

CASE NO.:
Appeal (civil) 1720 of 1999

PETITIONER:
HINDUSTAN LEVER LTD.

Vs.

RESPONDENT:
S.M. JADHAV & ANOTHER

DATE OF JUDGMENT: 21/03/2001

BENCH:
S. Rajendra Babu & S.N. Variava.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T...J

S.N.VARIAVA, J

This Appeal is against the Order dated 24th June, 1998. Briefly stated the facts are as follows:

On 4th of February, 1952, the 1st Respondent joined the services of M/s. Brooke Bond Lipton India Limited (which is now amalgamated with the Appellant) as a Salesman. In the application submitted by him the 1st Respondent showed his date of birth as 12th of June, 1927 and his age to be 25 years. The Manager of M/s. Brooke Bond Lipton India Ltd. issued a certificate dated 19th February, 1952 certifying that he had examined the Matriculation Certificate and that the date of birth was 12th of June, 1927. The Manager also certified that the age of the 1st Respondent, at that time, was 24 years 8 months.

The 1st Respondent has worked with M/s. Brooke Bond Lipton India Ltd. till his retirement. His service record, at all times, showed the date of birth as 12th of June, 1927. The Provident Fund Booklet showed his date of birth as 12th of June, 1927. The Annual Reports, published by the Company under Section 217 of the Company Act, showed his date of birth as 12th of June, 1927.

Apart from the above on 16th of November, 1981 there was a settlement between the management of M/s. Brooke Bond Lipton India Ltd. and the All India Brooke Bond Employees Federation. By this it was, inter alia, agreed that the age of the employees would be decided on the basis of the birth certificate and school or university certificate. It was agreed that in future no fresh cases would be brought up for consideration about the date of birth of an employee. The 1st Respondent raised no dispute in respect of his date of birth at this time.

As the 1st Respondent's date of birth was 12th of June, 1927 he was to retire, as per the Company rules, on 1st of April, 1987. M/s. Brooke Bond Lipton India Ltd sent a notice dated 11th November, 1986 intimating 1st Respondent

that he was due to retire on 1st of April, 1987. They enquired whether he wished to encash his leave. In reply to this, the 1st Respondent, by his Advocate's letter dated 14th November, 1986, for the first time raised a contention that his date of birth was 29th August, 1930 and not 12th June, 1927. The 1st Respondent claimed that the date of birth in the SSC Certificate had been corrected and that the corrected date had been informed to the Company in the year 1953 itself. At this stage to be noted that in the Advocate's letter it is not claimed that a written intimation had been given to the Company. M/s Brooke Bond India Ltd. point out that the date of birth in the Provident Fund Booklet and the Service record is 12th June, 1927. They reiterate that the 1st Respondent would be retiring on 1st April, 1987.

The 1st Respondent then filed a suit in the Court of the III Additional Munsiff, Belgaum praying for a declaration that his date of birth be corrected. In this suit he applied for an interim injunction. The trial Court by a detailed and reasoned order refused interim injunction. In so refusing the trial Court, inter alia, observed as follows:

"It is the say of the plaintiff that in the year 1953 itself this was informed to the defendant company for due correction in his service records. No documents have been produced by the plaintiff do not disclose the fact that such an information was given to the defendant company, if really such an information was given, the plaintiff ought to have followed it up with some enquiry etc., in this connection. Nothing is before the court to show that any correspondence was done with the defendant company in this regard."

On 1st of April, 1987, the 1st Respondent retired and accepted his retiral benefits and dues. Thereafter on 2nd of June, 1987, the 1st Respondent raised an industrial dispute claiming that his correct date of birth was 29th of August, 1930. The Industrial Tribunal by its Award dated 4th October, 1993 allowed the claim of the 1st Respondent. The Industrial Tribunal directed M/s Brooke Bond India Ltd. to pay full back wages for 3 years along with consequential benefits to the 1st Respondent.

The Appellant filed a Writ Petition in the High Court of Karnataka. The Writ Petition was allowed by a Single Judge on 13th June, 1996. The Single Judge noted that the material on record was sufficient to show that the 1st Respondent's date of birth in the records was 12th June, 1927 and that only at the fag end of his career he could not be allowed to raise a dispute regarding his date of birth.

The 1st Respondent filed a Writ Appeal which has been allowed by a Division Bench by the impugned Order dated 24th June, 1998. The Appellant have thus filed this Appeal.

We have heard the parties. It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. The case of the 1st Respondent that he had intimated the Company in 1953 itself is not believable. In the application, which had been filed by the 1st Respondent he himself had given his date of birth as 12th of June, 1927 and also mentioned that his age as 25 years. On the basis of this application and the

Matriculation Certificate the Manager had issued a certificate. Thereafter his service record, Provident Fund Booklet and even the Annual Reports contained the 1st Respondent's date of birth as 12th June, 1927. It is impossible to believe that for all these years the 1st Respondent was not aware of the date of birth in his service record or the Provident Fund Booklet. It is impossible to believe that he has not read a single Annual Report in all these years. If, as claimed by him, he had informed the Company in 1953, he would surely have made some enquiry whether the service record was corrected. This would have been done, if not earlier, at least at the time when the settlement took place between the Union and the Company. That was the time when other employees were getting their age corrected and therefore it is impossible to believe that the 1st Respondent would not have at that time ascertained what his date of birth was in the service record.

No reliance can be placed on the letter dated 15th May, 1953. This is produced for the first time in the High Court. There is no reference to this letter in the Advocate's reply. In the suit, which had been filed by him, there was no reliance on any such written intimation. The learned Judge hearing the interim application noted that no document was produced. Significantly there is no endorsement of the Company or proof of service of such a letter on the Company.

In our view, the impugned Order cannot be sustained at all. The 1st Respondent cannot be allowed to raise such a dispute at the fag end of his career. Accordingly, the Appeal is allowed. The impugned Order dated 24th June, 1998 is set aside. The Order of the learned Single Judge dated 13th June, 1996 is restored. There will be no order as to costs.