



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15720 OF 2022**

Ashok Subbayya Shetty

... Petitioner

versus

M/s. S.S.Batra and Co. and Anr.

... Respondents

Mr. Mayur D. Sapkale, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 4 JULY 2023

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The Petitioner takes exception to a judgment and Order dated 10 November 2021 passed by the learned Judge, Labour Court, Mumbai in Complaint (ULP) No.152 of 2017, whereby the Complaint filed by the Petitioner under Section 28(1) read with Items 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1947), came to be dismissed.
3. The Petitioner was serving as a waiter with the Respondent No.1 since 5 July 1983. The Petitioner was never subjected to any disciplinary proceedings. By an order dated 5 August 2017, the services of the Petitioner were abruptly terminated on the premise that the Petitioner would have retired in the year 2013 itself, but had continued in service by wrongfully claiming that he was born on 19 April 1958 though,

in fact, his date of birth was 10 February 1953. The Petitioner claimed Respondent No.1 had not issued any appointment order. Nor there was any agreement or settlement executed between the Petitioner and the Respondent No.1 regarding the age of retirement. The Model Standing Orders as regards the age of retirement under the Maharashtra Employment (Standing Orders) Act, 1946 were not applicable. Hence, the abrupt termination of the services of the Petitioner constituted an unfair labour practice.

4. The Respondents resisted the Complaint by filing a written statement. It was contended, inter alia, that the Petitioner was born in the year 1953, and, yet, by wrongfully claiming that the Petitioner was born in the year 1958, the Petitioner continued in employment for almost 53 months beyond the normal age of superannuation. Thus, the Respondents were constrained to terminate the services of the Petitioner as the Petitioner's claim was found to be fraudulent and dishonest.

5. By the impugned judgment and order, the learned Judge, Labour Court, was persuaded to hold that the Respondents did not indulge in any unfair labour practice in as much as the Petitioner himself claimed that his date of birth was 10th February 1953 and, by any standard, the Petitioner would have superannuated upon completion of 60 years in the month of February 2013 and, yet, the Petitioner continued to remain in employment till 1 August 2017.

6. The learned Counsel for the Petitioner would submit that the learned

Judge, Labour Court, did not properly appreciate the Petitioner's case. In fact, the testimony of the Petitioner had gone unchallenged as the Respondent did not turn up to cross-examine the Petitioner. The learned Judge, Labour Court, also lost sight of the fact that the Petitioner was efficient and healthy and fit enough to discharge the duties of a waiter, and in the absence of any agreement or settlement between the parties regarding the age of retirement, there was no reason to abruptly terminate the services of the Petitioner.

7. I find it rather difficult to accede to the aforesaid submissions. The fact that the Petitioner was not cross-examined or for that matter the evidence of the Petitioner went untraversed, does not advance the cause of the Petitioner. In the Affidavit in lieu of examination in chief, the Petitioner categorically asserted that his date of birth was 10 February 1953. Therefore, the fact that the Petitioner would have attained 60 years of age in the year 2013 itself could not have been controverted.

8. In the face of these uncontroverted facts, the learned Judge, Labour Court, was justified in holding that even if it was assumed that there was no agreement between the parties as regards the age of retirement, the age of retirement prescribed in the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 would govern the situation. What exacerbates the situation is the fact that an unjustifiable attempt was made on behalf of the Petitioner to demonstrate that the Petitioner was born in the year 1958 and not in 1953, which fact was not at all borne

out by the material on record. Moreover, in the dismissal order which was assailed as colourable exercise of authority and an unfair labour practice, specifically referred to the fact that the Petitioner had made an endeavour to suppress the correct date of birth and continued to remain in employment for 53 months.

9. In the aforesaid view of the matter, the learned Judge, Labour Court, committed no error in returning a finding that there was no unfair labour practice and, thus, dismissing the complaint.

10. A grievance was sought to be made on behalf of the Petitioner that the Petitioner had not been paid admissible dues, especially the gratuity. If that is the case, the Petitioner can resort to the appropriate remedies as available in law.

11. In the circumstances, there is no justifiable reason to entertain the Writ Petition in exercise of extra ordinary writ jurisdiction.

12. The Writ Petition stands rejected.

(N.J.JAMADAR, J.)