

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8115 OF 2016

Vasudeo Ramchandra Nautiyal .. Petitioner.

Vs.

The Member,

Industrial Court, Mumbai & Ors. .. Respondents.

Mr.G.T.Kanchanpurkar for the Petitioner.

Mr.Bharat Goyal, Mr.Atman Mehta, Ms.Vaishali Shah, Ms.Parthvi Gotecha i/b
Haresh Mehta & Co. for the Respondent Nos.2 to 4.

CORAM : A.K. MENON, J.

DATED : 21ST JANUARY, 2019

P.C. :

1. By this petition, the petitioner assails the impugned judgment and order dated 31st March, 2016 passed by the Industrial Court whereby Complaint (ULP) No.438 of 2010 came to be rejected.

2. The complaint proceeds on the basis that the petitioner was employed since 22nd May, 1973 as hourly rated workman and his age was then recorded as 20 years as on 29th May, 1973. The medical examination that he was subjected to also confirmed that declaration of the age is correct. The petitioner – original complainant thereafter continued in the service of respondent no.2 for several years. The petitioner was due to retire on 31st December, 2010. However, on 20th December, 2009 the petitioner has

addressed a letter to the respondent company claiming that his date of birth as per school leaving certificate was 7th October, 1958 whereas the respondent company has recorded it as 1st January, 1953. The petitioner requested correction of the date of birth. According to the petitioner, the respondent company failed to act upon his request and being aggrieved he filed subject complaint alleging unfair labour practice under Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act.

3. At the hearing of the complaint, the Industrial Court has framed six issues including one as to whether the petitioner – complainant's date of birth has been wrongly recorded as 1st January, 1953 instead of 7th October, 1958 and whether issuance of letter confirming retirement amounts to an unfair labour practice. Although a copy of letter dated 2nd March, 2010 is not annexed, it is not in dispute that the said letter, the date of retirement was made known to the petitioner. The petitioner had meanwhile already made a request for correction of the date of birth vide his letter dated 20th December, 2009. The respondent company had vide letter dated 20th February, 2010 intimated the petitioner that they are unable to accept the contention that the date of birth was incorrectly recorded and that they were unable to act on the certificate now relied upon by the petitioner.

4. The impugned judgment has, after setting out factual background, considered all the material on record and has observed that reliance placed on duplicate school leaving certificate dated 26th June, 2010 would not

entitle the petitioner to a declaration that any unfair labour practice has been suffered by the petitioner. On the findings of fact, the Court has referred to various documents that came to be considered at hearing of the complaint including the letter of appointment and other communications such as Form 2 under the Employees Provident Fund Scheme issued by the respondent company, document pertaining to the Gratuity Scheme which contains a declaration and nomination duly executed by the petitioner. On behalf of the petitioner it was contended that the petitioner was not educated enough to understand the contents of these documents and upon realising that the date of birth has been incorrectly recorded he has obtained duplicate school leaving certificate.

5. At the hearing of the petition, learned counsel for the petitioner has relied upon a copy of annexures to the letter dated 20th December, 2009. The fact that this letter contains annexures was not in dispute nor is it in dispute that these annexures were duly considered while passing the impugned judgment. The documents on which the respondents have relied have all been signed by the petitioner. There is no dispute as to execution of these documents. The analysis of these documents and as observed by the Industrial Court reveal that the petitioner was appointed on 1st April, 1973 and as on that date he had declared that his age was 20 years. Exhibit-A to the petition is duplicate leaving certificate of the petitioner. Subsequently, it appears that the petitioner underwent medical examination. It is material to

note that on 27th September, 1973 the respondent had issued a letter to the petitioner a copy of which appears at Exhibit-C stating that the petitioner was appointed as a probationer from 1st April, 1973 and at that stage he has declared his age as 20 years and further that the petitioner had omitted to submit documents in support of his age. The petitioner was further informed that age declared by him has been accepted by the respondent company and that the company would now note his age as 20 years as on date of appointment and that no further changes could be made to the date of birth. This letter was received by the petitioner and duly signed by him on 28th September, 1973. The petitioner did not object to the recording of the date of birth thereafter.

6. Learned counsel for the respondent pointed out that Form 2 of the Provident Fund Scheme which considered declaration and nomination form also mentions date of birth as 1953. This is so because he had not submitted documents earlier and when this fact was brought to his notice, it is contention of the petitioner's counsel that form is not filled in his hand writing. In my view there is no doubt that form was duly signed by the petitioner. Nothing in evidence or any other documentary evidence suggests that contents of form were incorrect in any manner including as to year of work which is extended on 1st September, 1953. Furthermore, the petitioner's contention that he was unaware of contents of the documents cannot be accepted. I find that all these documents have been signed by the

petitioner in the English language. This merely appears by way of after thought. The petitioner has retired since and the interim application made under Section 32 of the Act was rejected on 23rd December, 2010. The challenge to the impugned judgment on the basis of incorrect recording of date of age cannot survive. Nothing in the impugned judgment is shown to be perverse or otherwise erroneous that would require admission of the petition. The impugned order has marshalled all material facts and cannot be faulted hence I pass the following order :

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

(A.K. MENON,J.)