



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 17983 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE K.M.THAKER

Sd/-

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====

TATA CHEMICALS MAJDOOR SANGH

Versus

TATA CHEMICALS LTD.

=====

Appearance:

MR YOGEN N PANDYA(5766) for the PETITIONER(s) No. 1

MR.VARUN K.PATEL(3802) for the RESPONDENT(s) No. 1

NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 2

=====

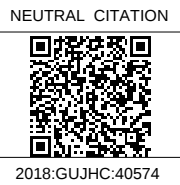
CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

Date : 06/09/2018

ORAL JUDGMENT

1. Heard Mr.Pandya, learned advocate for the petitioner and Mr.Patel, learned advocate for the respondent.

2. In present petition, the petitioner union has

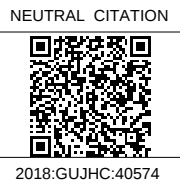


challenged award dated 31.12.2015 passed by the learned Industrial Tribunal at Jamnagar in Reference (IT) No.42 of 2014 whereby the learned Tribunal rejected the reference.

3. The central issue involved in this petition is about rectification of company's record (registers) so as to remove the mistake and to enter correct birth date.

3.1 The company rejected the workman's request on the ground that (a) the workman had (allegedly) declared, at the time of appointment, that he does not have any document / proof about birth date and he would surrender to medical test; (b) delay in raising the plea for rectification of record.

3.2 The workman, on other hand, supported his request with aid of school leaving certificate and insurance policy i.e. two documents / proof – which are recognised as 'acceptable evidence' under company's Rules. The workman also alleged



discrimination. He also relied on a settlement (between company and the union) to refute and demolish the objection on ground of delay because the settlement postulate that a workman can approach the authority for correction at at any time before actual retirement.

3.3 If the petitioner is right with regard to the settlement, then the objection on ground of delay would, even otherwise, evaporate inasmuch as the workman had approached the company with the request, almost 2 years before scheduled (as per company's record) superannuation, therefore the refusal on ground of delay cannot survive.

4. An employee of present respondent company raised an industrial dispute against the company's decision whereby the respondent company rejected his request to make necessary correction with regard to his birth date entered in company's registers.

4.1 Appropriate government referred the said



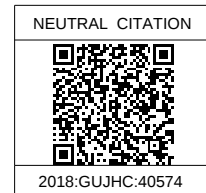
dispute for adjudication to learned Tribunal at Jamnagar. The learned Tribunal decided the said dispute against the claimant. The claimant felt aggrieved by the said award.

4.2 Hence present petition.

5. So far as factual background is concerned, it has emerged from the record that the concerned claimant before the learned Tribunal joined the service with the respondent company in November 1984. At the time when the concerned claimant joined the service with the respondent company, his personal details viz. Name, Nationality, Address as well as Age / Birth Date, etc. were recorded by the company in the official record.

5.1 The dispute involved in present petition is with regard to the birth date recorded in the register.

5.2 In 2013, the concerned employee approached the competent officer with an application to rectify the record and amend the entry with



regard to his birth date.

5.3 The concerned employee claimed that the entry made in the official record with regard to his birth date which reflected 3.12.1955 as his birth date is incorrect inasmuch as his birth date is 1.6.1961.

5.4 The company rejected the said application vide its decision / order dated 3.12.2013.

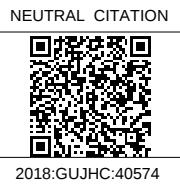
5.5 The said decision by the company gave rise to the industrial dispute which came to be referred for adjudication.

5.6 The learned Tribunal registered the said dispute as Reference (IT) No.42 of 2014. The terms of reference required the learned Tribunal to decide as to whether the company should record 1.6.1961 as employee's birth date instead of 3.12.1955.

