

I/126371/2021

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

No. Labr/. /700/(LC-IR)/22015(16)/12/2021

Date : 17.03.2021

ORDER

WHEREAS an industrial dispute existed between M/s Aditya Birla Nuvo Ltd., Unit : Jayashree Textiles, Rishra, P.O. Pravashnagar, P.S. Serampore, Dist. Hooghly, Pin - 712249 and Sri Deb Chandra Jha, C/o Sri Rajendra Shaw, 51/19, N.S. Road, Sushila Bhawan, P.O. & P.S. Rishra, Dist. Hooghly regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filled an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14of 1947) to the Judge, Third Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said Third Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947).

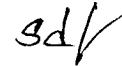
AND WHEREAS the said Judge Third Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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,



Deputy Secretary
to the Government of West Bengal

I/126371/2021

: 2 :

No. Labr/ ^{708/1(5)} / (LC-IR)Date : ¹⁷⁻⁰³⁻ 2021

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

1. M/s Aditya Birla Nuvo Ltd., Unit : Jayashree Textiles, Rishra, P.O. Pravashnagar, P.S. Serampore, Dist. Hooghly, Pin - 712249.
2. Sri Deb Chandra Jha, C/o Sri Rajendra Shaw, 51/19, N.S. Road, Sushila Bhawan, P.O. & P.S. Rishra, Dist. Hooghly.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

Date : ¹⁷⁻⁰³⁻ 2021No. Labr/ ^{708/2(2)} / (LC-IR)

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, Kolkata, with respect to his Memo No. 348 - L.T. dated 05.03.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

**In the Third Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata**

Present: Shri Sanjeev Kumar Sharma, Judge,
Third Industrial Tribunal, Kolkata.

CASE NO. 02/2016

Under Section 10(1B) (d) of the Industrial Disputes Act, 1947

Sri Deb Chandra Jha ... Applicant

-Versus-

M/s. Aditya Birla Nuvo Ltd. ... OP/Company

A W A R D

Dated :- 01-03-2021

This is an application under Section 10(1B) (d) of the Industrial Disputes Act, 1947 filed by the applicant Sri Deb Chandra Jha. The case of the applicant is that he was a permanent employee, having Token No.2964, P.F. No.7894, P.F. Code No. WB/151/1886 and ESI No.4107173151, of Aditya Birla Ltd. (Unit: Jayshree Textiles, Rishra) hereinafter referred to as the OP/Company. The applicant alleged that his service was terminated on 01.01.2013 on the plea of retirement policy of the company though his actual date of retirement was 01.01.2015. Being aggrieved by the company's decision of his premature retirement the applicant by his letter dated 02.12.2014 stated that his original date of birth was 15.07.1956 which was recorded in ESI Card and P.F. record. The applicant alleged that the company forcefully retired him treating his date of birth as 31.12.1954 which resulted in loss of earning for two years to him. He requested the company to furnish his PF declaration form for ascertaining his date of birth, but the company did not pay any heed. On 15.12.2014 the applicant submitted another representation to the company reiterating that his date of birth was 15.07.1956

Contd.....

as recorded in the Registers of ESI and PF records. The PF Authority could also not process his pension benefits due to wrong declaration given by the company. The applicant also requested the company to pay the unpaid salary, bonus, leave encashment for the period 01.01.2013 to 01.01.2015.

Getting no redressal from the company the applicant referred the matter to the Deputy Labour Commissioner, Serampore by letter dated 06.04.2015. The EPF Authority sent a letter dated 11.02.2014 to the company to furnish certain documents and the company by their letter dated 20.01.2014 to the EPF Authority stated that due to clerical mistake the date of birth in EPS was entered as 1956, but the date of birth of the applicant was 31.12.1954.

Despite sending reminders for reconsideration, the company did not pay any heed. The conciliation proceeding was drawn up by Area Conciliation Officer, but it did not yield any fruitful result. The applicant prayed for issuance of conciliation certificate, but the same was not issued. The applicant further pleaded that there was delay in filing the application before this Tribunal as he was suffering from various problems like physical illness and economic crisis. The applicant prayed for an Award that the termination of his service w.e.f. 01.01.2013 in the garb of retirement is unlawful and unjustified with direction upon the company to release the service benefits including back wages, bonus, leave payment, provident fund and gratuity as if the applicant was not retired till 31.12.2014.

