

Prayag Narain Dubey Vs U.P. State Road Transport Corporation and Others

Court: ALLAHABAD HIGH COURT

Date of Decision: Aug. 28, 2014

Acts Referred: Factories Act, 1948 " Section 2, 23, 27, 2a, 2b

Citation: (2015) 1 ESC 298

Hon'ble Judges: Rakesh Tiwari, J; Ashok Pal Singh, J

Bench: Division Bench

Advocate: Ashok Khare and Siddharth Khare, Advocates for the Appellant; M.M. Sahai, Advocates for the Respondent

Judgement

Rakesh Tiwari, J.

Heard Shri Sidharth Khare, learned counsel for the appellant, Shri M.M. Sahai, learned counsel for the respondents and

perused the record. By means of this appeal, the appellant challenges the validity and correctness of impugned judgement dated 23.7.2014 passed

in Writ A. No. 40927 of 2004, Prayag Narain Dubey v. U.P. State Road Transport Corporation and others, which is a short one and reproduced

below:

The petitioner virtually seeks rectification of his date of birth at the fag end of his career. It is settled law that it cannot be done at that later stage.

Firstly the record of the case has been summoned and after due verification it has been found that the date of birth recorded by the petitioner in his

service book was the year 1952 and interpolation had been made in the record by writing 58. This finding has been recorded by the Court in its

order sheet dated 10.4.2012 but no amendment has been sought even otherwise the reason stated above the prayer sought by the petitioner

cannot be granted.

The writ petition is accordingly dismissed

2. In the aforesaid judgment a reference has been made to the order dated 10.4.2012. This order pertains to production of original record before

the Court and its observation. It reads thus:

Learned Counsel for the petitioner prays for and is granted one week"s time to amend his petition.

List thereafter.

Sri M.M. Sahai has produced the record before this Court, which has been shown to the counsel for the petitioner also. From a plain perusal of

the record it appears that the date of birth has been changed from 1952 to 1958. Learned Counsel for the petitioner now wants to amend his

petition. He prays for and is granted one week's time to do so.

3. Contention of learned counsel for the appellant is that the appellant had passed Junior High School Certificate Examination in the year 1971

wherein his date of birth was recorded as 25.2.1958. He was initially engaged as labour (Majadur) in U.P. Government Roadways in 1974 and

thereafter was promoted as Conductor on 29.7.1983; that the Assistant Regional Manager vide his order dated 29.10.2002 directed that date of

birth of the appellant petitioner be treated as 25.2.1952 instead of 25.2.1958 on the basis of medical certificate said to have been submitted by the

petitioner to the department at the time of his appointment. The order dated 29.10.2002 reads thus:

4. The medical certificate regarding date of birth of the appellant issued by the medical officer appended to the writ petition, is reproduced below:

Office of the Superintendent of District Hospital

Certificate of Fitness for Government Service

I do hereby certify that I have examined Sri Prayag Narain Dubey a Candidate in the Roadways Deptt. and can not discover that he has any

disease, Constitutional weakness or bodily infirmity except NIL I do not consider this a disqualification for Employment in the office Roadways.

His age, according to his own statement is 26 years and by appearance about 26 years.

Superintendent

District Hospital, Etawah

5. The fitness certificate of appellant petitioner for Government Service issued under Rule 10 of the Fundamental Rule is undated and does not

show any definite date of birth of the appellant. According to the statement of the appellant his age was 23 years when the certificate was issued.

Similarly, perusal of the last certificate dated 17.6.1983 issued by the Superintendent of District Hospital, Etawah, demonstrates that the age of the

appellant employee was recorded as 26 years, on the basis of his own statement given to him on that date.

6. Shri M.M. Sahai, learned counsel for U.P. State Road Transport Corporation submits that it is clear from the order dated 29.10.2002 passed

by the Assistant Regional Manager that there was some manipulation in the date of birth in the service record of the employee, as such the said

officer has corrected the date of birth in the record on the basis of medical fitness certificate issued after the medical examination of the appellant

wherein the petitioner was found fit for service. He has also argued that even if the date of birth of the appellant is taken to be 25.2.1958, then in

that case, he would have come into service on attaining the age of 16 years at the time of his appointment, which is not permissible in law.

7. Per contra learned counsel for the appellant submits that appellant had submitted his Junior High School Examination Certificate at the time of

appointment in the year 1974, which was issued in the year 1971. According to the said certificate, the date of birth of the petitioner was recorded

as 25.2.1958 and employment of an adolescent even in the factories is permissible in law.