5.7 The claimant filed his statement of claim wherein he claimed that he joined service in



November 1984. He also claimed that according to the Rules of the company, Class-IV employee would retire from service on completion of 60 years of age. The employee claimed that the company had not recorded correct birth date in the registers and that, therefore, he had submitted an application dated 21.10.2013 to make necessary correction, however, the company arbitrarily rejected the said application vide order dated 3.12.2013. He also claimed that in case of other co-employee namely, Himatsinh Bholubhai, though the request was made at the time of retirement and at very late stage and many years after his appointment the company granted request and made appropriate correction, however, the company arbitrarily rejected his request despite the fact that in support of his request, he also submitted copy of the School Leaving Certificate. With the said allegation, the claimant demanded that the company should be directed to make necessary correction and the company should also be directed to allow the claimant to render service



until he attains 60 years of age on the basis of his birth date, i.e. 1.6.1961. Along with the said statement of claim, the claimant also filed an application for interim relief. The learned Tribunal rejected the said interim relief application.

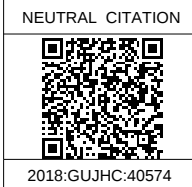
5.8 The company opposed the reference. The company filed its reply. In its reply the company claimed that the dispute which is raised at the end of the tenure of service should not be entertained on the ground of delay and laches. The company also claimed that at the time when the claimant came to be appointed, he had not submitted any document and that, therefore, the birth date was recorded on the basis of the medical report (certificate issued by the Medical Officer). The company claimed that from 1984 to 2013 the claimant never raised such dispute and did not come forward with any document – not even the school leaving certificate, though he had received the said certificate as back as in 1980.



The company claimed that in case of the concerned employee, the procedure prescribed by Rule 5 was followed (because he failed to submit any document with regard to birth date). The company claimed that the allegations by the petitioner are incorrect and unjustified and reference should be rejected.

5.9 Before the learned Tribunal the concerned workman led documentary and oral evidence including the evidence of the Principal of the School which issued the School Leaving Certificate. The claimant also placed reliance on a settlement arrived at by and between the company and the union in 1979. Likewise, the company also led documentary and oral evidence. The company examined one Mr.R.P. Vithlani (Exh.46) as its witness.

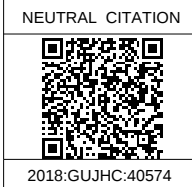
5.10 The learned Tribunal, on the ground that the claimant raised dispute almost at the end of his service period and such belated dispute cannot be entertained, rejected the reference.



6. Learned advocate for the petitioner submitted that the learned Tribunal failed to appreciate that the claimant had repeatedly approached the concerned Officer with the request to make necessary correction in the register however repeated request by the claimant were not accepted by the company and that therefore the claimant ultimately submitted application in October, 2013. According to learned advocate for the petitioner the decision by learned Tribunal to reject the petitioner's request on the ground of delay is unjustified and arbitrary. Learned advocate for the petitioner submitted that when the petitioner submitted relevant document, which is one of the recognized document, as a proof with regard to birth date of an employee, the company should have accepted the said request and the company should have made necessary rectification in the Register on the basis of school leaving certificate. When there was no dispute with regard to the authenticity of the



documents and when it was not the case even of the company that the document (school leaving certificate) is forged or fabricated document, the said document should have been accepted and necessary correction on the basis of the details recorded in the school leaving certificate should have been taken into account and appropriate correction in the company's register should have been made. According to learned advocate for the petitioner, the workman can approach the company with request to make necessary correction, at any time before he is actually superannuated however the company arbitrarily did not accept the petitioner's request for appropriate correction in the register (official record). Learned advocate for the petitioner would submit that instead of passing such direction and granting appropriate relief, the learned Tribunal arbitrarily and erroneously rejected the reference. Therefore, the award deserves to be set aside.



