

I/203464/2022

Government of West Bengal
Labour Department, I. R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 651 / (LC-IR)

Date: 29/06/2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/104/(LC-IR)/22015(15)/132/2019 dated 12/02/2020 the Industrial Dispute between M/s. Hindustan Motors Ltd., Hindmotor, Hooghly, Pin - 712233 and its workman Sri Bibhas Biswas, 93, B.P.M.B. Sarani, P.O. - Bhadrakali, Hooghly, Pin - 712233 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 15/06/2022 on the said Industrial Dispute vide memo no. 904 - L.T. dated - 16/06/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Joint Secretary
to the Government of West Bengal

I/203464/2022

651/1(5)
No. Labr/. /(LC-IR)

Date: 29/06/2022.

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Hindustan Motors Ltd., Hindmotor, Hooghly, Pin - 712233.
2. Sri Bibhas Biswas, 93, B.P.M.B. Sarani, P.O. - Bhadrakali, Hooghly, Pin - 712233.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

651/2(2)
No. Labr/ /(LC-IR)

Date: 29/06/2022.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 904 - L.T. dated - 16/06/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.

Present - Sanjeev Kumar Sharma,
Judge, 3rd Industrial Tribunal,
Kolkata.

Case No.- 07/2020/10; u/s. 10 of the Industrial Disputes Act 1947.

AWARD

Date-15.06.2022

In the matter of an Industrial Dispute between M/s. Hindustan Motors Ltd., Hindmotor, Hooghly, Pin-712233 and its workman Sri Bibhas Biswas, 93, B.P.M.B. Sarani, P.O. – Bhadrakali, Hooghly, Pin-712233 referred to this Tribunal vide Reference order No. Labr./104/(LC-IR) / 22015(15)/132/2019 dated 12.02.2020 of the Labour Department, I. R. Branch, Govt. of W.B. for adjudicating the following issues.

ISSUES

1. Whether the retrenchment of the workman namely Sri Bibhas Biswas in the guise of premature retirement is justified?
2. To what relief, if any, is he entitled?

Upon receiving the reference notices were sent to both the parties. The workman appeared and filed his written statement/Statement of claim. The company did not turn up despite service of notice. Further notice was sent to the company to show cause as to why the case should not proceed ex-parte against it but despite receiving the show-cause notice the company did not appear as such the case proceeded ex-parte.

The case of the workman, as it appears from his statement of claim, is that he joined the service of the company on 02.11.1993 and he had submitted all the documents showing his date of birth as 18.06.1953. Though his actual date of retirement was 17.07.2011, the company dismissed him from service in the guise of retirement on 01.12.2007 by treating his year of birth as 1949 fancifully and hypothetically. He submitted twenty letters to the company during the period 1993 to 2008 along with age proof documents, but the company did not pay any heed and

Contd...

wrongfully retired him on 01.12.2007 preceded by the service of retirement notice dated 01.11.2006. He further submitted that even after 01.12.2007 he continued to work in the company up to March, 2008 as usual. When he claimed salary for the six months i.e. from December, 2007 to March, 2008 the company came to know his original date of retirement i.e. 17.07.2011 from their computerized data base and thereafter they blocked his attendance punching machine and ordered the security officer not to allow him to enter the company premises. He made several correspondences with the company for correcting his date of birth to 18.06.1953, but to no effect. He then approached the office of the Labour Commissioner, Serampore, Hooghly in the year 2011. The company did not attend the conciliation proceedings and finally the Labour Commissioner issued certificate in Form-S in terms of Section 10(1B) of the Industrial Disputes Act, 1947. He filed case in this Tribunal in the year 2013 under Section 2A(2) of the Industrial Disputes Act, 1947 which was dismissed as time barred. He challenged the order of this Tribunal before the Hon'ble High Court, but the Hon'ble High Court affirmed the order of dismissal passed by this Tribunal. He then again approached the Labour Commissioner, Serampore who re-opened the case and called the company, but the company did not turn up and thereafter the case was forwarded to Labour Department of the State which resulted in this reference.

