

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.560 OF 2018

Dattu G. Shinde		Petitioner
Versus		
KEC International Limited		
And Another		Respondents
		
Mr. S.K. More for the Petitioner.		
Ms. N.R. Patankar for the Respondents.		

CORAM : S.C.GUPTE, J.

DATE : 11 JULY 2018

P.C. :

. Heard learned Counsel for the parties.

2 The writ petition challenges an order passed by the Industrial Court at Mumbai in a complaint of unfair labour practice. The complaint concerns refusal of Respondent No.1 company to correct the date of birth of the Petitioner in its records. The Petitioner's date of birth originally recorded by the company was 19 February 1953, when he was appointed by the company on 6 February 1985. In the year 2007, for the first time, he made an application to correct his date of birth in the company's records. After some correspondence, the application was reiterated on 20 June 2011. That application was rejected by Respondent No.1 company on 1 July 2011. The grounds for rejection were that originally, when the application was made seeking employment with Respondent No.1 company, the Petitioner had mentioned his date of birth

as 19 February 1953. The same date was mentioned in PF Nomination Form. In support of this date of birth, he had submitted several documents including school leaving certificate as also SSC and diploma certificates including an endorsement made by the Head Master of the School, in which his date of birth was mentioned as 19 February 1953. The rejection was challenged by the Petitioner by filing the present complaint of unfair labour practice. The application was rejected by the Industrial Court by its impugned order. The Industrial Court did not accept the evidence of birth certificate produced by the complainant which stated his date of birth to be 25 February 1954. That was on the ground that admittedly the register maintained by the Corporation for the year 1954 was destroyed. The witness who deposed on behalf of the Petitioner did not have any personal knowledge concerning the entry made in the record. The court also took into account the fact that the Petitioner had admitted in his cross examination that inspite of his having in his custody the birth certificate on which he was placing reliance, the date of birth used by him for provident fund and pension was 19 February 1953. There was no explanation why the birth certificate was not produced before the PF authority or whilst seeking pension. The court observed that the complainant retired on 28 February 2013 and claimed provident fund and pension on the basis of his age of retirement based on the date of birth as 19 February 1953; he was thereafter claiming wages for a period for which he had not worked based on an alteration in his date of birth. The court particularly did not find any favoritism or victimization and, accordingly, dismissed the complaint on the ground that the complainant had failed to prove any unfair labour practice.

3 There is no infirmity in the impugned order of the Industrial Court. The view taken by the Industrial Court on the complaint is a possible view which is based on evidence before the Court. Appreciation of evidence by the Industrial Court in a complaint of unfair labour practice cannot *per se* be examined by this court. Only if there is some perversity in the analysis of the evidence or the conclusion drawn by the court, this court interferes with an order in its writ jurisdiction. No perversion or impossibility is pointed out to this court.

4 Learned Counsel for the Petitioner relies on the judgement of our court in **Vasudha Goarakhnath Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd.**¹, and submits that Birth Certificate issued by the local authority maintaining record of birth is a certified copy of a public document under Section 77 of the Evidence Act and carries a presumption of its genuineness under Section 79 of that Act, whereas school records, being private documents, cannot override such Birth Certificate. We are not directly concerned here with the question as to which of the two documents, namely, Birth Certificate issued by a local authority or the School Leaving Certificate, has precedence as evidence of birth date. We are concerned here with a complaint of unfair labour practice. If the employer, in the facts of the case narrated above, does not accede to the demand of change of the date of birth at the fag end of his employment by the employee, can it be termed as unfair labour practice within the meaning of Items 5 or 9 of Schedule IV of the MRTU & PULP Act. That is the question here. The controversy must be viewed in that light. Thus viewed, the conclusion that there was no unfair labour practice

1 2008 (5) Bom C.R. 417

is certainly a possible conclusion.

5 Accordingly, there is no merit in the petition. The petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh Vasant
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2018.07.19
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