Supreme Court of India
Ishwarlal Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd.& ... on 16 April, 1947
Author: V Gowda
Bench: Gyan Sudha Misra, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4558 OF 2014 (Arising out of SLP (C) No. 22798 OF 2013)

ISWARLAL MOHANLAL THAKKAR ……APPELLANT

Versus

PASCHIM GUJARAT VIJ COMPANY LTD. & ANR. ….RESPONDENTS

J U D G M E N T

V.Gopala Gowda, J.

Leave granted.

2. This appeal is filed by the appellant against the final judgment and order dated 19.04.2011, passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 4168 of 2002, whereby the High Court allowed the petition filed by the respondent under Articles 226 and 227 of the Constitution of India, praying for issuance of an appropriate writ or direction for quashing and setting aside the judgment and award dated 31.7.2001 passed by the Labour Court, Bhavnagar in Reference(LCB) No.225 of 1998.

3. Brief facts of the case are stated hereunder:

The appellant was the employee of the erstwhile Bhavnagar Electricity Company Ltd. which was taken over by the respondent-board and the appellant was appointed afresh as per the agreement in 1978. The appellant gave an application in the year 1987 to change his birth date from 27.6.1937 to 27.6.1940 but he was orally informed of the rejection of his request. The Executive Engineer of the respondent-board addressed a letter to the appellant directing him to produce a school leaving

certificate or Municipal Birth certificate as proof and stated that in the absence of production of the required documents, the date of birth recorded in the service book shall be final. The appellant's elder brother filed a criminal application no.227 of 1987 wherein it was prayed that the Registrar of Birth and Date Records, Bhavnagar be directed to enter the date of birth of the appellant as 27.6.1940 on its record and a birth certificate be issued. The Court of the JMFC vide order dated 22.05.1987 directed the Bhavnagar Municipal Corporation(BMC) to issue a birth certificate to the appellant. Pursuant to this order a birth certificate was issued by the BMC, the Xerox copy of which is marked as Ex.52, wherein his date of birth was shown as 27.6.1940. The appellant forwarded the birth certificate issued by the BMC to the respondent on 25.5.1987 and sent a reminder on 11.6.1987 to make corrections in the service record with regard to his date of birth. He was informed by the Executive Engineer of the respondent-board that he has to produce his original school leaving certificate or SSC pass certificate in order to effect corrections in the service records. The Electricity Board vide its circular dated 28.5.1989 informed all the employees that for the purpose of deciding date of birth and making corrections for the same, only School Leaving Certificate of SSC or HSC may be taken into account.

4. As his date of birth was not corrected, the appellant filed a civil suit in the year 1997 for declaration regarding his date of birth and prayed for interim relief, but the same was rejected. He then filed a civil misc. appeal No.124 of 1997 before the District Court, Bhavnagar, against the order of the civil court, but this also came to be rejected. The respondent-board, on 27.6.1997, pursuant to the date of birth in its records, terminated the services of the appellant and the appellant raised an industrial dispute before the Conciliation Officer which was referred by the State Government for adjudication to Labour Court, Bhavnagar vide reference(LCB) no.225 of 1998. The Labour Court has allowed the reference after conducting an enquiry and passed an Award dated 31.7.2001 holding that the termination of the services of the appellant prematurely on the basis of his incorrect date of birth was wrong and further directed the respondent to pay full salary, all admissible ancillary benefits from the date he was wrongfully and prematurely terminated from service till the date of his actual retirement and further, also ordered that a sum of Rs.1,500/- be paid as costs. The respondent filed a petition under Articles 226 and 227, being special civil application no.4168 of 2002 before the High Court of Gujarat at Ahmedabad. The same was allowed and the award passed by the Labour Court in Reference(LCB) No.225 of 1998 was set aside. Aggrieved by the same, the appellant has filed the present civil appeal urging various facts and legal contentions in support of his case.

