In the Supreme Court of Bangladesh (High Court Division)

Writ Petition No. 7146 of 2001.

Published in BLD:

- Volume: 25
- Year: 2005
- Page: 363 to 365

Decided On:

The 29th November, 2004

Result:

Rule discharged

Parties:

Md. Mozammel Haque Chowdhury. V Chairman, Labour Court and Another.

Hon'ble Judge(s):

Syed Mahmud Hossain, and Syed Refaat Ahmed, JJ

Counsels:

For the petitioner:

Mr. Md. Khurshid Alam Khan, for the petitioner.

For the Respondent:

No other respondent.

Subject Matter:

Employment of Labour (Standing Order) Act, 1965, Section—25(1)(a), Industrial Relations Ordinance, 1969, Section—34

In the instant case determination of the age of the petitioner is not a right secured or guaranteed within the meaning of section 34 of the Ordinance.

(Para—13)

Jurisdiction:

Special Original Jurisdiction

Related Acts/Rules/Orders:

Employment of Labour (Standing Order) Act, 1965, Section—25(1)(a), Industrial Relations Ordinance, 1969, Section—34

Key words:

JUDGMENT

Syed Mahmud Hossain, J: In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the judgment and order dated 1.8.2001 passed by the Chairman, Labour Court, Khulna in IRO Case No. 46 of 1998 dismissing the case as contained in Annexure-'F' should not be declared to have been made without lawful authority and to be of no legal effect.

2. The facts necessary for the disposal of the Rule are:

On 27.9.1998, the petitioner filed IRO Case No. 46 of 1998 against respondent No. 2 under section 25(1)(a) of the Employment of Labour (Standing Order) Act, 1965 and also under section 34 of the Industrial Relations Ordinance, 1969 (hereinafter referred to as the Ordinance). The case of the petitioner, in short, is that he was appointed as a seasonal Darwan under respondent No. 2. At the time of appointment, his date of birth was not so important. Subsequently, the appointing authority did not ask the petitioner about his date of birth. The concerned officer recorded the age of the petitioner on surmise, which the petitioner was not at all aware of. While a student of Class VIII of Serajganj High School, the petitioner joined the service under respondent No. 2 because of death of his father. The actual date of birth of the petitioner is 20.12.1949 and as such, he is supposed to retire on 20.12.2006. Respondent No. 2 illegally retired the petitioner on 31.7.1998.

3. Being aggrieved by the order of retirement, the petitioner sent a petition containing grievance to respondent No. 2 by registered post. Respondent No. 2, however, did not take any effective step to redress the grievance. For the reasons stated, the petitioner was constrained to file the IRO Case (Annexure-A to the Writ Petition).

4. Respondent No. 2 contested the case by filing a written statement contending, inter alia, that the petitioner joined the service as seasonal Darwan on 18.11.1966. At the time of joining, the petitioner disclosed his date of birth as 1.8.1941 and accordingly, he completed 57 years of age on 31.7.1998 and as such, he was retired on that date. Therefore, respondent No. 2 prayed for dismissal of the case with cost.

5. On 3.7.2001, the petitioner made a prayer before the Labour Court for a direction upon respondent No. 2 for submitting the following papers, namely, (I) Petitioner's application form for appointing nominee/file regarding P.F. (II) Service file/personal file of the petitioner (III) Police Verification Report. At the time of trial, the petitioner examined himself as P.W. 1 and he was cross-examined by respondent No. 2. which, however, did not examine any witness.

6. Considering facts, circumstances and evidence on record, the learned Chairman of the Labour Court, Khulna dismissed the case by judgment and order dated 1.8.2001.

7. Being aggrieved by, and dissatisfied with, the impugned judgment as contained in Annexure-F to the Writ Petition, the petitioner obtained this Rule Nisi from this Court.

8. Though notice was duly served upon the respondents, none of them appeared to contest the Rule.

9. Mr. Md. Khurshid Alam Khan, learned Advocate appearing for the petitioner, submits that the Labour Court came to an erroneous finding that it did not have the jurisdiction to determine the age of the petitioner and as such, the impugned judgment is liable to be set aside. The learned Advocate further submits that the petitioner filed an application before the Labour Court for calling his personal record to determine his actual date of birth but it was not allowed and as such, the Labour Court could not ascertain his actual date of birth. He also submits that the scope of section 34 of Ordinance, is very wide and that the Labour Court is also competent to determine the age of the petitioner under that section.

10. Heard the learned Advocate, perused the Writ Petition, its Annexures and the L.C. record. The Labour Court came to a finding that the case of the petitioner could not come under section 25(1) (a) of The Employment of Labour (Standing Order) Act, 1965 as the petition containing grievance was sent 15 days after the date of passing of the order of retirement. In support of such finding, the Labour Court relied upon the case of Mohammad Abdul Hamid Vs. The Chairman, Second Labour Court, 29 DLR (1977) 296. The learned advocate for the petitioner, however, did not press this point at the time of hearing. The Labour Court

also came to a finding that only a worker who was in service could file an application under section 34 of the Ordinance and that the petitioner not being a labour on the date of filing of the case could not come under that section. As regards determination of age of the petitioner, the Labour Court found that it did not have the jurisdiction to entertain a case to determine what the real date of birth of the petitioner was, because it was on a question of fact for which the Labour Court relied upon the case of Bangladesh Marine Fisheries Association Vs. Government of Bangladesh and Others, 52 DLR 252.

11. The aforesaid findings arrived at by the Labour Court having been based on proper appreciation of law call for no interference by this Court.

12. We, in our own anxiety, perused the L.C record and found that before the dispute of the age of the petitioner arose, his date of birth was shown as 1.8.1941 in the Annual Confidential Report (shortly ACR) of Karu and Co. (Bangladesh) Limited, Darshana as evident from the ACR dated 31.12.1986. Similar ACRs were also prepared in 1988, 1991, 1992 and 1993 and from those ACRs, it appears that the date of birth of the petitioner is 1.8.1941. The ACRs were prepared before the dispute arose between the parties. We, however, find that the Labour Court came to a correct finding that it was not the function of that Court to determine the age of a labour which was a disputed question of fact. We also find that such a dispute can be resolved in a forum other than the Labour Court. In addition, in the case of Chairman, Power Development Board and Others Vs. Chairman, Labour Court, Khulna Division and Another, 1981 BLD (AD) 59, the Appellate Division held:

“Section 34 is not meant for establishment of any right, but provides for enforcement of any existing right guaranteed or secured by law, award or settlement.”

13. In view of the pronouncement of Appellate Division referred to above, we find that in the instant case determination of the age of the petitioner is not a right secured or guaranteed within the meaning of section 34 of the Ordinance.

14. For the reasons stated, we do not find any substance in this Rule.

15. Accordingly, the Rule Nisi is discharged without any order as to costs.

Send down the L.C. record with a copy of the judgment.