MADHYA PRADESH HIGH COURT

Kymore Cement Mazdoor Congress Kymore

Vs.

Industrial Court

Misc. Petn. No. 486 of 1964
(P.V. Dixit, C.J. and K.L. Pandey, J.)

22.10.1965

JUDGMENT

Dixit, C.J.

1. This is an application under Articles 226 and 227 of the Constitution by the Kymore Cement Mazdoor Congress, Kymore, for the issue of a writ of certiorari for quashing a decision dated 24 August 1964 of the Industrial Court setting aside an order of the Labor Court, Jabalpur, made in circumstances to be presently stated, directing the Associated Cement Companies Ltd., Kymore (hereinafter referred to as the Company) to reinstate in its service one Hafiz Mohammad, who was employed as a blacksmith in the workshop department and awarding him Rs. 1,000 as compensation.

2. On 31 July 1961 the Company intimated to Hafiz Mohammad that according to the Company's records he would be attaining the age of 60 years on 1 January 1962 and according to the sixty years' rule of retirement, in force in the company enforceable on him he would be retired from that date. Some time after receiving this intimation, Hafiz Mohammad informed the Company that according to an entry in the Register of Births maintained by the authorities in Basonda village of the Banda district, Uttar Pradesh, he was born on 11 February 1906 and accordingly his age should be corrected in the Company's records-and he should not be retired from 1 January 1962. This prayer of Hafiz Mohammad was-rejected by the Company, and accordingly he was retired on 1 January 1962. Thereafter, the petitioner-Congress approached the Company in the manner prescribed in Section 31(3) of the Industrial Relations Act, 1960, for the correction of the Company's record in regard to Hafiz Mohammad's age and for his retention in the service of the Company. As the approach to the employer did not yield any result the petitioner moved the Labor Court in the matter.

3. The learned Judge of the Labor Court held that the Company was not justified in the retiring of Hafiz Mohammad on the basis of his age determined after medical examination for the purpose of the Employees Provident Fund Scheme, that there was no evidence before him to show that for the purpose of the scheme under the Employees-Provident Fund Scheme, 1952, the medical examination of Hafiz Mohammad was pointedly directed towards ascertaining his age. The Labor Court further held that the certified-copy of the entry from the Birth Register maintained for the village Basonda, produced by Hafiz Mohammad, indicated that he was born on 11 February 1906; that under Section 79 of the Evidence Act it must be presumed that the certified copy was genuine; and that if the Company doubted the genuineness of the certified copy or of the competence of the authority which issued it then the Company could have proved by summoning the original Birth Register that the copy was not correct. In this view the Labor Judge found that Hafiz Mohammad was born on 11 February 1906, and that consequently his retirement from service from 1 January 1962 was invalid. The Labor Court also thought that the circumstances of the case required that Hafiz Mohammad should be paid Rs. 1,000 by way of compensation.

4. The Company then preferred a revision petition under Section 66 of the Act to the Industrial Court against the decision of the Labor Court, Jabalpur. The Industrial Court held that when the Employees Provident Fund Scheme was made applicable to the Company a notice was given by the Company to all their employees asking them to furnish their dates of birth and identification marks for the purpose of facilitating the completion of the declaration and nomination forms for the purpose of the scheme; that according to that notice, if an employee was not able to furnish his date of birth or an identification mark, he was to be examined by the Medical Officer for the determination of such identification marks, etc. The Industrial Court also held that Hafiz Mohammad could not furnish his date of birth for the purpose of the Employees Provident Fund Scheme; that he was therefore medically examined and at that time his age was determined to be 51 years; that Hafiz Mohammad accepted the determination of this e without demur by signing a document twice, one on 17 October 1953 and a second time on 4 August 1955; that a wage slip was also issued to him on the basis of the age determined at the medical examination; and that according to the age so determined he had attained the age of 60 years on 1 January 1962. "The Industrial Court further held that the age of Hafiz Mohammad determined by the Company for purpose of the Employees Provident Fund Scheme should have been accepted by the

Labor Court and no value could be attached to the certified copy of the entry from the Birth Register which Hafiz Mohammad produced as it only mentioned that on 11 February a son was born to one Raj Mohammad, resident of Banda, Mohalla Jagannath. "The learned Judge of the Industrial Court observed that there was nothing whatsoever to indicate that this entry related to the birth of Hafiz Mohammad. Accordingly, the Industrial Court set aside the order of the Labor Court with regard to the reinstatement of Hafiz Mohammad and of the award of compensation to him.

