

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8697/2018

(THE PROJECT OFFICER, BHUJAL VYAVASTHAPAN PATHDARSHI, NAGPUR & OTHERS **VERSUS**
 SIDDHARTH KASHINATH GAJBHIYE & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.M. Balpande, A.G.P. for petitioners.
 Shri S.S. Ghate and Shri S.K. Tambde, counsel for R-1.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 12, 2019.

The challenge raised in the present writ petition is to the order passed by the Industrial Court in complaint filed by the respondent under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

It is the case of the respondent no.1 that his date of birth which is 01.05.1961 has been wrongly recorded in service-book as 01.05.1951. The respondent no.1 made various requests to the petitioners to have the same corrected. As the same was not done, he filed aforesaid complaint seeking correction in the said date of birth. Same was not done and since the respondent no.1 was stated to attain the age of superannuation on 30.04.2011, he filed the aforesaid complaint. In the written statement, the claim as made was opposed. It was stated that the date of birth had been recorded as per the information supplied by the respondent no.1 himself and therefore as he had approached the Court belatedly there was no reason to grant any relief to him. The Industrial Court after considering the entire evidence on record came to a conclusion that the correct date of birth of the respondent no.1 was 01.05.1961 and hence the same was liable to be corrected. Being aggrieved, the present writ petition has been filed.

Shri A.M. Balpande, learned Assistant Government Pleader submitted that since the respondent no.1 himself had supplied the date of birth to the Department, the entries in that regard were taken. The respondent no.1 himself was responsible for the recording of the date of birth as 01.05.1951. Correction was sought at the fag end of his service and the same was not permissible. Without considering these aspects, the Industrial Court proceeded to allow the complaint.

Shri S.S. Ghate, learned counsel for the respondent no.1 supported the impugned order and referred to the findings recorded by the Industrial Court. He submitted that various documents placed on record indicated that the date of birth of the respondent no.1 was 01.05.1961 and that despite various requests being made to have the same corrected, such correction was not carried out. He urged that after adjudication of the complaint by the Industrial Court, the petitioners persisted with the challenge to that order despite an opinion being expressed against doing so. He referred to the averments in paragraph 10 of the writ petition and by referring to the decision in *Shriniwas Prabhakar Karve Versus The State of Maharashtra & Others* [2017 (2) All MR 328] submitted that the respondent no.1 was entitled for costs.

Heard the learned counsel and perused the documents placed on record. The Industrial Court while answering Issue No.5 has taken into consideration the School Leaving Certificate at Exhibit 31 that was issued to the respondent no.1 as well as the School Leaving Certificate of the elder sister of the respondent no.1 at Exhibit 33. It noted that the mother of the respondent no.1 was also working with the Department and her date of birth was 23.02.1939. Other documentary evidence was referred to and on

that basis it was concluded that the correct date of birth of the respondent no.1 was 01.05.1961. It is thus found that on the basis of documentary evidence a finding has been recorded that the correct date of birth of the respondent no.1 is 01.05.1961 and hence the direction issued to have the same corrected is based on such material. That conclusion therefore does not deserve to be interfered with.

Insofar as the submission that the challenge was raised to the order of the Industrial Court despite the opinion being given against it, reference has been made to the averments in paragraph 10 of the writ petition. Initially, the request for such permission was not granted by the Law & Judiciary Department but thereafter on 16.05.2018 such sanction was granted for filing the writ petition at the risk and consequences of the Department. Considering the material placed on record, the challenge to the impugned order is found to be misconceived. In the facts of the case, the respondent no.1 is held entitled to costs of Rs.10,000/- (Rupees Ten Thousand) from the petitioners. Costs be paid to the respondent no.1 within a period of four weeks.

With above observations, the Writ Petition stands dismissed with costs.

JUDGE

APTE