

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2806 OF 2017

Harishchandra Sukal Jaiswar

... Petitioner

vs.

General Manager
 The Tata Mills

... Respondents

.....

Ms. Saranga Ugalmugle for the Petitioner.

Ms. Meena H. Doshi for the Respondent.

.....

CORAM : A.K. MENON, J.

DATE : 24th APRIL, 2018

P. C.

1. By this Writ Petition the petitioner challenges an order and judgment dated 7th January, 2017 passed by the Industrial Court in Appeal No.17 of 2016 under Section 84 of the Maharashtra Industrial Relations Act, 1946 (MIR Act) whereby the order passed by the 11th Labour Court on 24th August, 2016 was set aside and an application made by the petitioner under the Bombay Industrial Act (BIR Act) being Application (BIR-I/C) No. 1 of 2013 was rejected.

2. The facts that lead to the present petition has its genesis of an application for correction of date of birth of the petitioner. It is the petitioners' case that he was employed with the respondent since 28th February, 1986 and has been in continuous service of the employer. At the time of the above application he was

working as a Jobber. He contended that he had furnished his School Leaving Certificate so as to record his date of birth. According to the petitioner he was born on 1st November, 1955 whereas the service record mentions only the year incorrectly as 1953. There was no mention of the date and month of birth. According to the petitioner sometime in 2005 the respondent routinely sought personal data including date of birth from all its employees in order that the respondent could issue fresh identity cards. The petitioner provided necessary information inter alia mentioning his date of birth as 1st November, 1955. When the identity card was finally issued the date of birth entered by the petitioner had been struck out and only the year 1953 was written as against his date of birth.

3. The learned counsel for the petitioner contended that upon noticing this defect, he made an application for correction of his date of birth vide his letter dated 25th April, 2005 (Exhibit- C to the petition) wherein he sought to enclose a copy of the School Leaving Certificate disclosing his date of birth as 1st November, 1955. According to the learned counsel for the petitioner the school leaving certificate was sufficient evidence of the correct date of birth. Although the letter was received by it, it is case of the respondent that there was no enclosure to the letter. On this aspect the learned counsel for the petitioner has submitted that if the enclosure had not been received, the least that would have been expected was that the respondent would bring that to the attention of the petitioner or call for the school leaving certificate. This was not done. It is submitted that the requisite evidence was furnished in the year 2005 itself to enable the respondent to correct their records. The issue was then not addressed by either of the parties and it is in 2013 that the

petitioner was served with a Superannuation Memo by the General Manager of the Respondent dated 1st December, 2013 intimating the petitioner that he would complete 60 years of age and that he would stand retired on 31st December, 2013. In response to the superannuation letter the petitioners filed complaint being Application (BIR-I/C) of 2013 dated 2nd May, 2013.

4. Meanwhile it appears that on 8th March, 2013 the petitioner addressed letter to the General Manager of the respondent (Exhibit-D to the petition) informing them that he had sought correction of the date of birth at the time of issuance of identity card in 2005 and had provided copy of the school leaving certificate in June 2005. It was contended that one Mr. Khan and Mr. Tamankar, officers of the respondent had verified the original of the school leaving certificate and returned the original to the petitioner retaining a copy thereof for record and orally assured the petitioner that his date of birth would be corrected in the service record, but this has not been done. This letter is seen to have been delivered to the respondent on 9th March, 2013 enclosing copy of the school leaving certificate. On or about 3rd May, 2013 the application filed by the petitioner for correction of date of birth came to be partly allowed declaring his correct date of birth as 1st November, 1955 and directing the respondent to correct the date of birth in service record.

5. Being aggrieved by this order the respondent filed an appeal before the Industrial Court which upon hearing the matter has passed the impugned order setting aside the order of the Labour Court. It is submitted on behalf of the petitioner that he was all along under the impression that his date of birth would

have been corrected by the respondent employer in view of the fact that the oral assurances that had been purportedly given to him. He however was surprised to receive the superannuation memo dated 1st December, 2013. Upon receipt of the order of superannuation he also filed complaint before the Industrial Court seeking a declaration that the respondent had engaged in unfair labour practices by issuing superannuation memo and an interim order came to be passed on 3rd May, 2014 under Complaint (ULP) No. 418/2013 which directed the petitioner to be continued in services till further orders. It is common ground that the Complaint (ULP) No. 418/2013 has since been disposed of.

