

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8321 OF 2016

1. Vithabai w/o Govind Pawale,
Age-60 years, Occu-Nil,
R/o Mukhed Road, Prafullanagar,
Bhokar, Tq. Bhokar, Dist.Nanded,
2. Hussainabi Diwankhan,
Age-61 years, Occu-Nil,
R/o Nageshwar Galli, Near Bus Stand,
Bhokar, Tq.Bhokar, Dist.Nanded – PETITIONERS

VERSUS

1. The Range Forest Officer,
Bhokar, Tq.Bhokar,
Dist.Nanded,
2. The Deputy Conservator of Forest,
Forest Division, Near Gandhi Statue,
Nanded, Tq. And Dist.Nanded,
3. Jahedabi Sayed Razak, **(DELETED)**
Age-60 years, Occu-Unemployed,
R/o Nageshwar Galli, Near Bus Stand,
Bhokar, Tq. Bhokar, Dist.Nanded – RESPONDENTS

Mr.A.S.Shelke, Advocate for the petitioners.
Mr.N.T.Bhagat, AGP for respondent Nos.1 and 2.
Respondent No.3 is deleted as per order dated 07/09/2016.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 01/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioners are aggrieved by the judgment of the Industrial Court dated 22/07/2015 by which Revision (ULP) No.80/2014 has been allowed and the judgment of the Labour Court dated 09/10/2014 allowing the petitioners' Complaint (ULP) No.36/2012 has been quashed and set aside.

3. I have considered the strenuous submissions of Mr.Shelke and the learned AGP and have gone through the record available with their assistance.

4. The issue raised is as to whether in the absence of any birth record or school or Gram Panchayat record, the report of the Medical Board defining the age of the petitioners deserves consideration or not.

5. The entire record indicates as well as the petitioners concede that when they joined duties with the respondents on 01/04/1992 and 23/03/1981 respectively, they had not produced any record indicating their date of birth. Both the petitioners are illiterate, were never admitted to any school and no birth record even by the Gram Panchayat was maintained. Yet, the date of birth of petitioner No.1 was recorded as 01/02/1955 and petitioner no.2 as 01/03/1957 in

the daily wage record of the respondents. The seniority list prepared indicates the said date of birth.

6. The respondents started issuing letters to both the petitioners from 20/11/2006 till 24/05/2012. They were called upon to produce their age proof. As both the petitioners did not submit any records, the respondents subjected the petitioners to medical examination. By the medical certificate Exh.C-10 with reference to the first petitioner, the Medical Board concluded that she was 56 years old as in July 2007. Similarly, the medical report of petitioner no.2 indicated her age to be 58 years. The Labour Court relied upon the seniority list and concluded that as the date of birth mentioned in the seniority list was never challenged by the Management, the petitioners would continue to work as per the said dates. The Labour Court granted reinstatement with continuity and Rs.1,00,000/- towards back wages.

7. The Industrial Court, after considering the R & P, concluded that in the absence of any age proof or the date of birth, merely because some date was mentioned in the seniority list would not defeat the test conducted by the assistance of medical science. It has concluded that there was no evidence at all to support the date of

birth mentioned in the seniority list. The age ascertained by the Medical Board by conducting a specific test would indicate that both the petitioners would have retired in 2010 and 2009 respectively. However, both of them continued till 31/05/2012 when they were superannuated.

8. In so far as the ossification test is concerned, the Honourable Apex Court in Om Prakash Vs. State of Rajasthan [AIR 2012 SC 1608 = (2012) 5 SCC 201], has held as under:-

".....In this context the statement of NAW-3 Dr. Jagdish Jugtawat, the medical jurist who conducted the ossification test of the accused and opined before the court that the accused was 19 years of age is of significance since it specifically states that the accused was not a juvenile on the date of commission of the offence. The statement of NAW-1 Dr. C.R. Agarwal, Asstt. Professor in Radiology also cannot be overlooked since he opined that on the basis of x-ray films, the age of the accused is above 18 years and below 20 years. Thus, in a circumstance where the trial court itself could not arrive at a conclusive finding regarding the age of the accused, the opinion of the medical experts based on x-ray and ossification test will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story set up by the father of the accused which prima facie is a cock and bull story."

9. In my view, in the absence of any specific birth record or age proof, the medical test conducted by which the approximate age of the petitioners was determined, cannot be faulted. Even if the advantage of two years was given to these petitioners, petitioner No.1 would have retired in 2011-2012 and petitioner No.2 would have retired in 2010-2011 thereby requiring a recovery of wages paid to them for having continued beyond the age of 60 years. I, therefore, do not find that the Industrial Court has committed any error in quashing the judgment of the Labour Court and dismissing the complaint.

10. This petition, being devoid of any merit, is therefore, dismissed. Rule is discharged. However, it may be noted that the respondents shall not resort to any recovery.

(RAVINDRA V. GHUGE, J.)