

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1798 of 2015
IN
Civil Writ Jurisdiction Case No. 12358 of 2006

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Bihar Cooperative Weavers Spinning Mill, At and P.O. Mokama, District Patna through Assistant Manager (Marketing), Retail Marketing Division, National Textile Corporation Limited, Kolkata, Sri Sagnik Se-since mill is closed hence neither the post of General Manager exist nor there is any person holding such post.

.... Respondent- Appellant/s

Versus

1. Sri Siya Ram Singh son of late Chandrika Singh resident of village Marachi, P.S. Marachi, District Patna
 2. State of Bihar
- Writ petitioner –Respondent 1st party
- Respondent No.1- Respondent 2nd Party

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Appearance :

For the Appellant/s : Mr. K.N. Gupta, Adv.

For the Respondent/s : Mr. Dronacharaya, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 27-03-2018

A learned Single Judge of this Court, by a judgment and order dated 26.2.2015 passed in C.W.J.C. No. 12358 of 2006 has quashed and set aside an award dated 3.1.2006 passed by the Labour Court, Patna and the appellant, as a consequence thereof, has been directed to calculate the date of superannuation of the respondent no. 1, taking his date of birth as 06.01.1944 instead of 15.07.1939, and pay to him all consequential monetary benefit accordingly till the date of his retirement and the retirement benefits. The said judgment and order



has been put to challenge in the present intra-court appeal under Clause 10 of the Letters Patent of this Court by the appellants.

2. We have heard Mr. K.N. Gupta, learned counsel for the appellant and Mr. Dronacharya learned counsel for the respondents.

3. From the materials on record it transpires that the respondent No.1 was appointed in Speed Frame Section of Bihar Cooperative Weavers Spinning Mill, Mokama (hereinafter referred to as the Mill) in the year 1965. This is not in dispute that immediately after his appointment, an E.S.I (Employees' State Insurance) Identity Card was prepared bearing his date of birth as 06.01.1944. The Mill for some reason remained shut down for a number of years. Workmen employed in the said mill remained out of employment for a considerable period of time but subsequently in the year 1972, it was nationalized and became operative, whereafter the respondent was taken back in the service of the Mill. This is also not in dispute that the retirement age of the employees of the mill was 58 years.

4. In the Employees' Provident Fund declaration and nomination form of the Respondent his date of birth was initially entered as 19.07.1945. It appears that the year of birth mentioned in the Employees' Provident Fund declaration and nomination Form was subsequently changed to 1939, after cutting the original entry of 1945. The respondent was, thus being made to retire treating his date of



birth as 15.07.1939. This led to raising a dispute by the Union of the said Mill before the management. As a result of non resolution of the dispute, the State of Bihar, Department of Labour Employment and Training, Patna through its Notification No. 3/11-9019/96 I & E 920 dated 10.4.1996 made reference to the labour Court in following terms:

“Whether not to recognize date of birth as registered in the ESI identity card by the Management of Bihar Cooperative Weavers’ Spinning Mills, Mokama, to its workmen Sri Siyaram Singh and Sri Garib Yadav is justified ? If not, what should be the basis of age consideration of both workmen, either the date of birth registered in PF form or as marked in the ESI identity card”.

5. As is evident from the term of reference, the question which the Labour Court was required to decide was whether not to recognize the date of birth as registered in the ESI Identity Card by the Management of the Bihar Cooperative Weavers’ Spinning Mills, Mokama to the respondent is justified. It appears that the management and the workmen appeared before the Labour Court took their respective stands in respect of the rival claims through the pleadings. It transpires that the Mill, which was under the management of the Cooperative society subsequently came under the management of the Nationalized Textile Corporation (NTC) in the year 1972, whereafter ‘personal data’ of the employees including the respondent, were obtained.