The company upon appearance submitted written statement. According to the company after the introduction of Section 2A(2) and 2A(3) of the Industrial Disputes Act, 1947 the application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 as amended in West Bengal is not maintainable. It also pleaded that the application was barred by limitation and also by the principles of estoppel and acquiescence because the applicant was served with notice two months prior to his retirement. The company further asserted that the applicant has accepted his final dues after his retirement without any exception and having accepted his retirement from service on 01.01.2013 has

raised the dispute in a colorful manner. It further asserted that the conciliation proceedings were instituted by the applicant suppressing the material facts. The company claimed that the applicant joined the service of the company on 01.07.1981 and retired on 01.01.2013 on attaining superannuation, the age of retirement being 58 years. Despite service of notice of retirement two months prior to the date of retirement the applicant did not raise any dispute. The company denied that the original date of birth of the applicant is 15.07.1956 as alleged. The applicant submitted declaration form to the company's provident fund institution stating his date of birth as 31.12.1954 and the same date of birth is mentioned in his ESI Identity Certificate. The company denied the allegation of forceful retirement of the applicant on 01.01.2013. According to the company, the applicant was validly retired and he is not entitled to any relief.

The following issues were framed in this case :

I S S U E S

1. Whether the application of the applicant / applicant filed under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable in its present form and prayer in law ?
2. Whether the termination of service of the applicant / applicant by the management of the OP/Company in the garb of retirement w.e.f. 01.01.2013 is justified ?
3. Whether the present application of the applicant / applicant is barred by law of limitation ?
4. To what other relief / reliefs, if any, the applicant / applicant is entitled?

In support of his claim, the applicant examined himself as PW-1 and brought the following documents on record :-

- (i) Copy of identity card issued by ESIC as Exhibit-1;
- (ii) Copy of nominee form as Exhibit-2;

- (iii) Copy of pay slip for December, 2012 as Exhibit-3;
- (iv) Copy of notice of retirement as Exhibit-4;
- (v) Copy of letter of applicant to the company as Exhibit-5;
- (vi) Copy of letter of applicant to the company as Exhibit-6;
- (vii) Copy of applicant's letter to the Deputy Labour Commissioner, Serampore as Exhibit-7;
- (viii) Copy of certificate issued to the applicant by the company as Exhibit-8;
- (ix) Copy of letter of EPFO as Exhibit-9;
- (x) Copy of letter of EPFO to the company as Exhibit-10;
- (xi) Copy of company's letter to APFC (WB) as Exhibit-11;
- (xii) Copy of applicant's letter to APFC (WB) with enclosure as Exhibit-13;
- (xiii) Copy of letter of AITUC to Additional Central Provident Fund Commissioner as Exhibit-14; &
- (xiv) Copy of Form P-4 as Exhibit-15.

The OP/Company examined Mr. Rakesh Pandey, its Administrative Manager as OPW-1 and Mr. Sandip Bhar, Manager of ESI Corporation, Rishra Branch as OPW-2. The OP/Company brought on record the copy of –

- (i) Jayshree PF Institution Members' declaration as Exhibit-A;
- (ii) Copy of Form-I filled up by the applicant under payment of gratuity Act, 1972 as Exhibit-B;
- (iii) Copy of letter to the applicant as Exhibit-C;
- (iv) Copy of reply of the company to the Assistant Labour Commissioner as Exhibit-D;
- (v) Copies of P.F. statements as Exhibit-E;
- (vi) Copy of temporary identity certificate of ESI Corporation in the name of the applicant as Exhibit-F;
- (vii) Copy of certificate of Rishra Branch of ESI Corporation as Exhibit-G; &

- (viii) Original declaration of the applicant in the Register of ESI Corporation as Exhibit-H.

Decision with reasons

Issue Nos. 1 and 3

These issues were not pressed during arguments. This is an application u/s 10 (1B) (d) of the Industrial Dispute Act as amended in W.B. The applicant raised a dispute as to the date of his birth and superannuation. As no settlement could be arrived during the conciliation the applicant come up with this application. On 03.09.2015 the applicant applied for certificate to the concerned conciliation officer but no certificate was given to him. Premature retirement as alleged certainly amounts to dismissal or termination of service as such there appears no impediment is filing this case. Of course, the facts alleged and denied are subject to proof by evidence. So far, the question of limitation is concerned, we find that the term may has been used in clause (c) of section 10 (1B) of the I. D. Act. The Act is a labour welfare legislation. No strict period of limitation having been provided I find that the bar of limitation as such is not attracted in this case. Both the issued are therefore answered in favour of the applicant.

