

(2009) 04 AHC CK 0802

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 11357 of 1999

Lord Krishna Textiles Mill,
Saharanpur

APPELLANT

Vs

Labour Court and others

RESPONDENT

Date of Decision: April 9, 2009

Acts Referred:

- Evidence Act, 1872 - Section 35
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K

Citation: (2009) 122 FLR 476

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Advocate: Devendra Pratap, D.P. Singh and Siddharth Singh, for the Appellant; N.K. Srivastava and Neeraj Agarwal, for the Respondent

Final Decision: Allowed

Judgement

Shishir Kumar, J.

Heard learned Counsel for petitioner and learned Counsel for respondents.

The present writ petition has been filed for quashing the award dated 13.4.1998 published on 16.11.1998.

2. The facts arising out of present writ petition are that petitioner's mill was nationalised and become a unit of National Textiles Corporation (U.P.) Limited, Kanpur but due to labour problem, it has been closed on 21st September, 1991. In spite of best efforts made by Central Government and financial assistance, petitioner's mill could not properly function and declared sick by the Board of Industrial and Financial Reconstruction.

3. One Susheel Kumar who joined the mill on 29.8.1958, raised a dispute regarding his date of birth. It was alleged that his date of birth has wrongly been recorded as

1939 as his correct date of birth is 15.8.1941, therefore, he will attain the age of 58 years in the year 1999. The aforesaid dispute was referred to State Government u/s 4K of U.P. Industrial Disputes Act and it was registered as Case No. 145 of 1997. A written statement was submitted by respondent No. 2 stating therein that correct date of birth is 15.8.1941 and petitioner has wrongly recorded his date of birth as 1939, therefore, superannuation notice dated 30.11.1996 is bad. A written statement was also filed on behalf of petitioner stating therein that according to service record of respondent No. 2, date of birth is 1939 and on attaining the age of superannuation, he has rightly been superannuated with effect from 1.1.1997 and therefore, there was no illegality in the notice of retirement. It was further stated that though workman concerned has joined service on 29.8.1958 and submitted a bio-data filled and signed by him in which he has mentioned the date of birth as 1939, thus, at the fag end of retirement, he cannot raised this dispute regarding date of birth but Labour Court has given an award in favour of respondent-workman directing that his date of birth may be treated as 1941 and as such, he will retire from service in the year 1999.

4. Aggrieved by aforesaid order, petitioner has filed present writ petition.

5. Sri Siddharth, learned Counsel for petitioner has submitted that date of birth of respondent No. 2 was recorded on the basis of information furnished by workman. In provident fund record, it has been recorded as 1939 and workman has joined his services on 29.8.1958, therefore, according to date of birth recorded in provident fund record he has retired from service on 1.1.1997. It has further been submitted that finding to this effect has been recorded that there is no counter signature or signature of workman in service book and other records. This finding is wholly incorrect in view of settlement and admission of workman. Learned Counsel has brought to the notice of the Court the settlement where workman has admitted this fact in his statement before the tribunal that he has signed in record of provident fund. Further submission has been made that it is well-settled now that date of birth recorded in the service record is final and conclusive prove unless and until proved otherwise. At the fag end of retirement, nobody can raise a dispute regarding the date of birth. Reliance has been placed upon a judgment of this Court in [Swadeshi Cotton Mills Vs. Sultan Ahmad](#), , and reliance has been placed upon para 16 of the said judgment. The same is being quoted below:--

16. Dr. Sampurnanand award, to which a reference has been made hereinabove, clearly stipulates that where a worker disputes his age recorded under the Employees' Provident Fund Act, he shall, within six months from the date of the publication of that award apply for correction of the age by producing a duly authenticated birth certificate or High School Certificate or Insurance Policy running from a date prior to the publication of the award, indicating his age, and his age shall be corrected by the Mill accordingly. It is further provided that if the age finally determined is that according to" records maintained under the Employees'

Provident Fund Act, and such records do not contain the exact date of birth, the age shall be calculated as if the date of birth was as on 1st July, of the year of his birth according to those records.

