

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 699 OF 1997

1. Superintending Engineer,
MSEB, Latur.

2. Executive Engineer,
MSEB Divisional Office,
Latur.

..Petitioners

Versus

Kishen Laxman Bade
Aged 55 years, Occ. service
R/o Latur, Kole Nagar, Latur.

..Respondent

...
Advocate for Respondent : Shri R.B.Deshmukh

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016
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ORAL JUDGMENT :-

1. None present for the petitioners. I have heard Shri Deshmukh, learned Advocate for the respondent.

2. The petitioners are aggrieved by the judgment and order dated 13.1.1997, delivered by the Industrial Court, Solapur, by which, Revision (ULP) No. 76 of 1995 has been allowed and the petitioner has been directed to correct the date of birth of the respondent from 11.9.1937 to 1.3.1939 and pay him wages for the said period with retiral benefits.

3. Shri Deshmukh has strenuously supported the impugned judgment. He specifically draws my attention to paragraph Nos.15 to 18 of the impugned judgment and contends that the Industrial Court has rightly set aside the judgment of the Labour Court and has rightly directed the petitioner to correct the date of birth of the respondent, thereby, giving him the benefit of service for a period of 18 months. He submits that there is no perversity in the impugned judgment and this Court should not upset the findings of the Industrial Court, which are based on the record and proceedings.

4. I am informed that the respondent joined duties with the petitioner as a lineman on 31.7.1959. It is also undisputed that the retirement age of lineman is 58 years. It is also undisputed that the date of birth of the respondent entered in the service book was 11.9.1937 and he sought correction of his date of birth by application dated 21.12.1994 after putting in 35 years and 5 months in employment.

5. The respondent filed Complaint (ULP) No. 29 of 1995 before the Labour Court at Latur, alleging that he is being wrongly superannuated w.e.f. 30.9.1995 and therefore, his retirement be stayed. It is further prayed that his date of birth be corrected from 11.9.1937 to 1.3.1939 and he be granted the service benefits for the said period of about 18 months.

6. By judgment dated 29.9.1995, delivered one day before the respondent retired, the Labour Court dismissed the complaint on the ground that there was an overwriting in the service book, date of birth is mentioned as 11.9.1937 and the respondent has not attempted to seek correction of his date of birth for 35 years and 5 months. The Labour Court also concluded that date of birth in the service record cannot be corrected at the fag end of the service.

7. The petitioner preferred Revision (ULP) No. 76 of 1995 before the Industrial Court and by the impugned order dated 13.1.1997, the Industrial Court, while exercising limited jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act "), has set aside the judgment of the Labour Court and granted benefits of service of 18 months to the respondent.

8. I find that the impugned judgment of the Industrial Court is perverse and unsustainable for two reasons. Firstly, that the jurisdiction of the Industrial Court under Section 44 of the said Act is akin to the jurisdiction of this Court under Article 227 of the Constitution of India. It is revisional jurisdiction and not appellate jurisdiction. The Industrial Court cannot consider a Revision Petition as if it is dealing with an Appeal against the judgment of the Labour

Court. Secondly, it is well settled that the correction of the date of birth, for any reason whatsoever, cannot be permitted at the fag end of the career.

9. I find it unbelievable that the respondent, who was working as a lineman from 31.7.1959, was unaware for 35 years and 5 months that his date of birth entered in the service book is 11.9.1937. There is no justifiable reason put forth as to how can the respondent pretend of having no knowledge about the date of birth entered in his service book. When about 9 months remained for his retirement, he moved an application on 21.12.1994, praying for correction in the date of birth.

10. In the above backdrop, merely because a second view was possible, the Industrial Court, while exercising its revisional jurisdiction, should not have interfered with the findings on facts arrived at by the Labour Court and more so, in the light of the law that correction in the date of birth cannot be permitted at the fag end of the career.

11. It was observed by the Labour Court that it was only for the VI Standard education that the respondent was admitted in the said school, which had furnished the entry of his birth in the School record as 1.3.1939. The record of the School in which the

respondent had taken education from the I to V Standards was not produced before Labour Court or even Industrial Court. The reasons for suppressing the said record are evident.

12. In the light of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 13.1.1997 is quashed and set aside and Revision (ULP)No. 76 of 1995 stands dismissed. Needless to state, the judgment of the Labour Court dated 29.5.1995 stands restored.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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