable evidence in absence of any corroborative evidence to support change of year of birth. This ESI card could at best be viewed as desultory evidence and without corroboration it could not be used as creditworthy proof of age to grant the relief of an additional four years service with the management. The Labour Court has gone by the declaration form and in this process of reasoning while weighing the evidence, the court *a quo* has not committed any error in forming opinion based on the more probable evidence and concluding that the date of birth recorded in the declaration form under the EPF Act was the correct date of birth and the more reliable one.

The burden was on the petitioner/workman to establish that his date of birth was incorrect in the declaration form and the ESI Identity Card was genuine but he was not able to discharge the burden by producing corroborative evidence either from the register of births and deaths maintained at the place of birth, record of the chowkidar of the village where he was born or a certificate from a school he may have attended or any other evidence such as a court decree justifying his year of birth was 1953. It was also rather late to seek correction of date of birth at the fag end of service to prolong it. It is but trite to say that the person who asserts a state of things must fail if he brings insufficient probative evidence in proof of facts asserted to claim relief. Moreover, it is not for the defendant to establish the case of the plaintiff and fill its weaknesses.

For these reasons, I would not interfere in the award passed by the Labour Court which does not appear to suffer from any

fundamental flaw or an error apparent on the face of the record. Once evidence has been duly weighed by the labour court and appreciated and an opinion expressed on it, it is not for this court then in supervisory jurisdiction to re-appreciate it and come to a different conclusion substituting the one arrived at. If the view taken is plausible and could be taken on the evidence that was found more reliable then there is hardly any case for interdicting the award. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

20.10.2015
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