

ITEM NO.58

COURT NO.10

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).17866/2009

(From the judgement and order dated 20/02/2009 in
of The HIGH COURT OF M.P AT INDORE)

WA No. 587/2008

EXECUTIVE ENGINEER & ANR.

Petitioner(s)

VERSUS

RAMAKANT

Respondent(s)

(With appln(s) for permission to place addl. documents on record and
prayer for interim relief and office report)

Date: 11/02/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Ashiesh Kumar, Adv.

For Respondent(s) Mr. Dhruv Mehta, Adv.
Mrs. Jayashree Wad, Adv.
Mr. Ashish Wad, Adv.
Mrs. Tamali Wad, Adv.
Mr. Chirag S. Dave, Adv.
Mr. Sameer, Adv.
Ms. Amrita Paul, Adv.
For M/s. J.S. Wad & Co., Advs.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated
20.2.2009 passed by the Division Bench of Madhya
Pradesh High Court whereby it declined to entertain the
appeal preferred by the petitioners under Section 2 of

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the Madhya Pradesh Uchcha Niyayalaya Khandpeeth Ko
Appeal Adhinyam on the ground that no such appeal lies
against an order passed by the learned Single Judge in
exercise of jurisdiction under Article 227 of the
Constitution of India.

The respondent joined service in Ratlam
Electric Supply Company. With the taking over of the
company by Madhya Pradesh Electricity Board (for short

"the Board") in 1967, the respondent became an employee of the Board. His date of birth was recorded as 10.10.1937. This was also the date of birth shown in the gradation list of the employees published by the Board in 1978. The respondent immediately submitted representation and pleaded for correction of his date of birth by claiming that his actual date of birth was 10.10.1938. On being asked by the concerned authority, the respondent produced certificates showing his date of birth as 10.10.1938. However, no action was taken to correct his recorded date of birth and he was retired from service in 1995.

The respondent challenged his retirement by filing an application under Section 31(3) read with Sections 61 and 62 of the Madhya Pradesh Industrial Relations Act. On a consideration of the pleadings of the parties and evidence produced by them, the learned

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Presiding Officer of the Labour Court, Ratlam held that the correct date of birth of the respondent was 10.10.1938 and he could not have been retired without carrying out necessary corrections in his recorded date of birth. The relevant portions of that order read as under:

"Applicant's statements could not be rebutted either by the statements of any of the witnesses of opposite party or by cross examination of applicant. Neither any such documentary evidence has been produced by opposite party whereby applicant's statement got rebutted. Thus, when Gradation List was published in the year 1978 by the Board, applicant came to know that his date of birth is still entered as 1937 in his Service Book. Thereafter, applicant presented an application for making correction in his date of birth, despite date of birth was not corrected. Then case was filed in the Court, which is found to be within limitation. This is the admittance of witness of opposite party that applicant had presented an application for making correction in his date of birth. Even applicant had produced related documents. Due to admittance of witness of opposite party, Issue No.2 is

decided in favour of applicant. Despite producing the application by applicant, it was not considered by opposite party. Applicant succeeded in proving the aforesaid fact, too. Applicant remained successful in proving by his statements on oath as well as documentary evidences, Exhs. P/1 to P/7 that date of year of birth of applicant is 1938 and applicant went on requesting the opposite party from time to time by way of applications to make correction in his date of birth. This court has jurisdiction to hear the application of applicant. Opposite parties remained unsuccessful in proving their objections. Opposite party could not prove his objection either by oral evidence or by documentary evidence. Case laws, which were produced by

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opposite party, i.e. AIR 1971 SC 2548 and 1974 L.C. Page 1492 are not applicable to the present matter being different in facts and circumstances.

Thus, retirement of applicant one year before of his scheduled retirement by not correcting his year of birth as 1938 on the basis of Exhs. P/1 and P/2, is illegal. Since the applicant was made retired before one year, therefore, applicant is entitled for obtaining all the benefits of service of remaining one year.

Therefore, opposite party is directed to pay the salary of one year, whatever amount it may be, along with other benefits on account of his retirement before one year within 2 months from the date of this order. Both the parties shall bear their respective costs. Matter be closed."

Appeal preferred by the Board against the order of the Labour Court was allowed by Industrial Court, Madhya Pradesh, Indore vide order dated 3.9.1998. That order was set aside by the High Court in Writ Petition No. 1714/1998 - Ramakant v. Member Judge, Industrial Court, M.P., Indore and others, and the matter was remanded to the Industrial Court for deciding the appeal afresh. After remand, the learned Member Judge, Industrial Court passed detailed order dated 26.2.2004 and upheld the order of the Labour Court.

The Board challenged the orders of the Labour Court and the Industrial Court by filing a petition

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parties. Although, format of the petition filed by the petitioner shows that it had invoked jurisdiction of the High Court under Article 227 of the Constitution and an appeal does not lie against an order passed by the learned Single Judge under Article 227 of the Constitution, we do not consider it necessary to delve deep into this controversy because, in our view, the concurrent findings recorded by the Labour Court and the Industrial Court that the correct date of birth of the respondent was 10.10.1938 and he could not have been retired before completing 58 years age counted with reference to the said date of birth did not suffer from any error of law apparent on the face of record and the learned Single Judge rightly refused to interfere with the orders of the Labour Court and the Industrial Court.

It is neither the pleaded case of the

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petitioner nor any material has been produced before this Court to show that the petitions/representations made by the respondent in 1978 and thereafter were disposed of by the competent authority. The petitioner has not explained as to why the petitions/representations made by the respondent for correction of his recorded date of birth were kept pending for almost two decades. Therefore, there is no valid ground to interfere with the well considered orders passed by the Labour Court and the Industrial Court.

In the result, the special leave petition is dismissed.

Before closing, we deem it proper to take cognizance of the statement made by the learned counsel for the respondent that on account of pendency of the

special leave petition, his client has not been paid his dues and direct that the concerned authority shall release the dues of the respondent within a maximum period of two months from today, failing which he shall become entitled to interest at the rate of 9% per annum from the date of the Labour Court's order.

The registry is directed to communicate by fax copies of this order to Chief Executive Officer of the Paschim Kshetra Vidyut Vitran Company Ltd., Ratlam
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and the Chief Engineer, M.P. State Electricity Board, Ujjain Division, Ujjain.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master