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Ct. No. 04

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M.A.T. 2055 of 2022
CAN 1 of 2023

Eastern Coalfields Limited
Vs.
Bhakta Bouri & Ors.

Mr. Bijoy Kumar.

... for the appellant.

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Mr. Debashis Das.

... for the respondents.

More emotional and sentimental argument is advanced by the learned Advocate for the appellant than on the basis of the applicable law, the Court is not supposed to succumb to the prayer made at the Bar or at the behest of either of the parties without there being any cogent or documentary evidence produced by either of the parties in this regard. The dispute has been diverted from the core issue to a difficult terrain, which is neither supported by law nor there is any element of binding Rules, which are the guiding factors for taking a decision by a Court of law and equity.

The core issue involved in the instant appeal relates to a claim of the respondent for appointment on compassionate ground because of untimely death of his father, who was admittedly an employee of the appellant. A scheme in this regard is framed by the appellant as a model employer to appoint one member of the family in order to give succor to such family, who suffered sudden jerk because of untimely death of the sole bread-earner. Such benevolent scheme has to be interpreted in a more pragmatic manner and should not be permitted to be used to defeat the very object sublime the promulgation of such welfare scheme.

Though the appellant under the aforesaid scheme may remotely offends Article 14 of the Constitution of India providing for equal opportunity to all eligible persons in offering their candidature in the public employment, however, an exception has been carved out in the nature of framing a scheme by the employer to provide employment to one of the family members with an intent to make the said family sustained and tide over the financial crisis suffered on the death of the sole bread-winner.

Obviously the scheme is in place and an application was taken out by the respondent claiming appointment on compassionate ground, which has not reached to its final destination as yet because of the litigation having pursued at the behest of the rival parties.

Indubitably, the scheme provides an upper age limit for consideration of the candidature of the family member and the same becomes a seminal point in the instant litigation. The respondent produced the document issued by the competent authority relating to his date of birth, but the appellant did not accept the genuinity and sanctity of the said document and decided to adopt the procedure of determination of age by constituting a Medical Board comprising of the medical experts connected with the appellant.

The report of the Medical Board or the consortium of the medical experts determined the age of the respondent ranging between 35 to 40 years as on the date of death of the employee. The appellant showed total disregard to the document issued by the statutory authority and banked upon the ossification test or in other words, the report submitted by the Medical Board

and proceeded to reject the said application filed by the respondent, as the respondent is overaged.

We are not in a position to find out any scientific method where the exact age of a person with precession can be ascertained or determined. We have not been given any document in this regard; where the science has developed to such a height where the exact date and time of the birth can be determined. The moment the Medical Board opined that the age of the respondent ranges between 35 to 40, we do not find any justification in the stand of the appellant to accept the maximum range and showed disregard to the minimum range.

However, there appears to be a disagreement on the said report of the Medical Board, which led the respondent to move a writ petition before this Court. Since the date of birth was a pivotal issue involved in the writ petition, the Single Bench of this Court directed further ossification test to be done by an independent Medical Board and it goes without saying that the said order was never assailed by the appellant by moving higher up; rather the said order was accepted and the respondent was directed to appear before the independent authority and the report on the basis of the ossification test was submitted to the Court, which indicates that the age of the respondent as on the date of death of his father is ranging between 30 to 40 years.

Immediately an application was taken out by the appellant praying for setting aside the age assessment report submitted by the SSKM Medical College & Hospital dated 24th March, 2022 and to refer the matter for assessment of age of the petitioner by the Medical Board at All India Institute of Medical Science, New

Delhi.

Both the application and the writ petition were taken up together and by the impugned order the Court not only rejected the said application but allowed the writ petition directing the respondent/appellant to process the compassionate employment of the writ petitioner/respondent treating him as 35 years of age on 24th March, 2022, when such examination was done by the said SSKM Hospital.

The learned Counsel for the appellant is very much vocal in his submission that the respondent obtained a forged document relating to his date of birth and the moment the Medical Board constituted by the appellant opined the age between 35 to 40, it is sacrosanct and, therefore, the rejection of an application on the score of forged document does not require any interference. It is vociferously submitted before us that the subsequent report submitted by SSKM Hospital is faulty one and, therefore, a further medical examination should be done by AIIMS at New Delhi.