5. Mr. P.H. Parekh, the learned senior counsel for the appellant has argued that the appellant came to know about his wrongly mentioned date of birth in his service record of the respondent in the year 1987 only. Prior to that, he had no knowledge about the incorrect recording of his date of birth and so he immediately made representation to the respondent for its correction which was not acceded and therefore, he had raised the industrial dispute and the Labour Court had recorded its finding in the Award after adjudication of the dispute and held that there was no delay on the part of the appellant in approaching his employer and the Conciliation Officer to correct his date of birth as he had approached it within reasonable time. It is contended by him that the appellant's submission with respect to his date of birth is based on documentary evidence i.e the birth certificate issued by the BMC, the Xerox copy of which is Ex.52 herein. Further, the LIC Policy, Ex.42 for which the

premium was paid by the respondent on behalf of the appellant to the Life Insurance Corporation and the same was deducted from his monthly salary, mentions his date of birth as 27.6.1940. There was an apparent mistake in his school records and it is submitted that the appellant approached the authorities for rectification of the same on the basis of the birth certificate issued by BMC and the school authorities rectified it. The learned senior counsel submitted that the birth certificate issued by the BMC is a legally binding document and that the appellant was prematurely, arbitrarily and illegally superannuated from his services, without notice, even though the respondent was aware of the appellant's real date of birth as the same was reflected in records namely : Identity Card issued by the Bhavnagar Electricity Co., the Birth Certificate issued by the BMC, the Certificate of birth date issued by the principal of the appellant's school, statement of employees and their relevant details handed over by the Bhavnagar Electricity Co. to the respondent at the time of takeover, confidential reports maintained by the respondent in its records and lastly the LIC Policy by which premium was paid. It was further contended that the High Court erred in not appreciating that the respondent, by permitting other employees to correct their date of birth by merely producing an affidavit has discriminated against the appellant by refusing to correct the date of birth even on production of an affidavit and a birth certificate issued by the BMC pursuant to an order of the JMFC court and other such documents furnished to it for correction that also formed part of the respondent's own record of its employees which proved the date of birth of the appellant to be 27.6.1940 and not 27.6.1937.

6. On the other hand, Ms. Hemantika Wahi, the learned counsel for the respondent submits that the respondent-board had taken over the erstwhile Bhavnagar Electricity Co. in the year 1978 and whatever service record was available with the erstwhile company was transferred to the respondent-board and as per the said record, birth date of the appellant was 27.6.1937. It is submitted that the appellant signed all the documents with open eyes and it was open for him to raise the issue of the alleged wrong date of birth in the year 1978 but he did not take any steps towards that till the year 1987. It was further contended that the confidential reports was signed by him every year and there also his birth date was indicated as 27.6.1937 and the service book of the appellant also reflects the same and all this evidence has estopped him from contending any birth date other than 27.6.1937. The learned counsel has raised the point that the Labour Court merely on the basis of conjectures and surmises and without assigning any detailed justification or reasons has accepted the birth certificate issued by the BMC to the appellant with the date of birth as 27.6.1940 and is thus ex-facie illegal and, therefore, the findings and reasons recorded by it is rightly set aside by the High Court in exercise of its power of judicial review.

7. We have heard the rival legal contentions urged on behalf of both the parties. The following questions would arise for our consideration:

> i. In the event that there is a dispute in the date of birth between the birth certificate issued by the competent authority and the school leaving certificate, which document will prevail?
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> ii. Whether the High Court was correct in passing an order setting aside the judgment and Award of the Labour Court?

iii. What Award?

