

THE HIGH COURT OF MADHYA PRADESH
M.P. No. 50/2018
Divisional Railway Manager V/s. Smt. Nanudi Bai.

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Indore, dated : 01.04.2019

Shri H.Y. Mehta, learned counsel for the petitioner.

Shri Arpit Yadav, learned counsel for the respondent.

With consent of learned counsel for the parties, heard finally.

ORDER

The petitioner – Divisional Railway Manager, Western Railway Ratlam has filed the present under Article 227 of the Constitution of India being aggrieved by award dated 21.4.2017 passed by Central Government Industrial Tribunal (CGIT) cum Labour Court, Jabalpur in favour of the respondent.

2. Facts of the case, in short, are as under :

Late Santosh Deva raised an industrial dispute in respect of regularisation into the services of Indian Railways. The conciliation proceedings were ended into failure. By order dated 20.6.2001, the Ministry of Labour has referred the dispute to the CGIT. The terms of the reference are as under :

“Whether the action of the Management of Divisional Railway Manager, Western Railway, Ratlam by not regularising the services of Shri Santosh Kumar Deva even after screening is justified? If not, what relief the workman is entitled for?”

3. Before the CGIT, the workman submitted statement of claim that he was engaged as a Labourer and worked up to 1994 in IOW, Mhow Section. In the year 1994-1995, he was called for screening test. He appeared before the Screening

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Committee and certain questions were asked from him. He submitted all the documents, but he was not regularised against the post of Labourer.

4. The present petitioner being the employer filed the written statement by submitting that the respondent was called for filling the vacant post in Group 'D'. He appeared on 22.11.1994 along with original documents. He submitted the documents and according to service record also, his date of birth was found 20.6.1969 and accordingly, on the date of appointment i.e. 20.8.1980, he was 11 years of age. Thereafter, he was again called to appear on 11.1.1995, but he did not appear, therefore, he was not regularised. Hence, the reference is liable to be rejected.

5. In support of his claim, Santosh Deva examined himself as P.W.1 and the petitioner examined one Santram Meena, the Chief Office Superintendent. Both the parties filed the documents.

6. During pendency of the reference, the workman expired on 4.11.2015 and his wife viz. Smt. Nanudi Bai was brought on record.

7. After hearing learned counsel for the parties, vide order dated 21.4.2017, learned CGIT answered the reference in favour of the workman and directed the petitioner to pay Rs.1,00,000/- to the widow of deceased workman within a period of 30 days. Being aggrieved by the aforesaid award, the petitioner has filed the present petition before this Court.

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8. Shri H.Y. Mehta, learned counsel appearing for the petitioner, submits that the CGIT has not taken into account that before the Screening Committee the workman did not produce any documents to establish that he worked as a daily rated employee and entitled for regularisation. On the basis of documents available before the Committee it was found that his date of birth is 20.6.1969, therefore, at the time of engagement as daily rated employee, he was 11 years i.e. below the minimum age of employment, hence, he was not found entitled for absorption/regularisation. Since the workman was not regularised, therefore, his services were terminated, therefore, the impugned award is liable to be set aside.

9. *Per contra*, Shri Arpit Yadav, learned counsel appearing for the respondent, submits that the date of birth of deceased workman is 20.6.1961, but the same was wrongly recorded as 20.1.1969 in the service record by petitioner. At the time of initial appointment, the workman was 19 years of age and after rendering 14 years unblemished service, he was entitled for regularisation. He produced various documents obtained under the Right to Information Act. The Management's witness viz. Santram Meena has admitted in his cross-examination that casual employee can be regularised in the service. The scope of interference under Article 227 of the Constitution of India with the award passed by the learned CGIT is very limited. Learned CGIT has rightly passed the award for payment of compensation to the wife of deceased workman in

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lieu of his reinstatement, who expired during pendency of the reference.

10. It is not in dispute that the deceased workman was engaged by the petitioner and he was called by the Screening Committee for the purposes of regularisation. His case was considered, but he was denied the benefit of regularisation only on the ground of dispute raised by the Management in respect of his date of birth. The workman filed the documents in respect of his educational qualification i.e. School Leaving Certificate, in which, his date of birth is recorded as 20.6.1961. The petitioner Department in its service record wrongly recorded his date of birth as 20.1.1969. The witness appeared on behalf of the petitioner has failed to explain as to on what basis the date of birth of the workman was recorded as 20.1.1969. The workman was not given second chance to explain all the discrepancies in the date of birth recorded in the service book. The service-card of the workman was not produced before the CGIT, but in the document (Ex. M/1), his name is appearing at Serial No.29 with educational qualification as 5th Standard Pass, date of appointment as 20.1.1980 and date of birth as 20.6.1969. Said document was prepared by the Management, but its witness has failed to explain as to on what basis the date of birth was recorded, whereas in the School Leaving Certificate, his date of birth is mentioned as 20.6.1961, therefore, learned CGIT has rightly held that the wrong information submitted by the petitioner Department resulted in denial of regularisation to the

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deceased workman. Since the workman has expired during pendency of the reference, therefore, his widow has rightly been granted the relief of compensation of Rs.1,00,000/-. Her husband worked with the Railways for number of years i.e. from 20.1.1980 to 1995 and was entitled for regularisation, but the same was denied to him on the basis of wrong entry made by the petitioner.

11. Even otherwise, the apex Court in the matter of **Jai Singh & others V/s. Municipal Corporation of Delhi : (2010) 9 SCC 385** while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to correct all errors of judgment of a Court, or Tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

12. In view of the foregoing discussion, I do not find any merit and substance in this petition and the same deserves to be and is hereby dismissed.

No order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/- Digitally signed by Alok Gargav
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