5. Before us, the legality of the decision of the Industrial Court was assailed solely on the ground that under Section 66 of the Act the Industrial Court had no power to disturb the finding of the fact reached by the Labour Court with regard to the age and date of birth of Hafiz Mohammad on an appreciation of evidence adduced by the parties before the Labor Court. In our judgment, this contention must be accepted. Section 66(1) of the Act, in so far as it is material here is as follows :

> "The Industrial Court may, on the application by any party to a case which has been finally decided by a Labor Court other than a case decided under paragraph (D) of Sub-Section (1) of Section 61, call for and examine the record of such case and may pass order in reference thereto as it thinks fit: Provided that the Industrial Court shall not vary or reverse any order of the Labor Court under this Section unless -
> (i) it is satisfied that Labor Court has -
> (a) exercised jurisdiction not vested in it by law; or
> (b) failed to exercise a jurisdiction so vested: or
> (c) acted in exercise of its jurisdiction illegally or with material irregularity;
> * * * * *

It will be seen that the revisional powers of the Industrial Court under Section 66 are restricted in the same manner as the High Court's revisional powers under Section 115 of Civil Procedure Code. The proviso to Section 66(1) lays down in so many words that the Industrial Court shall not vary or reverse any orders of the Labor Court unless it is satisfied that the Labor Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. There is no difference in the language of the restrictions put by Section 115 of the Civil Procedure Code and those embodied in the proviso to Section 66(1) of the Act. Now, the meaning and scope of

Section 115 of the Civil Procedure Code has been authoritatively explained by the Privy Council and the Supreme Court in many cases: Sec *Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras,*[1] *Joy Chand v. Kamalaksha* [2] *Keshardeo v. Radhakissen,* [3] *Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee,*[4] *Abbasbhai v. Gulamnabi,* [5] and the recent decision of the Supreme Court in *Pandurang Dhondi v. Maruti Hari,* [6] These decisions must also govern the construction of Section 66(1) of the Act as both in Section 155 of the Civil Procedure Code and in the proviso to Section 66(1) the limits of revisional jurisdiction have been defined in identical terms. The decisions referred to above and many other decisions of the Supreme Court firmly lay down that the High Court can interfere in revision under Section 115 of the Civil Procedure Code only when (1) there is non-exercise of jurisdiction or (2) there is illegal assumption of jurisdiction or (3) a subordinate Court in exercising jurisdiction has acted illegally or with material irregularity, that is to say, where the Court, though possessed of jurisdiction commits an error or irregularity in procedure or violates or disregards any rule of law or procedure in the manner of arriving at a decision. In the very recent case of the Supreme Court, 1965 MP LJ 852 : AIR 1966 Supreme Court 153 (supra), it has been laid down that while exercising its jurisdiction under Section 115 it is not competent to the High Court to correct errors of fact, however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself.

6. It must be noted that under section 115 (c) the High Court interferes not because the decision in fact or in law is wrong or perverse but because it is vitiated by the manner in which it is reached. This is clear from the decision of the Privy Council in Venkatagiri Ayyangar's case, AIR 1949 PC 156 (supra). In that case, the Privy Council explained 'acted illegally' as meaning 'acted in breach of some provision of law' and 'acted with material irregularity' as 'having acted by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decisions'. This case and the later case of AIR 1949 PC 239 (supra) were referred to by the Supreme Court in AIR 1953 Supreme Court 23 (supra). In Keshardeo's case, AIR 1953 Supreme Court 23, Mahajan, J. (as he then was), who delivered the judgment of the Court, also approved the observations of Bose J. in AIR 1948 Nagpur 258 (FB) that

> "the words "illegality" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in

which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with."

7. These principles must be applied in determining the scope of interference permissible under Section 66 of the Act. Now, it is clear that the decision of the Labor Court that Hafiz Mohammad was born on 11 February 1906 on the basis of the material before it does not affect the jurisdiction of the Labor Court conferred upon it by the Industrial Relations Act, 1960. Even if the Labor Court wrongly decided that Hafiz Mohammad was born on 11 February 1906 on the basis of the entry from the Birth Register produced by him, it cannot be said that the Labor Court assumed to itself a jurisdiction which was not vested in it by law or refused to exercise a jurisdiction which was vested in it by law. Nor can it be said that the Labor Court by arriving at a wrong conclusion on the basis of the certified copy of the entry from the Birth Register acted illegally or with material irregularity in the exercise of its jurisdiction. The Industrial Court was therefore clearly in error in setting aside the decision of the Labor Court in the exercise of the powers in revision under Section 66 of the Act.

8. This is plain enough. But Sri Dabir, learned counsel appearing for the Company, argued that the Labor Court's finding with regard to Hafiz Mohammed's date of birth was not a finding of fact inasmuch as it rested solely on the entry in the Birth Register, which did not in any way connect Hafiz Mohammad with that entry. It was said that the finding of the Labor Court was a finding on a question of law. Learned counsel drew our attention to the decision of the Supreme Court in Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC) In India General Navigation and *Rly. Co. Ltd. v. Their Workme*n and submitted that according to this decision of the Supreme Court the finding of the Labour Court with regard to the late of birth of Hafiz Mohammad was patently and palpably erroneous, and that the Labour Court acted with material irregularity in reaching the conclusion that it did about the date of birth of Hafiz Mohammad, ignoring the principle laid down by the Supreme Court in the case of India General Navigation and Rly. Co. Ltd., Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC).