6. The Management relied on the personal data of the Respondent before the Labour Court, in which the date of birth of the respondent was shown as 15.07.1939, with the specific case that the said personal data was filled up by the respondent no. 1 himself who had put his signature too. On the basis of this fact, coupled with the entry in the Employees Provident Funds Declaration Form showing his date of birth as 15.07.1939, the management took the specific plea before the Labour Court that his date of birth was 15.7.1939 and respondent was required to retire accordingly on that basis, after attaining the age of superannuation. The workman (Respondent) and the Management both adduced their oral and documentary evidence. The Labour Court, by the award dated 03.01.2006, answered the first part of reference in affirmative, meaning thereby, that decision of the management not to recognize date of birth of the workmen as registered in ESI identity card by the management was justified. There being an affirmative answer to the first part of reference, there was apparently no need of answering the second part of reference by the Labour court and the Labour Court recorded this accordingly, in its award.

7. The award of the Labour Court came to be assailed by the workman before this Court by way of a writ application, which gave rise to C.W.J.C.No.12358 of 2006, which has been finally allowed by



learned Single Judge by the impugned judgment and order.

8. Mr. Gupta, learned counsel appearing on behalf of the appellant has submitted *inter alia* that in the absence of the any procedural defect in the proceedings before the Labour Court having been noticed by the learned Single Judge, findings of fact recorded by the Labour Court ought not to have been interfered with. He contends that in exercise of power of judicial review under Article 226 of the Constitution of India, the learned Single Judge was not required to re-appreciate the evidence and come to his own conclusion thereafter and thereby taking a view different from the one taken by the Labour Court. He has next submitted that in any view of the matter, the entry of date of birth made in the ESI identity card of a workman can not be the basis for determination of date of birth of the workman, since the employer/management does not have any role at all to play in preparation of the ESI identity card. According to him, the management had proceeded on the basis of the materials which the management came to possess after nationalization of the Mill in 1972 which included the entry made in the Employees Provident Fund declaration form, indicating the date of birth of the workman as 19.7.1939. He thus, submits that learned Single Judge has erred while reaching conclusion that in the absence of service book, the only reliable document was the ESI identity card, without realizing the



fact, which is evident from the evidence adduced before the Labour Court, that neither there is any statutory requirement for maintaining service book of the employees of the establishment nor the service book of the employees of the establishment was being maintained.

9. Per contra, Mr. Dronacharya, learned counsel for the workman/respondent No. 1 has submitted that the learned Single Judge has recorded his findings, after having seen the records of the case and entire evidence which were adduced before the Labour Court during the proceedings, brought on record by way of supplementary affidavit filed in the writ proceedings by the workman. Correctness of no document brought on record by way of supplementary affidavit in the form of Annexures was disputed by the management in the proceedings before the learned Single Judge. He has drawn our attention to the entry of date of birth in the Employees Provident Fund declaration form of the workman which was exhibited before the Labour court as Ext. E to contend that initially the date of birth of the workman was apparently entered as 15.7.1945. The entry in respect of the year of birth in the said form has been changed to 1939 as is evident, after making cuttings over the original entry of 1945. The Ext. C does not disclose the person who changed the year of birth from 1945 to 1939 nor does it indicate the date when it was done. He has next submitted that even in course of the proceedings before the



Labour Court no evidence came that before changing the year of birth of the petitioner in the declaration form, the workman was ever noticed. He accordingly contends that in the absence of the initials of the competent authority carrying out change in the entry of the date of birth the original entry should not have been treated to have been corrected. He has next submitted that the management relied on photocopy of the personal data which came to be marked as Ext. D before the Labour Court without explaining why the management was not in a position to bring on record the oral evidence. He has also submitted that the evidence on record does not suggest that the said personal data (Ext. D) bears the signature of the workman. Coming to the Ext. B which is Employees State Insurance Corporation declaration form under Regulations 11 and 12, it is the submission that the entries were made on 18.6.1965 i.e immediately after the appointment of the workman on 06.06.1965 which bears the year of birth of employee as 1944. It is his plea that the said declaration form did not have any space for date of birth rather against year of birth 1944 was filled up. Our attention has also been drawn by him towards transfer certificate issued by the Primary school, Mahsaura (Munger) issued on 03.01.1954 which was marked as Ext. 2 in the proceedings before the Labour Court which also indicates the date of birth of the workman as 06.01.1944. He has accordingly, submitted