Issue Nos. 2 and 4

These are the most vital issues in this case as the sum and substance of the case of the applicant is that he was superannuated prematurely by the Company depriving of service benefits of two years while the case of the Company is that the applicant was validly retired on attaining his age of superannuation. Learned Advocate for the OP/Company in the course of argument submits that the applicant was served with notice of retirement two months prior to the date of his retirement, but he did not raise any objection and on the other hand, he took all the retirement benefits. Referring to the cross-examination of PW-1 he submits that the applicant candidly admitted that he received the notice of retirement and he received the amount of gratuity. He further submits that the applicant remained silent for two years

after retirement and subsequently on the basis of the ESI Card he raised the claim that his year of birth is 1956 and not 1954. He further contends that it is not a case of dismissal, retrenchment or refusal, but it is a case of retirement. It is for the applicant to prove that he has been prematurely retired by the company. He points that Exhibit-H, the original declaration form, made by the applicant and submits that the applicant himself declared his year of birth as 1954. Pointing at Exhibit-A, the PF declaration form, the learned advocate submits that in this document also the year of birth is mentioned as 1954. He contends that the age of retirement is 58 years, which is not disputed in this case. He further submits that Exhibit-1, relied upon by the applicant, was prepared on the basis of fresh declaration form, which is evident from the testimony of the summoned witness Sri Sandip Bhar, who is the Branch Manager of ESI Corporation, Rishra. Summing up his argument, the Learned advocate for the company submits that the applicant has no case. He has been properly retired on attaining the age of 58 years and in this case he is not entitled to any relief.

Learned advocate for the company refers to the decision in (i) *Bharat Coking Coal Ltd. vs. Shyam Kishore Singh*, reported in (2020) 3 SCC 411; (ii) *Bhagabat Sharan vs. Purushottam*, reported in (2020) 6 SCC 387 and (iii) *Haryana Co-operative Land Development Bank vs. Neelam*, reported in 2005 LLR 483.

Learned Advocate of the applicant on the other hand submits that the applicant is an illiterate person and after superannuation he made enquiry and came to know that his year of birth was 1956 and as soon as he came to know the fact, he approached the authority. He contends that the premature retirement of the applicant amounts to retrenchment. Referring to Exhibit-1 he submits that the date of birth has been recorded as 05.07.1956 in the document which has been issued by the ESI Authority. He submits that the ESI Card and the PF Card are statutory documents. He further submits that the illiterate applicant had no knowledge of the affairs of the Company. Referring to the cross-examination of OPW-1 the learned advocate submits

that the witness could not say that who signed the document as authorised officer and the witness was unable to say that who filled up the document. He further submits that in Exhibit-A the year of birth of the applicant is recorded as 1954 and his date of joining has been recorded as 01.07.1981 while in Exhibit-G, the date of joining is recorded as 02.03.1974. He submits that the different dates of joining are recorded in different documents which shows the casual manner of maintaining documents by the company. Referring to Exhibit-11 the learned advocate submits that the company admitted that due to clerical mistake the date of birth of the applicant was entered as 1956 in 3 EPS. He also refers to Exhibit-10 and submits that EPFO authority wrote to the company about the discrepancy in the date of birth of the applicant and demanded production of documents as to his date of birth which included the ESIC card. He further contents that the decision of **BCCL vs. Shyam Kishore Singh**, referred to by the company, is not applicable in this case as in that case the company was a government company, but in this case it is a private company and moreover, no document of date of birth was produced in that case. He submits that there is a vast difference between government and private employment and while opportunity to verify and seek change in the service record was given to the applicant, but no opportunity to the applicant was given in this case.

Learned advocate for the applicant cites the decisions in Bhupesh Chandra Ghosh vs. Commissioner of Police, reported in 1992 SCC Online Calcutta 250; Shobharam Raturi vs. Haryana Bidyut Prasaran Nigam Ltd., reported in (2016) 16 SCC 663 and Reserve Bank of India vs. C.T. Dighe, reported in (1981) 3 SCC 545.