9. There is no merit in this contention advanced by learned counsel for the Company. It is difficult to see how the finding of the Labor Court as regards the date of birth of

Hafiz Mohammad, which is unmistakably a finding of fact, ceases to be so and becomes a finding on a question of law, merely because it was founded on the certified copy of the entry from the Birtn. Register of Basonda village showing that on 11 February 1906 a son was born to Raj Mohammad. The decision of the Supreme Court relied on by learned counsel itself shows that the finding as regards the date of birth and the age of Hafiz Mohammad is a pure finding of fact. Again, even if the finding is assumed to be a finding on a question of law, that by itself could not authorize the Industrial Court to reverse the order of the Labor Court; for, having regard to the limitation put by the proviso to Section 66(1) on the exercise of revisional powers, even errors of law cannot be corrected unless they have relation to the jurisdiction of the Labor Court to try the dispute itself.

10. In India General Navigation and Rly. Co. Ltd.'s case, Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC) (supra) an employee named Suresh Chandra Paul was retired from service from 1 January 1961 on his attaining the age of 60 years according to a declaration made by him as regards his age and date of birth at the time of joining the Provident Fund Institution. The employee raised the dispute contending that he was born on 1 November 1902 and he could not therefore, be retired from 1 January 1961. In support of this plea he relied on an extract from a school register which showed that when one S.C. Paul entered the school on 16 January 1918 his age was shown therein as 15 years 2 months and 14 days. On the dispute being referred to the Industrial Tribunal for adjudication it was held by the Tribunal that the employer, i.e., the India General Navigation and Railway Co. Ltd., was not justified in refusing to accept the age of Paul recorded in the school certificate, according to which he would reach the age of superannuation on 1 November 1962. Accordingly, the Tribunal made an award with regard to the continuation in service of Paul till 1 November 1962. The Supreme Court set aside the order of the Tribunal, taking the view that no reliance should have been placed on the extract from the school register produced by Paul, which did not establish the identity of the boy admitted into the school, with Paul the employee, and the declaration by Paul as regards his age and date of birth when he joined the Provident Fund Institution should have been given effect to. It was observed by the Supreme Court :

> "The obvious question which the Tribunal should have asked itself was, what is the evidence to show that S.C. Paul whose age is shown to have been 15 years 2 months and 14 days on the 16th January, 1918 when he was admitted in the

School, is the very person with whose case the Tribunal is dealing. In other words, the identity of the boy who was admitted in the school on that date with the workman S.C. Paul with whom we are concerned, has not been established at all. The extract produced by Chowdhry can afford no assistance whatever in establishing the identity of the boy with the present workman. If only the Tribunal had considered this obvious point, it would not have accepted the said extract in preference to the declaration made by Paul when he joined the said Provident Fund Institution."

11. On the strength of the Supreme Court's above decision it can, no doubt, be argued with considerable force that the finding of the Labor Court in the present case as regards the date of birth of Hafiz Mohammad reached on the basis of the certified copy of the entry in the Birth Register produced by him did not at all establish his identity with the son born to Raj Mohammad on 11 February 1906 and is erroneous. But none the less, the finding even if erroneous, remains an erroneous finding of fact, which has no relation to the jurisdiction of the Labour Court to try the dispute as regards Hafiz Mohammad's age. It cannot be urged that the Labor Court acted with material irregularity in determining the date of birth of Hafiz Mohammad overlooking the decision of the Supreme Court in India General Navigation and Railway Co.'s case, Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC) when that decision was not brought to the notice of the learned Judge. That apart, the decision of the Supreme Court in India General Navigation and Railway Co.'s case, Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC) with regard to the age of Paul was a decision on facts. It did not enunciate any rule or principle which should be followed by all Courts in future. That being so, it cannot be maintained that in reaching the conclusion that it did about Hafiz Mohmmad's date of birth the Labor Court disregarded any law as laid down by the Supreme Court in India General Navigation and Railway Co.'s case, Civil Appeal No. 151 of 1964 and CMP No. 2008 of 1964 (SC) and thus committed a material irregularity in reaching that decision. There are no doubt cases as for example *Surajman Prasad v. Sadanand,* [7] and *Penchelu Varadappa v. Mahadeviah,* [8] in which it has been held that where in arriving at a conclusion a subordinate Court fails to follow a decision of the Superior Court to which it is subordinate, then it commits a material irregularity in the exercise of jurisdiction. But all those decisions, are distinguishable by the fact that in those cases the subordinate Court failed to follow a decision of the Superior Court deciding a particular question of law or followed decisions of other High Courts on a question of law in preference to

the decision of the High Court to which the Court was subordinate.

12. For the foregoing reasons, our conclusion is that the finding reached by the Labour Court as regards the date of birth of Hafiz Mohmmad was a pure finding of fact, which had no relation whatsoever to the jurisdiction of the Labour Court, and consequently even if that finding was erroneous the Industrial Court had no power to reverse the order of the Labor Court in the exercise of its revisional powers under Section 66 of the Act. This petition is therefore, allowed, and the decision dated 24 August 1964 of the Industrial Court is quashed. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The security deposit shall be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. AIR 1949 PC 156
2. AIR 1949 PC 239
3. AIR 1953 SC 23
4. AIR 1964 SC 1336
5. AIR 1964 SC 1341
6. 1965 MP LJ 852: AIR 1966 SC 153
7. AIR 1932 Pat 346
8. AIR 1933 Mad 94