that despite there being consistent evidence that the date of birth of the workman was 06.01.1944, which was entered in the ESI form also, the Labour Court has wrongly answered the first part of reference in affirmative and the learned Single Judge after having appreciated all the facts and circumstances, noticing the findings of the Labour Court to be perverse and contrary to the evidence has rightly interfered with findings recorded by the Labour Court. He has relied on a Supreme Court decision reported in **2016 (3) SCC 340 (Management of Narendra and Company Private Limited Vs. the Workmen of Narendra and Company)** to contend that in an intra court appeal, unless the Division Bench reaches a conclusion that finding of the Single Judge is perverse, the Division Bench may not interfere with the findings recorded by the learned Single Judge. According to him, it cannot be said that learned Single Judge has taken into account irrelevant facts/evidence for reaching the conclusion as arrived at nor can it be said that learned Single Judge has failed to consider any relevant material, on the basis of which it concluded that findings recorded by the learned Single Judge are perverse.

10. We would be first dealing with the submission, made by Mr. K.N. Gupta learned counsel for the appellant, to the effect that an employer does not have any role to play in the matter of preparation



of an identity card in Form 4 of the Employees State Insurance (General) Regulation, 1950. The Regulations have been framed in exercise of power conferred under Section 97 of the Employees' State Insurance Act, 1948. Regulation 17 of the Regulations deals with issuance of identity cards in Form 4. The language of Regulation 17 is clear which mandates that the appropriate office of the Employees State Insurance Corporation shall arrange to have an identity card prepared in Form 4 for each person in respect of whom an Insurance number is allotted. It further contemplates that such appropriate office shall send the identity cards to the employer. A duty has been cast upon the employer under Regulation 17 of the Regulations to obtain the signature or thumb -impression of the employee on the identity card and after making 'relevant entries thereon, deliver the identity card to him'. A plain language of Regulation 17 of the Regulations makes it clear that it casts certain obligations on the employer in respect of the entries in the identity card to be issued in Form 4.

11. We need to refer to Regulation 11 of the Regulations at this juncture, which contemplates that every employee of the factory establishment shall furnish correct particulars for the purpose of Form I which is a declaration form under the regulations. It further casts an obligation on the employer to enter the particulars in the declaration form, including the temporary identity certificate and to obtain the



signature or the thumb- impression of the employee. Regulation 11 reads thus:

“11. Declaration by persons in employment on appointed day. — The employer in respect of a factory or an establishment shall require every employee in such factory or establishment to furnish and such employee shall on demand furnish to him either before or on the appointed day correct particulars along with his/her photograph and that of his/her family] required for the purpose of Form-1 (hereinafter referred to as the Declaration Form). Such employer shall enter the particulars in the Declaration Form including the Temporary Identification Certificate, and obtain the signature or the thumb impression of such employee and also complete the form as indicated thereon.”

12. Regulation 12 is also relevant for the purpose of declaration

in form I which is being reproduced hereinbelow.

“12. Declaration by persons engaged after the appointed day.— (1) The employer in respect of a factory or an establishment shall, before taking any person into employment in such factory or establishment after the appointed day, require such person (unless he can produce an Identity Card or other document in lieu thereof issued to him under these regulations) to furnish and such person shall on demand furnish to him correct particulars 1[along with his/her photograph and that of his/her family] required for the Declaration Form including the Temporary Identification Certificate. Such employer shall enter the particulars in the Declaration Form including the Temporary Identification Certificate and obtain the signature or the thumb impression of such person and also complete the form as indicated thereon.

(2)Where an Identity Card is produced under sub-regulation (1), the employer shall make relevant entries thereon.”

13. The ‘declaration’ as contemplated under Regulations 11 and

12 in prescribed Form was adduced as evidence before the Labour



Court marked Ext. 13, which too had been brought on record by way of supplementary affidavit in the writ proceedings. In the said declaration Form, which is statutory in nature, the year of birth of the workman has been entered as 1944. The said document bears the signature of the workman and the factory manager. The fact that the said declaration form is of 1965 prepared immediately after appointment of the workmen on 06.06.1965 enhances the probative value of the entry made therein. The submission on behalf of the appellant that employer has no role to play in preparation of the ESI identity card, thus, cannot be accepted and the entries made therein cannot be brushed aside.