The gist of the applicant's case is that he was wrongfully superannuated as he had two more years of service left in the company. He claims his year of birth is 1956 contrary to the company's case that his year of birth is 1954. The applicant mainly relies on the date of birth recorded on the ESI Card. Evidently, no birth certificate or any school certificate has been produced by the applicant to prove his date of birth. Exhibit-1 is the copy of ESI Card,

wherein date of birth of the applicant is recorded as 05.07.56. Exhibit-2 is the copy of nominee form in the form of screenshot which records the date of birth of the applicant as 15.07.56. Exhibit-A, marked on admission, is the copy of members' declaration of Jayashree P.F. Institution which records the year of birth of the applicant as 1954. The document is dated 22.08.85. Exhibit-F is thy temporary identity certificate issued by ESI Corporation in the name of the applicant which records his date of birth as 31.12.54. Exhibit-H is the declaration form of ESI Corporation which also records the year of birth of the applicant as 1954 and his date of joining as 02.03.1974. The date of the document is 02.03.74. The claim of the applicant in his pleadings as well as evidence is that his actual date of retirement was 01.01.2015. We, therefore, find that there is no dispute that the age of retirement was 58 years. If the date of birth of the applicant is taken as 15.07.1956 as recorded in the ESI card then his date of retirement cannot be 01.01.2015 as claimed by the applicant. Thus, the date of birth claimed by the applicant on the basis of the ESI card is not commensurate to his own claim that his service was to continue till 31.12.2014. Exhibit-C is the letter dated 01.01.2012 of the company addressed to the applicant. The applicant admitted the receipt of the letter. Through this letter, the company intimated the applicant, well in advance, that he would be retiring from service w.e.f. 01.01.2013 and he was advised to collect his dues from the office on or after 01.01.2013. We, therefore, find that the notice of superannuation was issued upon the applicant two months prior to his date of retirement, but the applicant did not raise any question regarding his date of retirement despite receiving the notice. Exhibit-5 is the copy of letter dated 02.12.2014, written by the applicant to the company, whereby he claimed for the first time that his date of birth was 15.07.1956, as appearing in his ESI card and PF record. Exhibit-6 is the copy of letter dated 15.12.2014 submitted by the applicant to the company claiming that his date of retirement was 01.01.2015, but he was forcefully retired on 01.01.2013. He demanded the unpaid dues from 01.01.2013 to 01.01.2015. Exhibit-7 is the copy of the letter dated 06.04.2015 written by the applicant to the Deputy Labour

Commissioner, Serampore, claiming that he was wrongfully retired on 01.01.2013 instead of 01.01.2015. It is also evident from the materials appearing on record that the applicant accepted all his retirement benefits. Exhibit-B is the copy of application for gratuity submitted by the applicant to the company on 06.02.2013. In this document also the date of retirement is written as 01.01.2013. The applicant through the trade union made application on 26.02.2015 to the Additional Central Provident Fund Commissioner, Salt Lake City, Kolkata for accepting his date of birth as mentioned in the ESI card. The copy of the application has been marked as Exhibit-14. Exhibit-9 is the reply to the letter given by the Assistant Provident Fund Commissioner, Zonal Office, Kolkata stating that the applicant declared his date of birth as 31.12.1954 in Form-2 submitted by him at the time of joining in the establishment and the same could not be changed without production of birth certificate or school leaving certificate. In *Haryana State Co-operative Land Development Bank vs. Neelam*, referred to by the company, the Hon'ble Supreme Court held that – It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Dispute Act may be to impart social justice to the applicant but the same by itself would not mean that irrespective of his conduct an applicant would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio. In this case we find that despite receiving notice of superannuation two months prior to the date of retirement the applicant did not raise any dispute nor he made any prayer for correction of his date of birth and after a long gap for the first time on 02.02.2014 he claimed that his date of birth was 15.07.1956 according to the ESI card. In *Bhagawat Saran vs. Purushottam*, relied upon by the company, the Hon'ble Supreme Court held that – It is trite law that a party cannot be permitted to approbate and reprobate at the same time. The principle is based on the principle of doctrine of election. The doctrine of election is the

