

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7618 OF 2009

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Osmanabad

– PETITIONER

VERSUS

Somnath Dadarao Dake,
Age-49 years, Occu-Service,
R/o House no.1/183, Tambri Sector,
Osmanabad

– RESPONDENT

Mr.D.S.Bagul, Advocate for the petitioner.
Mr.S.B.Bhosale, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/07/2019

ORAL JUDGMENT :

1. The petitioner/Corporation has challenged the judgment of the Industrial Court dated 18/08/2009, by which the Industrial Court allowed the ULP complaint thereby correcting the date of birth of the respondent/original complainant 7 months prior to his retirement. The respondent was due to retire on 10/03/2010 and the Industrial Court delivered a judgment on 18/08/2009 holding that his date of birth be entered as 10/07/1956.

2. The learned Advocate for the respondent/original complainant has strenuously supported the impugned judgment. He points out a copy of the school record dated 07/04/2005 in which his date of birth is recorded as 10/07/1956. The Learned Advocate submits that besides this document, there is no other document to indicate the exact date of birth of the respondent/complainant. He submits that the dates of birth of his father, mother and brothers may be considered so as to assess as to whether the complainant was born in 1952 or 1956. I am unable to accept this contention because the date of birth of his brothers cannot be an indicator of the exact age of the complainant.

3. The contention of the complainant is probably based upon a "Janmpatrika" prepared by an Astrologer in which his date of birth is mentioned as 10/07/1956. The complainant entered employment with the petitioner/Corporation on the basis of the SSC certificate which indicates that the complainant was born on 10/03/1952. It was on the strength of the said certificate issued by the Maharashtra State Board of Secondary Education that the date of birth of the respondent was entered in the service records as being 10/03/1952. When this record is pitted against the copy of the school register, which is procured by the complainant on 07/04/2005, I find it

inappropriate to rely upon the said copy in the face of the SSC certificate. If the complainant was aware of his date of birth being 10/07/1956 and was recorded as 10/03/1952 when he passed out his 10th standard examination, he would have immediately objected to the said date and would have promptly taken steps to seek correction.

4. He joined duties in 1980 and then made the first application on 30/03/1985 seeking correction of the date of birth. While making such application, he obviously did not have the copy of the school record, which he has procured on 07/04/2005. He moved another application on 26/12/1989 and then filed a ULP complaint after 18 years on 24/08/2007 when he was about 2 years away from the date of his superannuation.

5. The Hon'ble Supreme Court has laid down the Law as regards to the correction of date of birth at the fag end of the service in the following matters :-

- [a] Hindustan Lever Ltd., Vs. S.N.Jadhav [(2001) 4 SCC 52 = 2001(98) FLR 681],
- [b] State of UP Vs. Smt Gulaichi [(2003) 6 SCC 483 = 2003 (98) FLR 891]
- [c] Mohd.Yunus Khan Vs. UPPCL [(2009) 1 SCC 80 = 2008(119)

FLR 808],

[d] State of Haryana Vs. Satish K.Mittal [(2010) 9 SCC 337 = 2010(2) SCC (L & S) 740].

6. Considering the above, I find that the impugned judgment of the Industrial Court is a perverse and erroneous. The same was already stayed by this Court by a speaking order on 18/01/2010. This petition is, therefore, allowed and the impugned judgment of the Industrial Court is quashed and set aside. Complaint (ULP) No.54/2007 stands dismissed. Rule is made absolute.

7. The learned Advocate for the complainant submits that his retiral benefits have not been disbursed on the pretext of the pendency of this complaint. The learned Advocate for the Corporation submits that he would take instructions. The learned Advocate for the complainant therefore prays for expeditious payment of his retiral benefits.

8. I find that if the retiral benefits and pensionary benefits are not extended to the complainant, merely because this petition is pending, this is a fit case for granting interest on the said amount to the respondent/Complainant. As such, if the Corporation clears the

entire retiral dues of the respondent on or before 30/09/2019, the amount shall carry an interest of 3% p.a. from the date of the actual retirement of the respondent, which is March 2010. If the said amount is not paid on or before 30/09/2019, the interest amount would be @ 6% p.a. from the date of retirement.

(Ravindra V.Ghuge, J.)