14. Let's now come to the next submission on behalf of the appellant that learned Single Judge exercising power of judicial review under Article 226 of the Constitution of India ought not to have been disturbed the findings of facts, recorded by the Labour Court, after re-appreciating the evidence. It has been urged that exercising power of judicial review under Article 226 of the constitution of India, a Court is required to see the correctness of the decision making process and not the decision itself. The contention, as proposition of law is sound, correct and indisputable. However, the Court is not precluded from interfering with the findings of fact recorded by any quasi judicial authority if such findings appear to be



perverse. If the Court exercising power under Article 226 of the Constitution of India forms an opinion that any authority or tribunal exercising quasi judicial or administrative power has, while reaching a conclusion has taken into account the facts which were irrelevant for reaching a just decision or has left out relevant materials from consideration to reach such conclusion, this Court in exercise of power under Article 226 of the Constitution of India will be well within its jurisdiction to enter into the question of correctness of findings of facts.

15. In the present case we notice that the Labour Court's finding is primarily based on the entry of date of birth in the personal data (Ext. D), before the Labour Court and the fact that the workman claimed different dates of his birth at different stages. The Labour Court completely failed to appropriately deal with the alteration made in the date of birth of the workman in his EPF declaration of nomination form (Ext. C), which was crucial and relevant for adjudication. It is evident that the changes made in the entry after cutting the original entry does not bear the signature of the person nor the date when it was done. It does not refer to any reason why it was so done. It is no one's case that the workman was ever noticed about the change in the entry in respect of his date of birth in the declaration and nomination form.



16. Further, the Labour Court apparently failed to appreciate the significance of entry in the ESI identity card in view of the statutory requirements under Regulations 11 and 12 of the Regulation as noted above, which certainly binds the employer too. The Labour Court has not discussed nor recorded any finding on the undisputed document viz. transfer certificate issued by the School brought on record by way of evidence as Ext 2 before the Labour Court. The management produced one witness who was examined as MW 1 Krishna Dev Sharma. There is nothing in his evidence to justify the alteration made in the declaration and nomination form under Employees Provident Fund Scheme (Ext C). It is also evident that Ext. D, the personal data was the photo copy of the original and there is no explanation while primary evidence was not brought on record by way of Exhibit. We further notice that the said witness deposed before the Labour Court that date of birth was recorded in the service book and that the service book of the workman was not with him.

17. Mr. K.N. Gupta learned counsel for the management has, with reference to the said deposition of M.W. 1 in his cross examination, canvasses that it cannot be inferred from the said deposition that service books of the employees in the establishment were maintained and there was a service book of the workman which was maintained. However, upon seeing the evidence we are of the



definite view and convinced that the MW 1 was not making statement with respect of maintenance of service book in general sense of the term, rather he was referring to service-book of the employees of the management. It is further evident from the deposition of M.W. 1 that according to him, the date of birth of the workman in the personal data (Ext. D) was entered in 1980 on the basis of the entry (altered in the declaration and nomination form) under the Employees Provident Fund Scheme, 1952 (Ext C). Since the management miserably failed to establish the reason leading to alteration in the year of birth as entered in the declaration and nomination form, which neither bore the signature of the competent authority making such alteration nor the date when such alteration was made, entry made in the personal data(Ext. D) becomes redundant.

18. After having perused the judgment and order under appeal we notice that the learned Single Judge after taking into consideration the entire evidence on record, has found the findings recorded by the Labour Court in its award dated 03.01.2006 to be unsustainable. We agree with the said findings recorded by the learned Single Judge in the judgment and order under appeal in the background of the reasons which have been assigned therein and the discussions which we have made hereinabove with reference to statutory provisions and other materials on record.



19. We do not find any merit in this appeal which is accordingly dismissed.

20. There shall be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
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