

(1999) 11 BOM CK 0043

Bombay High Court

Case No: Writ Petition No. 1515 of 1989

M/s. Universal Cine Trades Pvt.
Ltd.

APPELLANT

Vs

Smt. Susheela Yeshwant Prabhu
and others

RESPONDENT

Date of Decision: Nov. 25, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 254
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28, 30

Citation: (2000) 1 ALLMR 506 : (2000) 2 BomCR 606 : (2000) 4 MhLj 123

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: Shekhar Naphade and H.S. Dandekar, for the Appellant; Ms. N.D. Buch, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.J. Kochar, J.

The petitioners-employer has challenged the judgment and order dated 9-1-1989 given by the Industrial Court, Maharashtra, Bombay in Complaint (U.L.P) No. 886 of 1985. The concerned employee who is no more alive, having expired on 1-3-1987, will be referred hereinafter by me as the "concerned employee", had filed a complaint of Unfair Labour Practice u/s 28 r/w 30 and Items 4(f) of Schedule II and Items 7 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act 1971 (for short M.R.T.U. & P.U.L.P. Act). His grievance in the complaint was that he was retired prematurely as his correct birth date was 24-9-1929 and therefore he was entitled to continue upto 24-9-1989. He therefore complained that his superannuation on the basis of the alleged birth date

of 1924 was an unfair labour practice, within the meaning of Item 9 of Schedule IV of the Act. The only grievance made by him is his premature superannuation on and from 11-12-1985 though the employee had averred the two other items of Unfair Labour Practice. The Industrial Court has accepted the contentions of the employee on the basis of the Certificate issued by the Government of Goa, Daman and Diu on 8-11-1985 to the effect that his date of birth was 24-9-1929. On the basis of the said certificate the Industrial Court has allowed the complaint of the said employee.

2. Aggrieved by the said order of the Industrial Court the petitioners-employer has filed the present petition under Articles 226, 227 and 254 of the Constitution of India. Shri Hapahde, the learned Counsel for the petitioners employer has submitted that the learned Industrial Court has totally ignored the material evidence to show that the correct birth date of the concerned employee was 1924. He submitted that the Industrial Court has not considered and has not appreciated that in the Identity Card issued by the E.S.I. Act Corporation under regulations framed under the E.S.I. Act the year of birth was stated as "24-C". It was also submitted by the learned Counsel that in the Identity Card issued by the Company to the employee the year of birth recorded was 1924. This Identity Card issued by the company was with the employee for a period of 30 years and at no point of time he made any grievance or complaint that the said recording of 1924 as the year of birth was wrong. The learned Counsel further questioned the legality of the decision of the Industrial Court for its reliance on the certificate issued by the Government of Goa as it had no evidentiary value. According to the learned Counsel, the said certificate was issued after the dispute arose and the certificate indicates the date of registration for the date as 8-11-1985. This record has no much value as it appears that the employee himself had got it recorded as the birth dated 24-9-1929 and 8-11-1985. In the circumstances the learned Counsel has challenged the findings of the Industrial Court.

3. As against the aforesaid submissions of the learned Counsel for the petitioners-employer Ms. Buch the learned Advocate for the respondent employee submitted that the figure "24-C" in the Identity Card does not convey the year 1924. She heavily relied the certificate of birth issued by the Government of Goa. She further submitted that if the birth date is to be taken as 1924 the employee should have been retired in the year 1984 and since he was continued upto 11-12-1985 it could not be said that the birth date which is found in the records of the company was correct. She further argued that the employee was illiterate and the date which appear in the E.S.I. record was not given by him but was recorded by the Clerk of the company.

4. I am not able to accept the contention of the learned advocate for the employee for more or one reasons. The E.S.I. scheme was brought into force in the year 1954 and the employees on the establishments which were covered by the E.S.I. Act, were required to be issued Identity Cards under the regulations framed under the Act.

Pursuant to the said regulations every insured person was issued an Identity Card with the required details. In the Identity Card of the employee in the column year/birth is stated is "24-C which certainly means 1924. The learned advocate for the employee merely said that it meant nothing. I am not able to agree with the learned advocate that in the column of year/birth the-year written is "24-C" means nothing. It does mean the year of birth i.e. 1924 only. This Identity Card was with the employee for a period of more than 20 years and at no point of time he made any grievance that the year was wrongly recorded. Even in his oral evidence he has admitted that the year of birth recorded in the Identity Card is 1924, and he did not say that it was wrongly recorded. The Industrial Court has not considered this very important piece of evidence, that is, the Identity Card issued by the E.S.I.C. Authority in accordance with the regulations. The learned member of the Industrial Court did not appreciate the fact that the certificate issued by the Government of Goa lost its evidentiary value as it was obtained by the employee after the dispute arose. He got the desired birth date recorded on 8-11-1985 and therefore, it does not reflect the correct birth date of the employee. We therefore have to go by the birth date recorded in the natural course of business as 1924 in the E.S.I. Corporation's Identity Card.

4-A. In the circumstances the judgment and order of the Industrial Court suffers from the infirmity as it has not considered the aforesaid material evidence and the same deserves to be quashed and set aside. I therefore hold and declare that the birth date of the employee was 1924 and he was rightly superannuated after the age of 60 years. Merely because he was continued for some months after the age of 60 years it does not give him any right to say that his correct birth date was not 1924 but it was something else. In the circumstances I quash and set aside the judgment and order dated 9-1-1989 passed by the Industrial Court. Rules is made absolute. No order as to costs.

5. Certified copy is expedited.

6. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.

7. Petition allowed.