

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

WRIT PETITION NO. 14714 OF 2018

Deepak Rama Gholap	...Petitioner
vs.	
Maharashtra Jeevan Pradhikaran Mandal, Pune	...Respondent

WITH
CONTEMPT PETITION NO. 114 OF 2019

Deepak Rama Gholap	...Petitioner
vs.	
Mr.Subhash Bhujbal, Superintending Engineer, Maharashtra Jeevan Pradhikaran Mandal, Pune	...Respondent

Mr.Anuraj Jain for Petitioner.
Mr.Ajit R. Pitale for Respondent.
Mr.Sadanand S. Yadav, Sr.Clerk, Maharashtra Jeevan Pradhikaran Mandal,
Pune.

CORAM : S.C. GUPTE, J.

DATE : 16 DECEMBER 2019

P.C. :

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of counsel.

2 This writ petition challenges an order passed by the Industrial Court at Pune on a complaint of unfair labour practice. The complaint was under Section 28(1) read with Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ('Act'). The Petitioner herein, who was the complainant before the Industrial Court, was in the employment of the Respondent since

6 February 1995 as an Assistant Store keeper. At the time of joining, his birth date was recorded as 28 December 1960 in the service book maintained by the Respondent. As recorded by the Industrial Court in its impugned order, the basis of recording this date was not very clear. In course of time (in fact, within a few months of his joining service), the complainant employee applied to the Respondent for correcting his date of birth. He submitted a gazetted notification of change of his birth date together with a birth certificate issued by the office of the Executive Officer of the Cantonment Board at Pune on 27 March 1996. These documents clearly indicated the date of birth of the complainant as 2 April 1963. On the basis of this requisition, the Respondent even proceeded to rectify the complainant's service record and effect the change in his date of birth. The changed record indicates that the change was effected on the basis of the Government Gazette of 29 August 1996. Having, thus, changed his service record, as the Petitioner was approaching superannuation with reference to the original date of his birth communicated to the Respondent, the correction made in the record was undone and the original date was reaffirmed in the service record by the Respondent. This was purportedly on the ground that higher authorities of the Respondent had not permitted the original rectification, which fact apparently was noted in an audit objection. What is more surprising is that the rectification was done away with and the original date of birth was restored without as much as a notice to the complainant employee. The complainant employee, in the premises, approached the Industrial Court on a complaint of unfair labour practice under the Act. In its impugned order, the Industrial Court appears to have dismissed the complaint practically only on the grounds (i) that his initial date of birth was recorded in the service book as 28 December 1960, which was on the basis of a voluntary submission of the complainant

employee, and (ii) that in the audit carried out by the Government auditor in the year 2014-15, it was found by the authorities that the original rectification of the complainant employee's date of birth was without permission from the higher authorities.

3 The impugned order of the Industrial Court suffers from a serious miscarriage of justice. Apart from the service record (and possibly with the exception of the school leaving certificate), the most authentic record of the Petitioner's birth date, which was his birth certificate issued by the office of the Executive Officer of the Cantonment Board at Pune, backed by a gazette notification correcting the date of his birth, was clearly in favour of the complainant. The complainant had, within a few months of his joining service, proceeded to apply for rectification of his service record accordingly. The rectification was actually carried out in the year 1996. If that is so, nearly 20 years after this rectification, the Respondent employer could not have done away with this rectification and restored the original birth date merely on the ground that when the rectification was made, it did not have the approval of its higher authorities. Approval of higher authorities is a matter anyway of the internal management of the Respondent employer, with which the complainant employee has nothing to do. The complainant applied for rectification on the basis of authentic documents including his birth certificate, which is the best evidence of birth date and had his service record rectified accordingly. Doing away with this rectification *ex post facto* and without notice to the Petitioner employee and restoring the original date of birth in his service record clearly amounts to an unfair labour practice so far as it prepones the superannuation date of the employee by three years.

4 Accordingly, the impugned order of the Industrial Court deserves to be quashed and set aside. Rule is, accordingly, made absolute and the petition is allowed by quashing and setting the impugned order of the Industrial Court dated 18 December 2018 and cancelling the restoration of the date of birth of the Petitioner in the service record of the Petitioner. The Petitioner shall continue to be in service of the Respondent on the basis of his originally corrected birth date as “2 April 1963”.

5 It is important to note further that by an order passed by this court on 28 December 2018, i.e. three days before the purported date of the Petitioner’s retirement on the basis of the old service record, i.e. the uncorrected original date of birth as “28 December 1960”, the Respondent was directed to maintain status quo regarding service of the Petitioner. It appears that in spite of this order or rather, in the face of it, the Petitioner was superannuated on 31 December 2018. The Petitioner has filed a contempt petition in this behalf, indicating therein that the Petitioner had continued to attend the Respondent’s office, but was not allowed to sign the muster on the basis that he had already stood superannuated. On these facts, the Petitioner must be treated as being continued in service since 31 December 2018 and shall be paid salaries and other dues accordingly.

6 So far as the contempt petition is concerned, learned Counsel for the Respondent, after taking instructions from Mr.Sadanand Yadav, an officer of the Respondent, tenders an unconditional apology. Considering that the Petitioner’s service has now been treated as continuous service since 31 December 2018, the apology tendered by the Respondent is accepted and the contempt notice is discharged.

7 The writ petition and the contempt petition are disposed of accordingly.

(S.C. GUPTE, J.)