It is vehemently submitted by the appellant that the disclosure made by the deceased employee in the service book is sacrosanct and no departure can be made therefrom either by the employer or by the family members and, therefore, the Trial Court have exceeded its jurisdiction not only entertaining the writ petition but also deciding the same in favour of the respondent. Lastly it is submitted that the deceased employee availed leave travelling concession disclosing not only the members of the family but also their respective age and, therefore, it is not open to the respondent to take a contrary view.

The aforesaid submissions made by the appellant has to be tested not only on the anvil of facts emanates from the record but also on the parameters of law applicable thereto. As indicated above the dispute hovers around the date of birth of the respondent, as the entitlement to get the appointment on compassionate ground, the other grounds required therefor have not been projected nor argued before the Single Bench. Even if the authorities have not taken any other plea except that the petitioner had crossed the upper age limit set-forth in the scheme and, therefore, exposed himself ineligible to be considered for appointment on compassionate ground, we have no occasion to consider the matter on other grounds.

Our attention is drawn to an excerpt of the service book where the employee was shown to have born on 21st August, 1959 and wife on 1st July, 1961. The aforesaid declaration was made on 21st April, 1998 wherein the son was shown to be of 21 years of age. Admittedly the father of the respondent died on 25th May, 2017. The appellant sought to derive inspiration from the aforesaid recording in the service book and arrived at the conclusion that as on the date of death of the father the son is nearly forty years or above and, therefore, is kept outside the purview of the said scheme.

The scheme provides for ascertaining the age which, in fact, was pressed in service; meaning thereby the appellant themselves did not totally rely upon the declaration made in the service book, by constituting a Medical Board to ascertain the age on the basis of the ossification test.

We are unable to comprehend the stand of the appellant in this regard more particularly when a stand

is taken that whatever is declared in the service book the same is sacrosanct then in such event there is no necessity to constitute a Medical Board for the purpose of determining and/or ascertaining the actual age of the applicant. Since the scheme provides for such mechanism, it is imperative on the part of the appellant to take recourse thereto, as the departure from such scheme shall tantamount to infraction of the statutory rules having a binding effect.

One has to ponder when there has been a disparity found in the age of the applicant between the declaration made in the service book and the opinion of the Medical Board, the discretion if left to the appellant to adopt either the declaration made in the service book or the report of the Medical Board determining the age on the basis of the ossification test, it would lead to an absurdity and would render such provision unworkable and of no binding effect.

Our attention is drawn to an unreported judgement rendered in case of *The Chairman-cum-Managing Director, Eastern Coalfield Limited & Ors. vs. Panpati Devi Lohar & Ors.* (M.A.T. 130 of 2018 decided on 15.01.2019) at the behest of the appellant to buttress the stand that the age declared by the parents or either of them in the service record has its edge-over any other document concerning the age. It appears that on the death of the employee during service his widow claimed an appointment on compassionate ground. In all such documents the widow declared that the age of the son is ten years as on 29th May, 1992; whereas the date of birth of the said son was declared by the deceased employee as 30th May, 1997. All such documents filed by the widow therein revealed that the age of the son was shown as ten years as on 29th May,

1992. However, the certificate issued by the Bihar School Examination Board, Patna indicates that the date of birth of the said son was 31st December, 1985 which led the dispute to crop up.

It appears that the Division Bench interacted with the said widow and found that she being a rustic villager was not in a position to throw light on the exact date of birth of her son and sought for a liberty to produce the relevant documents. The Division Bench further held that the date of birth recorded in the certificate issued by the said Examination Board carries sufficient weight but one cannot lose sight of the fact in so far as the rustic villagers are concerned, such date of birth is incorporated on their disclosure and, therefore, the moment the disclosure of age of the son in the service record is pitted against the disclosure of the date of birth before the said Examination Board, the disclosure in the service record has to be taken into account as having significance in this regard.

The judgement of the Court has to be read in juxtaposition with the context in which it is passed. A little variation in facts or additional facts may invite a diametrically opposite decision and, therefore, in order to apply the ratio laid down in the judgement, it is the foremost duty of the Court to read the context in which it is used. In the said decision the learned Judges of the Division Bench interacted with the lady and found that she was unable to disclose the exact date of birth of her son having come from a remote village. Since there was no record of date of birth in those area, the Division Bench held that the date of birth recorded in the Educational Board including the documents issued by the said Board is on oral disclosure, which may not be correct. Since the compassionate appointment relates

to service, the Division Bench held that the disclosure made in the service record has to be considered while determining the age.