6. Taking support of aforesaid judgment, it has been submitted by learned Counsel for petitioner that Dr. Sampumanand Award clearly stipulates that where a workman disputes his age recorded under the Employees' Provident Fund Act, he shall, within six months from the date of publication of that award apply for correction of age by producing a duly authenticated birth certificate or High School Certificate or insurance policy running from the date prior to the date of publication of the award, indicating his age and his age shall be corrected by the Mill accordingly. This award was given in the year 1962, Admittedly, the respondent, has not made any application for correction of date of birth, therefore, date of birth recorded in provident fund record has to be treated final and conclusive prove.

7. On the other hand, learned Counsel for respondents submits that in the year 1987, workman has made an application with school leaving certificate of Class IX showing therein that his date of birth is 15.8.1941 but no orders were passed, therefore, labour Court has rightly considered the said aspect of the matter and has given an award in favour of workman. Reliance has been placed upon one judgment of this Court in U.P. State Electricity Board v. The Presiding Officer, Industrial Tribunal-IV, U.P., Agra and others 2003 (98) FLR 1127 (All.) Placing reliance upon aforesaid judgment, learned Counsel for petitioner submits that transfer certificate regarding date of birth submitted cannot be ignored and unless and until contrary evidence by employer is brought on, workman is entitled to get the benefit. Another judgment has been placed by learned Counsel for respondents in State of Chhattisgarh v. Lekhram. 2006 (41) AIC 83 (SC) : 2006 (55) ACC 282 : 2006 ACJ 1165 Taking support of aforesaid judgment learned Counsel for respondents submits that register maintained by school is admissible in the evidence to prove date of birth. Reliance has been placed upon para 12 of said judgment. The same is being quoted below:--

12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of section 35 of the Indian Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW-5 who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. Father of the prosecutrix also deposed to the said effect.

8. I have considered the submissions made on behalf of parties and have perused the record. Admittedly, respondent No. 2 has joined services in the year 1958 and he has counter-signed in service record. According to workman, he has passed IXth Class, therefore has been able to understand what has been written in the service record regarding date of birth. In the provident fund record also, date of birth mentioned was 1939 and workman has counter signed it. At that time workman has

not raised any objection. Even when the award of Dr. Sampumanand was given in 1962, workman concerned has not raised any objection, therefore, in my opinion, subsequent to that on an application made by any workman, date of birth cannot be changed. The finding recorded by Labour Court in the award appears to without consideration of relevant record to this effect regarding signing relevant record by workman concerned. In his statement he has admitted this fact that he has signed the record relating to provident fund, therefore, finding that no signature has been made by workmen should not have been recorded by Labour Court. Further, if according to respondent No. 2 he has raised the dispute regarding his date of birth in the year 1987 then if no orders were passed then at that time during the period of service, he should have raised an objection and raised a dispute before Labour Court. But he kept mum and after his retirement he raised a dispute. As regards, decision relied upon by learned Counsel for respondents, the case of State of Chattisgarh (supra) is regarding evidenciary value of a particular document. It does not held that if such type of document is submitted by an employee at the fag end of retirement, on that basis date of birth has to be accepted recorded in the register maintained by the school in spite of fact that in the service record another date of birth is recorded. Another judgment relied upon by learned Counsel for petitioner in Uttar Pradesh State Electricity Board (supra) will also not be applicable in the present case as employer has not brought on record any contrary document contradicting the date of birth of a particular employee. In that situation, Court has accepted that if transfer certificate regarding date of birth is submitted by the workman concerned, that can be taken into account.

9. In view of aforesaid fact, I am of the opinion that judgment and order passed by the Labour Court dated 13.4.1998 is not sustainable in law. The writ petition is allowed. The award dated 13.4.1998 is hereby set aside.

No order as to costs.

The amount deposited in pursuance of the order passed by this Court may be permitted to be withdrawn by petitioner on an application made by him within a period of one month.