8. Firstly we take up the issue of employment of a person below 18 years of age. Shri M.M. Sahai, learned counsel for the respondent has

contended that at the time of appointment, the appellant was not an adult, i.e. above 18 years of age, hence, for this reason his very engagement in

service is void. This argument does not appeal to reason. U.P.S.R.T.C. is a commercial establishment of workshops wherein maintenance, repair

work and some manufacturing process is also under-taken. The U.P. Shops and Commercial Establishment Act 1962 (hereinafter referred to as

the Act, 1962) as well as the Factories Act, 1948 (hereinafter referred to as the Act, 1948) applies to its various departments, offices and

workshops. Section 2(1), 2(2), 2(6), 2(8), 2(16) and 2(20) of the Act 1962 define an apprentice, a child, an employee, factory, shop and young

person respectively, thus:

(1) "apprentice" means a person, not being a person below the age of 12 years, employed for purposes of training, with or without wages, by an

employer in any trade or calling;

(2) "child" means a person who has not completed his fourteenth year;

(6) "employee" means a person wholly or mainly employed on wages. by an employer in, or in connection " with any trade, business or

manufacture carried on in a shop or commercial establishment and includes--

(a) caretaker, mali or a member of the watch and ward staff;

(b) any clerical or other staff of a factory or industrial establishment, which is not covered by the provisions of the Factories Act, 1948; and

(c) any apprentice or a contract or piece-rate worker;

(8) "factory" shall have the meaning assigned to it in the Factories Act, 1948, so However as not to include the premises where the clerical or other

establishment of a factory, to whom the provisions of that Act do not apply, work;

(16) "shop" means any premises where any wholesale or retail trade or business is carried on, or where services are rendered to customers, and

includes, all offices, godowns or ware houses, whether in the same premises or not, which are used in connection with such trade or business;

(20) young person" means a person who is not a child and has not completed his seventeenth year.

9. Section 6 of the Act 1962 provides Hours of work and overtime thus:

6. Hours of work and overtime.--(1) No employer shall require or allow an employee to work on any day for more than--

(a) five hours in the case of a child,

(b) six hours in the case of a young person, and

(c) eight hours in the case of any other employee:

Provided that any employee, not being a young person or a child, may be required or allowed to work longer than the aforesaid hours of work, so

however, that the total number of hours of work including overtime does not exceed ten on any one day except on a day of stocktaking or making

of accounts:

Provided further that the total number of hours of overtime work shall not exceed fifty in any quarter.

10. Whereas Section 21 of the Act 1962 which prohibits employment of children says no child shall be required, or allowed, to work in any shop

or commercial establishment except as an apprentice in such employment as may be notified by the State Government in the Gazette.

11. Question is whether a person who is below 18 years of age, i.e. not an adult can be lawfully employed in an establishment as a labour or a

worker. In this regard, under Section 2 of the Act, 1948, adult, adolescent, child, young persons and worker in Section 2a, 2b, 2c, 2d and 2l

respectively, have been defined thus:

Section 2

(a) "adult" means a person who has completed his eighteenth year of age;

(b) "adolescent" means a person, who has completed his fifteenth year of age but has not completed his eighteenth year;

(c) "child" means a person who has not completed his fifteenth year of age;

(d) "young person" means a person, who is either a child or an adolescent;

(l) "worker" means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal

employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a

manufacturing process, or in another kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing

process but does not include any member of the armed forces of the Union;

12. Section 23 of the Act 1948 prohibits employment of young persons on dangerous machines, whereas, its Section 27 prohibits employment of

women and children near cotton openers but permits their employment on the side of the partition where the feed-end is situated. Thus, we find

that person below the age of 18 years can also be employed. The appellant was initially employed as a labourer in the in the U.P.S.R.T.C. on

30.9.1974. It appears from the photo copy of his service book that it had been prepared on 3.8.1981, therefore, mistake in his date of birth might

have occurred therein at the time of its preparation for he had already passed his Junior High School Examination in 1971 before his entry in

service.

13. A query has been made by the Court from Shri M.M. Sahai, learned counsel for the respondent that in whose possession service book of the

appellant petitioner remained after his appointment. Learned counsel for the respondent replies that service book of the petitioner remained in the

custody of the Officers of the Corporation at all times. In these circumstances, there was no occasion for the appellant to bring this fact to the

notice of the respondent that interpolation had been made in his date of birth by changing the year in his date of birth as 1958 in place of 1952.

14. Moreover, we find from the office order dated 2.2.2002 of U.P.S.R.T.C. containing seniority list of the employee of the corporation wherein

the appellant has been shown at serial No. 292. His date of birth is recorded as 25.2.1958 and date of C appointment in the corporation as

29.7.1983. Therefore, he was an adult at that time.

15. It is clear from the aforesaid order of the corporation dated 2.2.2002 containing the seniority list that till 2002, the ""date of birth of the

appellant in the record of the corporation was shown as 25.2.1958 and it has been changed after making interpolation thereafter. Considering the

facts that the service record of the petitioner was with the corporation and he had e no opportunity to look into the same, it can be safely said that

the change in date of birth of the appellant, if any, was made at the corporation level itself. In view of above facts and circumstances, appeal is

allowed. Impugned order dated 23.7.2014 is quashed and the matter is remanded back for a fresh decision by the appropriate Court within a

period of three months from the date of production of a certified copy of the present order.