8. We will first examine the award and judgment of the Labour Court. The Labour court while passing its award and judgment has given cogent reasons for the same. The labour court examined all the evidence on record and held that as per Ex.36 which is the certificate of birth given by the school for the brother of the appellant, Batuklal Mohanlal Thakker wherein his date of birth is written as 27/1/1937 and therefore, it is impossible that the appellant's date of birth would be 27/6/1937 as the difference would be only 5 months and so it is clear that when both the brothers joined the school, the Director/Principal had inadvertently written date of birth which revealed from Court's order and hence, the date of birth in the school record for the appellant was corrected to 27/6/1940 as per the court's order. The Labour Court further went on to observe that before the court order, as and when the applicant got the chance, he gave an application to the respondent organisation vide letter dated 18.4.1987 requesting them to correct his date of birth as per documents enclosed – the statement of the Bhavnagar Electricity Company Ltd, his Identity card and copy of the LIC policy, all of which showed his date of birth as 27.6.1940, and to record the entry in the service records. The respondent did not accept the same and the appellant then got a court order dated 22.05.1987 which directed the entry of date of birth of the appellant as 27.6.1940 to be passed in the Birth & Deaths Register but in spite of this order, the respondent did not accept such judicial/court evidence or the government documents. They neither cared to inform the appellant that they did not accept the documents nor did they give him any opportunity to defend his application and retired him arbitrarily by taking an ex-parte decision which is illegal and against the principles of natural justice. The Labour Court then went on to observe that in the case of other employees, the dates of birth were corrected on the basis of affidavits but in the case of the appellant, in spite of producing a court order and other documents, they were not accepted by the respondent and thus, this action of the respondent, retiring the applicant from service was illegal and unconstitutional and against the principles of natural justice. Thereby the reference of the appellant was accepted and the respondent was ordered to pay the appellant full salary along with all admissible ancillary benefits from the date he was retired till the date of his actual retirement as per his date of birth, and Rs.1,500/- towards costs of the matter.

9. We find the judgment and award of the labour court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the labour court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the labour court was based on sound and cogent reasoning, which has served the ends of justice.

It is relevant to mention that in the case of Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil[1], with regard to the limitations of the High Court to exercise its jurisdiction under Article

227, it was held in para 49 that-

> "The power of interference under Art.227 is to be kept to a minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court." It was also held that-
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> "High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Art.227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it." Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.
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> In the case of Harjinder Singh v. Punjab State Warehousing Corporation[2], this Court held that, "20.....In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs.87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulation."

10. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the labour court. In the case of Heinz India Pvt. Ltd. & Anr. v. State of UP & Ors.[3], this Court referred to the position held on the power of judicial review in the case of Reid v. Secretary of State for Scotland[4], wherein it is stated that :-

> "Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed.

As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own

preferred view of evidence." Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the Award of the labour court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Indian Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27.6.1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent-board prematurely terminated the services of the appellant by taking his date of birth as 27.6.1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant's elder brother was born on 27.1.1937 as per the School Leaving Certificate, and there cannot be a mere 5 months difference between the birth of his elder brother and himself. Therefore, it is apparent that the School Leaving Certificate cannot be relied upon by the respondent-board and instead, the birth certificate issued by the BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27.6.1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by the BMC on the face of all these discrepancies as the same was issued on the order of the JMFC. The High Court has wrongly held that the appellant was estopped from raising the issue of his date of birth as he had signed the records in 1978 but he raised this issue only in 1987. The reason for this is clear that the respondent came out with a circular in 1987 that those employees who wished to change their date of birth in the records may do so by furnishing the necessary birth certificate and further, they can do it before they become 50 years of age. The appellant had not attained 50 years of age at the time he raised the contention regarding mistake in his date of birth. The High Court has not applied its mind in setting aside the judgment and award of the labour court in exercise of its power of judicial review and superintendence as it is patently clear that the labour court has not committed any error of jurisdiction or passed a judgment without sufficient evidence. The impugned judgement and order of the High Court deserves to be set aside and the award and judgment of the labour court be restored.

11. In view of the aforesaid reasons, we allow the appeal, set aside the impugned judgment and order of the High Court and restore the award of the Labour Court, since the services of the appellant were prematurely superannuated taking his date of birth as 27.06.1937 instead of 27.06.1940, and therefore, he is entitled to full back wages and other consequential monetary benefits from the date of termination till the date of his correct superannuation considering his date of birth as 27.06.1940. The back wages shall be calculated on the basis of revised pay scale and the same must be paid by way of demand draft to the appellant within six weeks from the date of receipt of the copy of this order, failing which the respondent shall pay interest @ 12% per annum on the amount due, towards back wages and other consequential monetary benefits, from the date of the Award of the Labour Court till the date of payment.

.....J.

[GYAN SUDHA MISHRA] .....J.

[V. GOPALA GOWDA]

New Delhi, April 16, 2014

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[1] (2010) 8 SCC 329
[2] (2010) 3 SCC 192
[3] (2012) 5 SCC 443
[4] (1999) 1 All ER 481
