HIGH COURT OF MADHYA PRADESH: BENCH:INDORE
(SINGLE BENCH: HON.MR.JUSTICE PRAKASH SHRIVASTAVA)

WRIT PETITION No.7605/2016

Roca Bathroom Products Ltd -- Petitioner

Vs.

Jay Naresh -- Respondent

For petitioner: Shri Prateek Patwardhan, learned counsel.

For respondent: Shri Sudeep Bhargava, learned counsel.

Whether approved for reporting:-

O R D E R
(Passed on 10/12/2018)

[1] By this writ petition under Article 227 of the Constitution, employer has challenged the award dated 11/8/2016 passed by the Labour Court, Dewas holding the superannuation order date 7/5/2014 illegal and void and directing the petitioner to reinstate the respondent with back wages.

[2] The short facts are that before the Labour Court on Reference u/S.10(1) of the Industrial Disputes Act, 1947, the respondent workman had submitted the statement of claim with the plea that he was appointed as labourer on 3/5/1990 and his correct date of birth is 10/7/1972, but the petitioner had retired him on 7/5/2014 treating his date of birth as

8/5/1956 which was not the correct date of birth.

[3] The petitioner had denied the claim and had taken the stand that the respondent was retired on the basis of his correct date of birth.

[4] The Labour Court had permitted both the parties to lead oral as well as the documentary evidence and after examining the same in the impugned award had found that the correct date of birth of the respondent was 10/7/1973 and the petitioner had not produced the record of the date of birth of the respondent and Labour Court has accordingly passed the award in favour of the respondent.

[5] Learned counsel for petitioner submits that the dispute was raised by the respondent after retirement and the dispute relating to the date of birth cannot be permitted to be raised at the fag end of service or after retirement. He has further submitted that in the salary slip and EPF account the date of birth as 8/5/1956 is mentioned and has also placed reliance upon Rule 14 of the Standard Standing Order (SSO).

[6] As against this, learned counsel for respondents has supported the award and has submitted that the date of birth itself was changed at the fag end of service by the petitioner and the respondent had submitted the necessary documents before the petitioner and since no decision was taken,

therefore, he had to raise the dispute at the fag end of retirement.

[7] Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the labour court has duly considered the evidence led by both the parties in detail. The case of the respondent before the labour court was that in the annual return submitted to the Provident Fund office for the year 2012-13 the date of birth of the respondent was shown to be as 8.5.1956 and he was retired on that basis, but in the returns prior to that year his date of birth was not disclosed. The petitioner had failed to produce any document before the labour court to show that at the time of entering into service the date of birth of the respondent was recorded as 8.5.1956. The petitioner did not produce the document such as provident fund form, ESI form etc. in their possession, which were prepared at the time of appointment of the respondent. No such record reflecting the date of birth of the respondent recorded at the time of entering into service was produced. Hence the labour court has rightly drawn adverse inference against the petitioner. The labour court has also examined the document Ex.D/1 to D/5 which are the pay slips of the respondent for the year 2011 to 2014, the ESI identity card Ex.D/16 and the EPF document Ex.D/17 and has noted

that the petitioner did not produce any document to show as to on what basis the respondent's date of birth was recorded in these documents. Even otherwise the documents Ex.D/1 to D/14 are for the year 2011 to 2014 prepared just only 2-3 years before the alleged retirement of the respondent on the basis of faulty date of birth.

[8] As against this, the respondent had produced the Higher Secondary School mark-sheet Ex.P/5 and the transfer certificate Ex.P/6 reflecting his date of birth as 10.7.1972 and no document in rebuttal was produced, therefore, the labour court has rightly relied upon it. The Labour Court has also duly considered the Rule 14-A of M.P. Industrial Employment (Standing Order) Rules, 1963 and has determined the issue having regard to the priority provided therein.

[9] Though it is the settled position in law that the date of birth of an employee cannot be corrected at the fag end of service, but the present case stands on different footing because it is a case where the respondent has established the plea that incorrect date of birth was recorded subsequently and the petitioner had failed to produce the record in respect of the date of birth originally recorded in the service record. Hence the case of the respondent that incorrect date of birth was subsequently recorded which the respondent came to

know just before the retirement, has been established.

[10] Hence, I am of the opinion that the view which has been taken by the labour court does not suffer from any patent illegality.

[11] Even otherwise this being a petition under Article 227 of the Constitution, scope of interference is limited. The Supreme Court in the matter of **Jai Singh and others Vs. Municipal Corporation of Delhi and Another** reported in **2010(9) SCC 385** while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to correct all errors of judgment of a court, or tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

[12] Thus, no merit is found in the present writ petition, which is accordingly dismissed.

(Prakash Shrivastava)
JUDGE

trilok/-