

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8650 of 2015

Date of Decision: 17.09.2015

Shambu Nath

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-
Cum-Labour Court, Patiala and others

... Respondents

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

Present: Mr. Baljinder Singh Sra, 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.

1. The challenge is to the award dated August 12, 2014 passed by the learned Presiding Officer, Industrial Tribunal, Patiala rejecting the reference under section 10 (1) (c) read with section 2-A of the Industrial Disputes Act, 1947 ("the Act"). The reference was whether the termination of services of the workman Shambu Nath by the management is illegal and unjustified and if yes what relief would the workman be entitled to. The petitioner served as a Machinist for long years and was retired from service on June 30, 2006 (AN) based on the date of birth recorded in his service file maintained by the respondent management. The notice of retirement was issued by the company on June 30, 2006 proposing that workman would stand retired on completing the age of superannuation.

2. Feeling aggrieved, the petitioner raised dispute with respect to

the retirement and called it termination citing wrongful bid to retire him prematurely as his date of birth recorded at the time of entry of service on November 17, 1969 was October 03, 1948 and there were still six years left for him to retire. He asserted this grievance first before the employer and the Labour Officer and then before the Labour Court on reference made that his date of birth was actually October 03, 1954. In support thereof he has sufficient proof including the School Leaving Certificate, Driving Licence, Pan Card, Passport and the Provident Fund Card. He believed that his date of birth on the papers of the management was tampered with to cut short his employment.

3. The management contested the reference and pleaded that the case did not fall under section 2-A of the Act as it involved retirement and not discharge, retrenchment or termination. It may be noticed that when the dispute was raised, in the first instance the appropriate Government had rejected the demand notice and refused to refer the matter to the Labour Court. However, it referred the dispute for adjudication by a fresh order passed later on reconsideration without court intervention.

4. The management pleaded that at no point of time prior to December 28, 2005 did the workman gave his date of birth as October 03, 1954. Years ago, sometime in the year 1985, the company demanded from Shambhu Nath his exact date of birth/proof of birth as the same was not available on its record but he failed to respond or furnish proof during all these years and woke up only at the fag end of his service by supplying a photocopy of his school leaving certificate dated August 30, 1971 issued by a Primary School in some other State which was annexed to the workman's

letter dated nil, supplied on December 28, 2005. If the school leaving certificate was in possession of the workman since 1971 or he knew of it he made no effort to produce it till 2006. The workman made no effort to seek a declaration of his date of birth as legal character from the civil court or by other lawful means.

5. It is not necessary to go into any detail of the 17 page award passed by the Presiding Officer, Industrial Tribunal, Patiala in close print as much of it is repetitious and redundant but it may be taken true that the large volume of evidence was produced on record by both the parties. One small but crucial fact remains looming over this file and which is that when the petitioner entered service as a temporary hand by the management on November 17, 1969 he was confirmed on March 16, 1971 w.e.f. March 03, 1971. The contemporaneous medical evidence is on record as Ex.M-4 which is the original medical report at the time of appointment where the petitioner gave his age as 22 years and admitted that he does not know of his exact date of birth. On the basis of this declaration in the original medical report Ex.M-4 the petitioner served the management for 36 years without demur and without submitting any proof of his date of birth despite demands of the management. If he was 20 years old in 1971 then his year of birth would be some time in the year 1948 in the natural order of things.

6. In a case where the exact date of birth is not known then Clause 7 of the Certified Standing Orders of the company act in aid which document was exhibited on record as Ex.W-8. The Clause provides that in absence of proof the first day of July of the approximate year of birth is to be taken as the date of birth of the workman if the exact date of birth of the

workman is not available in documented form from the right source i.e. the Register of Birth and Deaths.

7. As per his declaration of age the petitioner was retired in June 2006 being held down to his own admission in the statement made before the Medical Officer who examined the petitioner in 1971 when he sought appointment to service. To the mind of this Court, no amount of evidence can dislodge the self-declaration and the workman has to be pinned down to that date even if that date of birth is shown to be wrong unless timely steps were taken to seek change of date of birth. The Labour Court noticed several documents in the custody of the management which reflected the date of birth as in 1948 by an approximation flowing from the declaration made before the Medical Officer by the workman himself. A presumption of truth attaches to the document which was over 30 years old at the time of retirement and when the matter was litigated. If the workman superannuated then it can never be a case of termination of service qualifying retrenchment within section 2 (oo) of the ID Act. The protection of the Act is not for him as he was ceased to possess industrial rights on retirement.

8. The Court noticed that if his date of birth, October 03, 1954 is presumed to be correct then in November 1969 when the workman was appointed as a temporary hand he would have been aged about 15 years. There is a constitutional prohibition against employment of child labour. The management was obligated not to engage a child in its industrial activity at Mohali and would not be assumed to break the law against child labour. I have no doubt that the papers in the name of the petitioner in company are beyond reproach and there is no suspicion that the date of

birth was tampered with by them only to prematurely superannuate the man forcibly. In all events there is a cascade of judgments of the Supreme Court refusing to entertain requests of change of date of birth at the fag end of the career, guiding Courts not to interfere in change of date of birth matters brought to Court at the eleventh hour. The following rulings of the Supreme Court can be read profitably:- (i) **State of Orissa v. Brahamarbar Senapathi**, (1994) 2 SCC 491; (ii) **Burn Standard Co. Ltd. v. Dinabandhu Majundar**, AIR 1995 SC 1500; (iii) **Union of India v. Ram Suia Sharma**, (1996) 7 SCC 421; (iv) **G.M., Bharat Coking Coal Ltd., v. Shib Kumar Dushad**, (2000) 8 SCC 696; (v) **State of Punjab v. S.C.Chadha**, (2004) 3 SCC 394; (vi) **State of U.P. v. Shiv Narain Upadhyaya**, (2005) 6 SCC 49; (vii) **U.P.Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri**, (2005) 11 SCC 465; (viii) **State of Uttaranchal v. Pitamber Dutt Semwal**, (2005) 11 SCC 477; (ix) **Coal India Ltd. v. Ardhendu Bikas Bhattacharjee**, (2005) 12 SCC 201; (x) **State of Gujarat v. Vali Mohd. Dosabhai Sindhi**, (2006) 6 SCC 537; (xi) **Punjab & Haryana High Court at Chandigarh v. Megh Raj Garg**, (2010) 6 SCC 482.

9. Before parting, I must say that I have read the cross-examination of Management Witness 1 Sudhanshu Bain on which much emphasis has been laid by the counsel for the petitioner where the words “it is correct” are repeated in large number. It was argued on the basis of this cross-examination that the management admitted as correct almost all the questions put by the cross-examiner but I find in the deposition there is no admission therein acknowledging the date of birth of the petitioner as

October 03, 1954 by the respondent management.

10. The rule of estoppel prohibits the petitioner from abandoning the position of the date of birth as recorded by the Medical Officer before whom the declaration was made and employment obtained. I have no reason to believe that the entry on the face of Ex.M-4 was actuated by malice or was aimed to deprive the petitioner of the fruit of his labour for 6 years beyond the year 2006 when he was retired. There is nothing found wrong in the work of the labour court in the impugned award in dismissing the reference. If his date of birth is as asserted by him then it may be good for the rest of the world. No doubt is cast by the proceedings on the documents he possesses.

11. For the reasons recorded above, there is nothing in this case to be considered in judicial review and the petition is accordingly dismissed.
No costs.

(RAJIV NARAIN RAINA)
JUDGE

17.09.2015
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