facet of a law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the settled documents. In *Bharat Coking Coal Ltd. Versus Shyam Kishore Singh*, referred to by the company, the Hon'ble Supreme Court observed that the Hon'ble Court has consistently hold that the request for change of date of birth in the service records at the fag end of the service is not sustainable and also that even if there was good evidence to establish that the recorded date of birth was erroneous, the correction cannot be claimed as a matter of right. In *Bhupen Chandra Ghosh versus Commissioner of Police*, referred to by the applicant, where the employee police personnel requested the correction of his date of birth in his service book on the basis of school certificate, the Hon'ble Calcutta High Court observed that no hearing was given to the petitioner by the concerned authorities even when he made a representation supported by documentary evidence for correction of his age in service book. The Hon'ble Court further observed that what was worse was that the authorities concerned did not even informed the petitioner that his representation was ever or at all considered not to speak of assigning any reason as to why his representation and the documents produced in support thereof could not be accepted. In *RBI versus C.T. Dighe*, referred to by the applicant, the Hon'ble Supreme Court held that the date of birth must be determined by holding an enquiry after giving notice of hearing to the effected employee. In that case it was admitted position that the alteration in the accepted date of birth on the basis of high school certificate was made without giving opportunity of hearing to the applicant.

In the instant case before us, the applicant did not raise the issue of his date of birth and never made any prayer for rectification of his date of birth to the company. What appears on going through the entire record is that the whole basis on which the applicant has based his claim is the date of birth recorded in his ESI card. OPW-2 is the Branch Manager of ESI Corporation. He produced the register of original declaration form containing the declaration form of this applicant which has been marked as Exhibit-H.

Exhibit-H records his year of birth as 1954. The declaration was made on 02.03.1974 by the applicant himself. It also bears the counter signature of the authorised representative of the company. It is found from the evidence of OPW-2 that the identity card (Exhibit-1) was prepared on the basis of a fresh declaration form. It is no case of the applicant that he submitted any fresh declaration form at any point of time. The temporary identity certificate (Exhibit-F) is found in consonance with the entries in the ESI declaration form register (Exhibit-H), but no basis of recording of date of birth of the applicant in the ESI card is found. No doubt the ESI card is issued by statutory authority but when the basis of such document is not found any evidentiary value can hardly be attached to it. The applicant served the company for decades, but during his entire tenure of service he never raised the dispute as to his date of birth. The documents (Exhibits-A & H) are the old documents and it cannot be said that those were prepared at that time with a view to victimise the applicant after so many years. During cross-examination of OPW1 the applicant tried to impeach the entries in Exhibit-A but in his deposition as PW1 he did not challenge the document rather in his cross-examination he admitted his signature thereon. The different dates of joining recorded in Exhibits-A and G does not appear to be of any consequence in this case as in this case we are concerned only with the validity of the superannuation of the applicant. The applicant was superannuated on the basis of the entries in the company's record. The applicant did not produce his voter card, Adhar card, Ration Card or any other authentic document in support of his claim as to his date of birth. The contention that the applicant could not raise any dispute on receiving notice of superannuation owing to his illiteracy is not believable.

It is no case of the applicant that the entries in the company's record were altered without notice to the applicant. Therefore, the decision in ***RBI versus C.T. Dighe*** is not applicable in this case. No representation was made by the applicant during his service or even after receiving the notice of superannuation for correcting his date of birth in the company's record on the basis of any birth certificate or school certificate. In the circumstances, the

decision in *Bhupesh Chandra Ghosh's* case is of no avail to the applicant. The decision in *Shobharam Raturi* case relate to the payment of back wages where the order of retirement was set aside. So far as Exhibits-10 and 11, as highlighted by learned advocate for the applicant, are concerned, we have already noticed that the date of birth recorded in ESIC card (Exhibit-1) is without basis. In the light of Exhibits-A, F, G and H and in view of the fact that the applicant did not furnish any authentic document of his date of birth, Exhibits 10 and 11 cannot be of any help to the applicant. In the circumstances Exhibit-11 cannot amount to alteration of the date or year of birth of the applicant by the company without notice to him.

Having regard to the entire facts and circumstances of the case and the evidence and materials on record, I find that the applicant was rightly retired on attaining his age of superannuation and his retirement from service does not amount to his dismissal or termination of service and consequently he is not entitled to any relief in this case.

All the issues are thus disposed of.

In result, the application under section 10 (1B) (d) of the Industrial Disputes Act merits dismissal.

Hence,

it is,

ordered

that the application under section 10 (1B) (d) of the Industrial Disputes Act 1947 is dismissed on contest but without any cost.

This is my award.

Dictated & corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)
Judge,
Third Industrial Tribunal,
Kolkata
01/03/2021