In the instant case, the respondent produced the birth certificate issued by the Asansol Municipal Corporation at Kulti office in statutory form, wherein the respondent is shown to have born on 6th December, 1984. The prescribed form indicates that the information disclosed therein has been taken from the original record of birth which is in the Register for (local area), Asansol Municipal Corporation at Kulti office, District Paschim Bardhaman, W.B.

Although the said birth certificate is issued after the dispute has arisen, but the sanctity thereof cannot be ruled out for simple reason that no counter-evidence has been produced nor the said issuing authority has indicated that the said birth certificate is ingenuine. It appears that the area in which the respondent was born is not falling under a remote village but under the Municipal Corporation and, therefore, one has to understand in such perspective.

It is sought to be contended by the learned Counsel for the appellant that the said birth certificate issued on the basis of an affidavit submitted to the Municipal Corporation and not on the basis of any other record does not appear to be correct from the opening sentence of the said birth certificate, which indicates that the information filled up in the said certificate is derived from the original record of birth, which is the register maintained in the local area.

In such scenario, we feel that the earlier judgement of the Division Bench or the ratio laid down

therein cannot be applied in abstract manner but there has been a considerable distinguishing features on facts. Furthermore when the appellant disbelieved the information incorporated in the said birth certificate and constituted a Medical Board in terms of the said scheme to ascertain the actual age of the applicant, the matter has to be viewed from the aforesaid angle.

Before the Single Bench and on the basis of the order passed by it a further ossification test was directed to be done by an independent medical hospital, which, in fact, had been done, but the moment the appellant found a disparity in the report of the Medical Board constituted by it and the Medical Board constituted in terms of the order of the Single Bench, took out an application seeking a report from a third Board. The Single Bench has found that the application filed by the appellant does not contain any adverse averment on the report of the SSKM Hospital. The said application is also annexed to the instant application containing 14 paragraphs.

Paragraph nos. 1 to 9 of the said application is reflective of facts and the events happened in course of the proceeding. Paragraph 10 relates to the assessment of age by the Apex Medical Board constituted by the appellant and the SSKM Medical College and Hospital; wherein both the report corroborated that the respondent is about 40 years of age at the time of death of the concerned workman. Curiously enough the paragraph 11 relates to the prayer for setting aside the age assessment report of the said Hospital and referred the matter to All India Institute of Medical Science, New Delhi. Paragraph 12 relates to shouldering the responsibility of the appellant to bear the expenditure incurred for the said purpose and paragraph 13 is a

usual paragraph relating to sufferance of irreparable loss and injury, if the report of the said Hospital is not set aside.

The first point, which emerged in this regard, is whether the Court should disregard the opinion of an expert simply because of an application for such disregard is taken out by either of the parties even in absence of any averment or prima facie materials produced which would remotely impinge upon the sanctity and genuinity of such report. The law does not prescribe that the Court should disregard the report, as one of the parties is dissatisfied therewith unless there is a convincing material produced before the Court which justify such disregard.

As indicated above, the averments made in the said application do not remotely suggest any defect or fault or of like nature in the report submitted by the SSKM Medical College & Hospital not even a case of such nature is made out; rather paragraph 10 of the said application indicates that the appellant is harping upon the said report of SSKM Medical College & Hospital that in that report as well the age of the respondent is shown as 40 years at the time of death of the deceased employee.

In absence of any cogent materials and more particularly when the appellant itself is confused in between the report submitted by the Apex Medical Board and the SSKM Medical College & Hospital, we do not find that it is a fit case where the Court should appoint a third Medical Board or Medical Agency to ascertain the age of the respondent at the time of death of the deceased employee.

It is inconceivable and improbable that the outer age reflected in the report submitted by the Medical Board is more sacrosanct and/or sanctity is attached thereto, which appears to us is a stand of the appellant reflected from paragraph 10 of the said application.

The moment the Board opined that the age as on the date of death of the employee ranges between 30 to 40 and if there are other corroborating documents, which indicate the age within such parameter, we do not find any justification in rejecting the application of the appellant treating him as overaged.

We thus do not find any merit in the instant appeal. The same is hereby dismissed.

After the judgement is delivered in open Court, the learned Counsel for the appellant prays for stay of operation of the judgement and order; which in our considered opinion cannot be granted and hence such prayer is refused.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