7. According to learned advocate for the respondent company, there is no error in the award. Learned advocate for the respondent company would submit that the employee joined the service in 1984 and until 2013 i.e. almost for 27 years the claimant never raised any objection with regard to birth date recorded in the register. Learned advocate for the respondent would submit that at the time of appointment the petitioner was subjected to medical test and the birth date came to be recorded on the basis of the report of the Medical Officer. The said procedure is prescribed by the Rules and the workman had submitted his consent for medical test the allegation by the workman is not justified and learned Tribunal has rightly appreciated the fact and rejected the reference. He also submitted that though the certificate was in his hands since 1980 the claimant came forward with the claim in 2013, therefore, the delay cannot be ignored. According to learned advocate for the respondent company, there is no error in

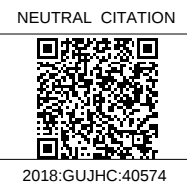


the award and the petition deserves to be rejected.

8. I have considered rival submission and material available on record as well as impugned award and the reasons recorded by learned Tribunal.

9. Since learned Labour Court has disallowed the claim – reference essentially on two grounds viz. (a) delay in approaching the company with request for correction of register; and (b) the declaration statement submitted by workman, it would be necessary to examine as to whether the Court's approach in this regard and the Court's findings and decision on said two issues – grounds are correct and justified and legally sustainable.

10. Now, so far as allegation about delay is concerned, if the workman's claim with regard to the settlement turn out to be correct and justified, then the company's principal objection



(on ground of delay) – which is the basis and premise on which final decision of learned Tribunal is based, would not and cannot survive.

10.1 Likewise, if the document (declaration) on which the company placed heavy reliance is closely examined it becomes clear that there are several discrepancies and anomalies inherent in said document (and in the contention based on said document) and it also becomes clear that the said aspects are not considered by the learned Tribunal.

11. For sake of convenience, it is appropriate to first address the aspects related to the so-called declaration allegedly made by the workman. Before it could be relied on, the said document (declaration) called for and deserved through and close and analytical or clinical scrutiny.

12. On this count, it is necessary to note at the outset that the company heavily relied on Rule 5 of the Standing Orders. The said provision reads



thus:

"5. Recruitment Employment and Record of Age

(a) The Labour officer of the establishment will record the age of every workman at the time of his employment and the entry of age shall be attested by the workman and shall not thereafter be questioned by him.

(b) No person shall be employed unless he has been examined and certified as fit by a medical officer appointed by the Management for the purpose. Candidates for employment should for the purpose of proving their age produce one of the following authentic documents which are listed in their order of preference.

- (i) Birth Certificate
- (ii) School Leaving Certificate.
- (iii) Insurance Policy.
- (iv) Horoscope.

Unless a candidate for employment produces authentic documentary evidence of his age which is entirely acceptable to the Management the opinion of the Medical officer appointed by the Management regarding a candidates age shall be taken as final and binding upon the candidate."

13. The said provision recognises four documents as valid proof about the date of birth of concerned employee. School Leaving Certificate and Life Insurance Policy are two out of four documents recognised by the Rules, as 'acceptable evidence' for the purpose of recording birth date of an employee. The rule further provides that if the candidate / appointee does not submit one of the four documents, then the birth date of the selected candidate / appointee would be recorded on the basis of ossification test.

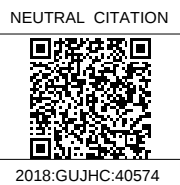
14. According to the company, at the time when



the claimant came to be appointed, he did not submit any documents and he declared that he was unable to submit any document with regard to his birth date and that, therefore, the company had to follow procedure prescribed by Rule 5. The company also put up a case that the workman had given his consent to undergo medical test and to substantiate the said submission the company relied on a document viz. a statement / declaration allegedly given by the workman.

14.1 On the other hand the workman claimed that (a) the company's defence on ground of medical test is incorrect; and (b) he was forced to put thumb impression on a paper which was a printed statement.