The workman examined himself as PW-1 and brought the following documents on record:

1. Copy of identity card issued by the company as Exhibit-1;
2. Copy of PAN card as Exhibit-2;
3. Copy of Aadhar Card as Exhibit-3;
4. Copy of Madhyamik certificate as Exhibit-4;
5. Copy of School transfer certificate as Exhibit-5;
6. Copy of Bank pass book cover as Exhibit-6;
7. Copy of provident fund form as Exhibit-7;
8. Copy of Form 16AA for the A.Y. 2004-2005 as Exhibit-8;
9. Copy of Notice dated 01.11.2006 as Exhibit-9;

10. Copy of Notice dated 23.10.2007 as Exhibit-10;
11. Copies of letters dated 18.11.1993, 03.03.2005, 05.01.2006, 19.05.2006, 25.11.2006, 15.12.2006, 05.01.2007, 05.02.2007, 18.06.2007, 21.08.2007, 02.09.2007, 12.09.2007, 30.09.2007, 16.02.2008, 25.03.2008, 05.10.2008, 06.11.2008 as Exhibit-11 series;
12. Copy of order dated 12.08.2014 of this Tribunal as Exhibit-12;
13. Copy of Hon'ble Court's order as Exhibit-13;
14. Copy of letter dated 20.09.2018 to the Conciliation Officer, Serampore as Exhibit-14;
15. Copy of Medical card as Exhibit-15; &
16. Copy of Identity Card as Exhibit-16.

The case record of Case No.02/13 is also produced. It appears from the record of that case that the workman had filed application under Section 2A(2) of the I. D. Act in this Tribunal on 24.06.2013 along with a certificate in Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958. The company appeared and filed a petition on 11.11.2013 for taking up the point of maintainability of the application before proceeding further. The petition was disposed of under order dated 12.08.2014 holding that the case was not maintainable as time barred. A copy of the order has been marked as Exhibit-12. The workman preferred a writ petition being No. W.P. 30507 (W) of 2016 against the order of this Tribunal which was dismissed by the Hon'ble Court under order dated 17.05.2017.

It is therefore found that the application under Section 2A(2) filed by the workman came to be dismissed as it was filed after the expiry of the period of three years from the date of the alleged termination of service in terms of Section 2A (3) of the I. D. Act. Evidently the company had not filed any written statement in the previous case and the application under Section 2A(2) was dismissed as time barred.

The instant case has arisen out of a reference made by the Government. The case of the workman revolves around the alleged termination of his service by way of premature retirement on the basis of the erroneous recording of his date of birth.

Learned advocate for the workman, in the course of arguments, submits that at the time of joining the service of the company the workman had disclosed his

correct date of birth but the concerned officer of the company just took his signatures on blank forms and recorded his year of birth as 1949. She submits that recording of the year of birth of the workman as 1949 by the company is without any substance and on the other hand the Madhyamik certificate of the workman shows that he passed Madhyamik examination in 1970 and his date of birth has been recorded therein as 18.06.1953. She further submits that the earlier application of the workman u/s 2A(2) of the I. D. Act was rejected as time barred and not on merits as such there arises no question of *resjudicata*. She further submits that the workman is a poor person who is running from pillar to post to get his legitimate entitlements. Concluding her arguments, the learned advocate submits that the workman is entitled to get relief in this case. The learned advocate cites the decision of the Hon'ble Supreme Court in Civil Appeal No. 2858 of 2022 (**Shankar Lal Vs Hindustan Copper Ltd.**) and of the Hon'ble Gujarat High Court in **Amts Vs Ahmedabad Municipality Nokar** decided on 08.09.2004 in support of her arguments. The learned advocate also refers to the model standing orders under the Industrial Employment (Standing Orders) Central Rules 1946 and submits that the company did not follow the rules while recording the year of birth of the workman.

It appears that the conciliation officer had issued pendency certificate in Form-S on 11.02.2013 on the basis of which the workman filed application under Section 2A(2) of the I. D. Act. After the dismissal of the writ petition the workman again approached to the Labour Authorities at Serampore which ultimately led to the instant reference.

So far as the validity of reference is concerned the Tribunal cannot decide the same. In **National Engineering Industries Ltd. Vs. State of Rajasthan** reported in (2000) 1 SCC 371, the Hon'ble Supreme Court held that High Court can entertain a writ petition impugning a reference on the ground of non-existence of an actual or apprehended industrial dispute but the industrial tribunal, a creation of statute which gets jurisdiction on the basis of reference cannot go into the question of validity of reference. In **Radhey Shyam Vs. State of Haryana** reported in (1998) II LLJ 1217 P H, the full bench of the Hon'ble Punjab and Haryana High Court held that by insertion of Section 2-A by legislative fiction an individual dispute has been converted into an industrial dispute and the scope of Industrial Dispute has been widened. It does not in any way affect the power of the appropriate Government to make or not make a reference of the dispute under Section 10(1).