6. Ms. Doshi, learned counsel for the respondent submitted that the respondent had put out a general notice in the year 1985 calling upon all employees who sought correction of their date of birth to approach the management with relevant documents for correction of date of birth so that the service records could be corrected, but the petitioner had not complied then. She submitted that there is no proof whatsoever to show that the School Leaving Certificate had been tendered in the year 2005 and therefore it is not possible to accept the contention of the petitioner to the effect that his date of birth is actually 1st November, 1955. He submitted that the record of the respondent merely showed only the date of birth as "1953" and there was no mention of either month or date and that as a matter of standard practice the date of superannuation would be deemed as 31st December of the concerned year and in this case since year of birth was noted as 1953 in the records, the petitioner would attain age of 60 effective 31st December, 2013 and

this is what led to the Superannuation Memo being issued. It is therefore submitted that the impugned order may not be interfered with inasmuch as there is no evidence as to why the petitioner had not submitted proof of date of birth at the material time in 1985 and once again when he sought correction by virtue of correspondence in the year 2005 but omitting to enclose the school leaving certificate. Ms. Doshi further submitted that even in the service book of which the petitioner was fully aware, the date of birth is shown as "1953". Furthermore in all records pertaining to Provident Fund and Gratuity the petitioner had also filed nomination forms. Both records disclose the year of birth as 1953. This aspect is not in dispute and no explanation is forthcoming as to why said records were not sought to be corrected. In the course of submissions, reference was made to a letter dated 8th April, 2013 addressed by the petitioner to the company. A specific statement has been made to the following effect :

"Some where in the month of June, 2005, Mr. Khan directed me to bring my original School certificate for verification the Xerox copy of the school leaving certificate. Accordingly I brought my original school leaving certificate and shown it to Mr. Khan and Mr. Tamankar. After verification the photo copy of the said certificate, the original was returned back to me. I was informed by the said officers, that my correct and exact date of birth, as per my said school leaving certificate shall be recorded in the service record. Therefore, I was under impression that it was corrected and my exact date of birth as 1.11.1955 was recorded in the service."

The true test of the petitioners case would be to gauge the petitioners reaction to the fact that no reply was received by him and the respondent company has since acted contrary to the alleged assurance given to him. This specific statement is made in

the approach letter dated 8th March, 2013 and it has been denied by the respondent in its reply dated 25th April, 2013 issued by the respondent mill whereby the mill denied that the said officers had made any promise to make correction sought by the petitioner. This being the strongest point in his averment the petitioner would be expected to summon these two persons in support of the petitioners case which has admittedly not been done.

7. The impugned order in appeal has considered in great detail, the facts leading up to the passing of the order of the Labour Court dated 24th August, 2016 and has come to the conclusion that the record of the mill did not show the school leaving certificate was ever produced before 2005 or even when opportunity was given in the year 1985 or even when he rejoined the mill sometime in 1990. The other factor to be noticed is that the interim order passed in complaint (ULP) No. 418 of 2013 continued to operate for a period from 1st January, 2014 till 31st December, 2016 which date the petitioner has continued to serve the respondent mill from 1st January, 2014 till 31st December, 2016 which date he superannuated. The fact that the petitioner made not effort to establish his case in the Labour Court on the basis of his contentions in the approach letter dated 8th March, 2013 would clearly establish that his contention is only by way of an after thought.

8. The learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of *Bharat Coking Coal Limited and Ors. Vs. Chhota Birsa Uranw [(2014) 12 SC 570]* to buttress her case. The respondent had failed

to make further inquiries in respect of school leaving certificate which he had produced in the year 2013 and in furtherance of the alleged promise made by the aforesaid two officers of the respondent to have the date of birth corrected, I am of the view that the factual situation in the case of *Bharat Coking Coal (supra)* were quite different from the facts at hand. In that case there were two date of birth recorded in the service record itself. A controversy arose on account of different dates in the service book which was part of the record and it was found that the petitioner company had failed to follow the procedure laid down in the "Implementation of instructions" in relation to its employees.

9. In the circumstances, I am of the view, in the present case the impugned order is neither perverse nor illegal and in my view does not call for any interference in the writ jurisdiction of this Court. Accordingly, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)