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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15114 of 2016

&

W.M.P.Nos.13174 of 2016, 1310 & 1311 of 2017

The Management of
Ashok Leyland Ltd.,
Ennore, Chennai - 600 057.
Represented by its
Head - Human Resources.

...Petitioner

-Vs-

1.The Presiding Officer,
III Additional Labour Court,
Chennai.

2.S.Rajendran

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, prayed to issue a Writ of Certiorari calling for the records of the first respondent in I.D.No.16 of 2010 and quash its award dated 19.03.2014.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For R1 : Court

For R2 : Mr.K.V.Ananthakrishnan

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The second respondent herein, who claims to have joined the services of the petitioner-Management on 01.07.1979, had originally declared his date of birth as 17.08.1950. By taking into account of the petitioner's policy of retiring their employees at the end of the month when they complete 58 years of age, the second respondent was permitted to retire from his services on 31.08.2008. The claim of the second respondent is that his actual date of birth is 17.08.1953 and therefore, the petitioner-Management had prematurely retired him from his



services, when actually he ought to have been permitted to retire only on 31.08.2011.

3. The Labour Court had held that since the petitioner-Management had not replied to the second respondent's request made on 23.07.2008 for alteration of his date of birth and that the employees of the petitioner-Management were never intimated by a letter about their actual date of superannuation, which was quoted as a justification for the delay, ordered for reinstatement and payment of back wages with continuity of service and all other benefits.

4. There seems to be an error in the findings of the Labour Court, insofar as it relates to ordering of reinstatement is concerned. Though the findings in the award would indicate that the Labour Court intended to extend the benefit of payment of back wages and continuity of service, the ultimate direction was for reinstatement, which could be regarded only as an error.

5. Insofar as the portion of the award that orders for back wages and continuity of service is concerned, the learned counsel for the petitioner would submit that the claim for alteration of the second respondent's date of birth was made at the fag end of his service and therefore, he would not be entitled for such a claim, in view of the decisions of the Hon'ble Supreme Court in the cases of Factory Manager, Kirloskar Brothers Limited Vs. Laxman reported in (2020) 3 SCC 419 and Karnataka Rural Infrastructure Development Limited Vs. T.P.Nataraja and others passed in Civil Appeal No.5721 of 2021.

6. On the contrary, the learned counsel for the second respondent would submit that since a claim was made for alteration of date of birth during the second respondent's service itself and the Management having failed to consider such a representation, the findings of the Labour Court cannot be found fault with. As such, the learned counsel would insist for payment of the back wages or in the contrary for compensation.

7. When the petitioner was due to retire on 31.08.2008, he had given a representation on 23.07.2008 seeking for altering his date of birth from 17.08.1950 to 17.08.1953. Apparently, the request was made at the fag end of his service career, as alleged by the learned counsel for the Management

8. The Hon'ble Supreme Court of India in the case of Kirloskar Brothers Limited Vs. Laxman (supra) had dealt on similar situation in the case of an employer who had belatedly made a claim for alteration of date of birth and by taking into



account of the latches, held that such alteration of date of birth is impermissible. The relevant portion of the order reads thus:

"4. The affidavit filed by the employee indicated that he was well aware that his date of birth had not been corrected by the employer on the basis of representation that was allegedly filed in the year 2003. Thus, it was not open to him to have waited for ten years i.e. till his date of retirement and to file a representation again and to approach the Labour Court. He slept over his right and it is also doubtful whether he had submitted representation. Even if he has submitted his representation, he could not have waited for ten years for seeking correction in the date of birth after his retirement. A perusal of the record also indicated that once the respondent himself had declared his date of birth as 1-1-1956. There is no document in service book indicating that he has ever declared his date of birth as 1-12-1956.

5. Consequently, we find that the indulgence made by the Labour Court, the learned Single Judge and the Division Bench of the High Court was wholly inappropriate. The employee was not entitled for any relief whatsoever. In the peculiar facts and circumstances of the case, we set aside the impugned orders and allow these appeals."

9. A similar view was taken in the case of Karnataka Rural Infrastructure Development Ltd., (supra) in the following manner:

"10. Considering the aforesaid decisions of this Court, the law on change of date of birth can be summarised as under:

- (i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;
- (ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;
- (iii) application can be rejected on the ground of delay and latches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation."



10. The aforesaid decisions are self-explanatory. In the present case, there is no satisfactory reasons assigned by the second respondent as to why he had waited from 1979 onwards till 2008 for making a request for altering his date of birth.

11. In view of this belated claim made and by applying the ratio laid down in the aforesaid decisions, this Court is of the view that the second respondent herein may not be justified in seeking for alteration of his date of birth in his service records at the end of his service career.

12. When the second respondent is not justified in making the original claim itself, the question of payment of compensation would not arise, since the claim itself does not seem to be bona fide. The Labour Court had apparently placed reliance on the representation made by the second respondent on 23.07.2008 and the consequent inaction of the Management in not replying to the representation. This Court is not in acceptance with such a reasoning adopted. The request was made just little over a month prior to the second respondent's retirement and the Management was not expected to forthwith reply to such a belated request. Even otherwise, a mere non-reply to the request would not entitle the employee to continue his services, after he reaches the age of superannuation.

13. It is needless to point out that even otherwise, such alteration of date of birth cannot be done on the basis of a mere representation, but only after due adjudication and by establishment through evidences, both oral and documentary. As such, the second respondent may not be entitled for the compensation sought for.

14. In the result, the impugned award dated 19.03.2014 passed by the first respondent is quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



hvk/ata
To

The Presiding Officer,
III Additional Labour Court,
Chennai.

+lcc to Mr.K.V.Ananthakrishnan, Advocate Sr.50704
+lcc to M/s.T.S.Gopalan & Co, Advocate Sr.50462

W.P.No.15114 of 2016

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