No doubt the subject matter of the application under Section 2A(2) and the instant reference in spirit is found to be the same but in the circumstances the principles of *res judicata* are not attracted in this case because in the application under Section 2A(2) of the I. D. Act the company did not file any written statement and no issues were framed for adjudication and the same was dismissed as not maintainable holding the same to be time barred. Thus, the application, in fact, was not heard and decided on merits.

It is well settled that the matter or issue which is directly and substantially between the same parties has been heard and finally decided in a previous suit, will be considered as hit by *resjudicata*. Since the application u/s 10 (1B)(d) filed by the workman against the Company was not heard and decided on merits and the same was dismissed as time barred I find no impediment in answering the issues referred in the instant reference.

Now, gist of the case of the workman is that his date of birth is 18.06.1953 but the company wrongfully retired him on 01.12.2007 treating his year of birth as 1949 and despite several representations the company did not correct his date of birth in their records. It is found from the evidence of the workman that he joined the service of the company as temporary worker in 1983 and he subsequently became permanent worker. He deposed that he had stated his date of birth to the company at the time of joining but the company management took his signatures on papers telling that they would put correct date of birth in the Form, but they recorded his year of birth as 1949. His further evidence is that he made several representations to the company for correcting his date of birth, but the company did not do so. Exhibit-4 is the school final examination certificate of the workman which shows that the workman appeared in the examination as private candidate in 1970 and his date of birth is recorded as 18.06.1953. Exhibit-5 is the transfer certificate of the workman issued by Durgapur Pallymangal Vidyamandir, Howrah which records his date of birth as 05.05.1953. Exhibits-11 series are the letters written by the workman to the company management at different times praying for correcting his date of birth. The prayers submitted by the workman for correcting his date of birth after receiving the retirement notice (Exhibit-9) on 01.11.2006 may not be given much credence, but Exhibits-11 & 11/1 dated 11.11.1993 and 03.03.2005 respectively show that the workman had sought rectification of his date of birth from much before receiving the termination notice. It is, therefore, not a case where the workman

raised the issue of his date of birth at the fag end of his service after receiving the termination notice. We find from Exhibit-11/7 that in their reply dated 08.01.2007 to the workman's letter dated 15.12.2006 the company stated that he had mentioned his year of birth as 1949 at the time of joining. Exhibit-12 is the copy of order No.17 dated 12.08.2014 of this Tribunal in Case No.02/2013 u/S. 2A(2). It appears from the copy of the order that the workman joined service of the company in 1969, but in this case the workman pleaded that he joined the service of the company on 02.11.1993. In his evidence also he first stated that he joined the company in the year 1993 but then he stated that he joined the company in 1983 as a temporary worker. The workman himself produced the copy of order of this tribunal (Exhibit-12) but he did not give any explanation about his date of joining in 1969 as found in Exhibit-12. Exhibit-16 is the identity card of the workman dated 04.04.1983 which shows that the workman was working as budli / temporary worker at that time. Exhibit-15 is the medical card of the company issued in the name of the workman on 25.08.1995 where his age is recorded as 45 years. We, therefore, find that the workman pleaded that he joined service of the company on 02.11.1993, but it is found from exhibit-11/14 that his service in the company was in fact made permanent in 1993. Exhibit-16 shows ESI No. of the workman as 7106523, but the workman in his evidence stated that he did not have ESI card as he was not covered under the ESI Act. The production of the ESI card would have established the date of joining of the workman. It therefore appears that the workman consciously avoided to disclose his actual date of joining in service of the company and pleaded that he joined service on 02.11.1993 which is actually the date when his service in the company was made permanent. It is also found from the record that the workman remained silent as to his date of birth for many years till his service was made permanent in the company. The school transfer certificate (Exhibit-5) and the Madhyamik certificate (Exhibit-4) record different dates of birth of the workman. The school transfer certificate was obtained on 06.01.2011 i.e. after the date of his retirement. The Madhyamik certificate bears the date of preparation as 07.11.1973. Therefore, the workman obviously got the certificate after 07.11.1973. When the workman joined service in 1969 there was no question of submission of the Madhyamik certificate by him before the company. If the date of birth claimed by the workman i.e. 18.06.1953 is taken to be correct, the workman was only sixteen years of age at the time of his joining in 1969. There is nothing on record that the

