

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3077 OF 2015
MAHARASHTRA STATE ROAD TRABSOIRT CIROIRATUIB WARDGA
VS
RAMKRISHNA S/O SUKHADEORAO DAHAT AND ANOTHER

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

Court's or Judge's orders

Shri R. S. Charpe, Advocate for the petitioner.
Shri C.V. Jagdale, Advocate for the respondent no.1.
Ms. Tajwar Khan, AGP for respondent no.2.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 26, 2016.

Heard.

The challenge in the present writ petition is to the judgment of the Industrial Court dated 30-6-2014 whereby the complaint filed by the respondent under Section 28 read with provisions of Item 9 to Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has been allowed.

It is the case of the respondent no.1 that he was employed on the post of clerk with the petitioner in the year 1981. In the documents submitted by the respondent no.1, his date of birth was shown as 1-7-1952. It is his further case that on 25-2-1984 after noticing that his date of birth has been wrongly mentioned, he moved an application to the Depot Manager seeking correction of his date of birth. However, no steps were taken by the petitioner and the correction as sought therein was not made. After finding that the service book supplied to him was not duly corrected, he filed the present complaint seeking correction of his date of birth.

In the written statement filed by the petitioner, a stand was taken that the respondent no.1 had not taken any steps within a period of five years from his appointment for having his date of birth corrected. Before the Industrial Court, the respondent no.1 examined himself and placed various documents on record. The respondent no.1 was not cross-examined nor was any evidence led on behalf of the petitioner. After considering the evidence on record, the Industrial Court allowed the complaint and directed correction to be made in the service record of the respondent no.1. It also directed payment of monetary benefits by treating his date of retirement as 30-6-2012.

Shri R. S. Charpe, the learned Counsel for the petitioner submitted that the respondent no.1 in his own hand writing had filled necessary documents while seeking employment. The date of birth was mentioned as 1-7-1952. Even the school records of the respondent no.1 showed the same date of birth. The documents which were relied upon by the respondent no.1 to seek correction of his date of birth did not bear the name of the respondent no.1. Said document could not have been relied upon by ignoring the school records. He then submitted that though no monetary relief was sought by the respondent no.1 in the complaint, a direction had been issued to pay all monetary benefits by treating the date of retirement as 30-6-2012. In support of his submissions, the learned Counsel placed reliance upon the judgment of learned Single Judge in *Maharashtra State Road Transport Corporation and others Vs Yeshwant Sridhar Phadke and another* 2000(4) Mh.L.J. 108.

Shri C. V. Jagdale, the learned Counsel for the respondent no.1 while supporting the impugned order referred to the averments made in the complaint. He

submitted that within five years of his appointment, the respondent no.1 had made an application for correcting his date of birth. He submitted that despite such application being moved no steps were taken by the petitioner. The filing of such application was not specifically denied in the written statement. He then submitted that all relevant documents were placed on record by the respondent no.1, but he was not cross-examined. He, therefore, submitted that the finding recorded by the Industrial Court in that regard did not call for any interference. The monetary benefit which was granted was consequential in nature and it was also based on the observations made in the order dated 15-7-2010 in Writ Petition No.2967/2010 (*Maharashtra State Road Transport Corporation Wardha Vs. Ramkrishna Sukhdeorao Dahat*). He relied upon the judgment of the Division Bench in *Kishor S/o Sukhdeo Walhekar Vs. State of Maharashtra and others* 2009(4) Mh.L.J. 817.

Perusal of the complaint filed by the respondent no.1 indicates that in paras 3 and 4 thereof it has been specifically averred that an application seeking correction in the date of birth was moved on 25-2-1984 which was within five years of his appointment. The acknowledgment was placed on record at Exhibit-15. A certified copy of the birth extract at Exhibit-17 was also placed on record. All these documents were duly exhibited but were not subjected to challenge due to absence of any cross-examination clearly indicated that the date of birth of the respondent was 6-6-1954. The contention that in the document at Exhibit-17, the name of the respondent was not mentioned is not of much relevance as the same indicates that male child was born to Sukhdeorao Dahat, the father of respondent no.1. Moreover, the same is an extract of the public record and as observed

in *Kishor Sukhdeo Wadekar (supra)*, the same would have more probative value than the school records.

As regards the submission that the application dated 8-2-1981 was filled in by the respondent no.1 himself and hence deserved to be accepted, it is to be noted that as per the standing orders of the Corporation, the correction of the date of birth can be sought within a period of five years from the appointment. Hence, though the aforesaid application was filled in by the respondent no.1 himself, such correction could be sought within a period of five years. This application was also moved by the respondent on 25-2-1984. In these facts, therefore, the observations in the aforesaid judgment of learned Single Judge in *Yeshwant Sridhar Phadke (supra)* do not support the case of the petitioner.

It is to be noted that the complaint was filed prior to the superannuation of the respondent no.1. Once when it was found that the correct date of birth was 6-6-1954 and that he had been retired on 30-6-2010 itself, grant of monetary relief for a period of two years cannot be faulted. The prayer made in the complaint is with regard to correction in the date of birth and ancillary relief with regard to grant of monetary benefits has been granted by the Industrial Court. In the aforesaid facts, I do not find that the Industrial Court committed any jurisdictional error while allowing the complaint.

In view of aforesaid, there is no case made out to interfere in writ jurisdiction. The writ petition is dismissed. No costs.

JUDGE

C E R T I F I C A T E

“ I certify that this Order uploaded is a true and correct copy of original signed Order.”

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