workman joined the service of the company as an adolescent worker in compliance to the mandatory requirements under chapter VII of the Factories Act, 1948 relating to the employment of young persons. The decision in the case of **Shankar Lal**, referred to by the learned advocate for the workman, is not applicable in this case because in that case the date of birth of the workman in the service record of the company was recorded as 21.09.1949 which was changed by the company to 21.09.1945 without any justification. In **Amts** case, referred to by the workman, the workman had proved his school leaving certificate and it was found that if the date of birth recorded in the service book was believed then it had to be believed that the workman was admitted in school at the age of 17 years which was not possible. Thus, this decision is also not applicable in this case.

In **Pratul Kr. Mukherjee Vs Steel Authority of India** reported in (1996) II LLJ 869 Cal the Hon'ble Calcutta High Court held, "The normal rule is that the date of birth recorded in the Service Book should be accepted as correct. A person seeking alteration of his date of birth in the Service Book must produce irrefutable and conclusive proof before the employer so as to enable it to accede to the request of the employee for alteration of date of birth. Even the entries in the School Register is not a conclusive document in as much as in a Court of Law the basis for such entry has to be established."

In **Saroj Kumar Bhattacharya Vs Bengal Immunity Ltd.**, reported in 1994 Vol. I CLJ 79 the Division Bench of the Hon'ble Calcutta High Court held that there was a distinction between a student who had passed as a regular student and as private student. It was observed by the Hon'ble Division Bench, "In the instant case the School Final Certificate was not a contemporaneous document and there is a distinction between a student who had passed as regular student and as a private student. In case of regular student, the age/date of birth is registered with the register of the School where the School Authority insist upon production of some records or documents or statements made from the guardian and the same is also considered in view of the appearance of the boy by the trained and experienced teachers and in such a case there is very little scope for suppressing the real age or to manipulate the age before the teachers who are dealing with thousands of similar students and in that case age recorded in the School Register is reflected in the Matriculation or School Final Certificate. That age is accepted because of certain safeguards therein. But in case of a private student the Board accepts the age declared by the Candidate

in the application form, without any verification and in case of a private Candidate any age may be declared suppressing real age and there is no machinery or there is no check and balance for verifying the actual age.”

In this case, we find that the workman procured all the documents regarding his date of birth after he joined the service of the company. No document as to the date of birth prior to the joining of the company has been produced by the workman. On the contrary, the workman did not disclose the date of joining of service of the company and all along tried to make out a case that he joined the service of the company on 02.11.1993. A person who seeks justice must come with clean hands, but in this case we find that the workman attempted to suppress the material fact from this Tribunal.

According to the model standing orders under Bengal Industrial Employment (Standing Orders) Rules 1946 and also the Central rules, referred to by the learned advocate, every workman shall indicate his exact date of birth to the employer at the time of entering service and the employer may require the workman to supply documents in support of his age. In this case, the year of birth of the workman was obviously recorded on the basis of the declaration made by the workman, as the workman did not produce any document as to the date of birth at the time of his joining service in 1969. Moreover, had the workman declared his date of birth as 18.06.1953 at the time of joining, the company would not have allowed him to join.

Where the workman made a declaration of his age at the time of joining service in order to procure the job, he cannot afterwards be permitted to change his date of birth specially when such change would have the effect of rendering the joining of his service in contravention of the law.

The testimony of the workman has no doubt remained unchallenged but it does not dispense with the duty cast upon the workman to substantiate his case in order to satisfy the conscience of the Court.

Considering the entire facts and circumstances and the materials on record and in tune with my foregoing discussions I am constrained to hold that the workman has failed to justify his claim ex-parte. In result, the claim of the workman fails.

The retirement of the workman on 01.12.2007 is found justified as the same is not retrenchment in the guise of premature retirement and consequently the workman is not entitled to get any relief in this case.

The issues are thus disposed of.

Hence it is,

Ordered

That the retirement of the workman on his reaching the age of superannuation as per his age in his service record is justified and he is not entitled to any relief in this case.

Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

This is my award.

Dictated and corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge

3rd Industrial Tribunal

Kolkata

15.06.2022