14.2 Further, even on plain reading of the said document, it comes out that the said document (a) is a 'ready-made' printed format of statement (format prepared in advance) and it is a printed statement which appears to have been kept ready by the company; (b) it is not written by the



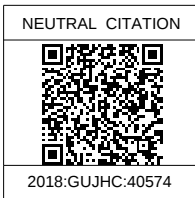
workman; (c) the said document contains pre-set and designed blank/s; (d) the said document bears and reflects – thumb impression; (e) the company claimed that the thumb impression is of concerned workman; (f) however the company did not lead evidence (forensic evidence) and did not prove that the thumb impression is of concerned workman; (g) even the person who put his signature on said document as witness to the execution of the document was not presented and was not examined as witness before the Court to identify and prove the thumb impression; (h) there is vast and huge difference between the date when the workman allegedly made such declaration and the date on which the workman came to be appointed; and (i) the said document is infected with inconsistencies and its probative and evidentiary value is punctured at many spots in the document.

14.3 Above mentioned and such other aspects, which strike out from the said document, give



rise to several questions and doubts which should have been considered and addressed by the learned Tribunal. Besides, the learned Tribunal failed to notice the discrepancies and also failed to address above mentioned issues and the learned Tribunal also did not consider the effect of such discrepancies and anomalies qua the case of the workman and reply – defence of the company.

14.4 Instead, the learned Tribunal mechanically accepted the defence set up by the company with reference to and on the basis of the said document and the learned Tribunal, without closely examining the said document and without necessary and proper scrutiny of the document, relied on the said document (i.e. so-called declaration allegedly submitted by the workman) and on strength of the said document, the learned Tribunal assumed and held that the workman had undergone medical test and that, therefore, he cannot raise any objection with regard to entry in the register of the company made on the basis

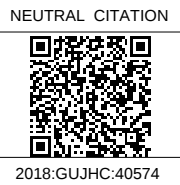


of Medical Officer's certificate.

14.5 In absence of cogent, sufficient and satisfactory evidence, the learned Tribunal ought not have based its findings and decision on such document.

14.6 It is pertinent to note that in present case the workman submitted school leaving certificate, to support and justify his request. In light of the said school leaving certificate there was no cause or justification for the learned Tribunal to assume that the workman is completely illiterate and not able to even put his signature and the learned Tribunal should have raised query with regard to said document, more particularly about the statement in the said document viz. the statement that '*I have never been admitted in a school*'. The learned Tribunal failed to take into account the said anomaly as well.

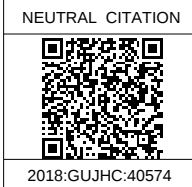
14.7 The learned Tribunal lost sight of the fact that two diametrically opposite documents were



submitted on record viz. (a) certificate allegedly issued by Medical Officer; and (b) school leaving certificate. Therefore, the question before the learned Tribunal, therefore, was which document should be preferred and relied on.

14.8 The learned Tribunal, unfortunately, also did not address the said important question and without addressing the said issue and without recording reasons – other than delay – as to why it relied on the Medical Officer's opinion and not on school leaving certificate and/or life insurance policy, dismissed the petitioner's grievance and the reference on ground of delay and the alleged declaration.

14.9 It is pertinent to note that there is no document on record, except the said so-called declaration, which bears the claimant's thumb impression. All other documents which are available on record bear and reflect claimant's signature.



14.10 This fact *prima facie* demonstrates that the workman can put his signature, rather he actually and regularly puts his signature and not thumb impression.

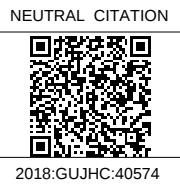
14.11 On this count, it is necessary and appropriate to take into account the statement of claim filed by the workman before the learned Tribunal. The said statement of claim bears and reflects signature of the claimant (and not thumb impression). Second similar instance is found from the document dated 3.12.2013 which is a letter addressed by Senior Manager – ER (Mr.Kamlesh S. Shah). It is addressed to the concerned workman and the said document also bears and reflects signature of the claimant which he put to acknowledge receipt of the said letter.

14.12 The said documents persuaded this Court to examine the vakalatnama given by the workman in favour of learned advocate (whose service he



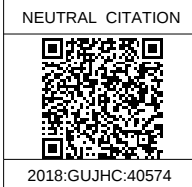
engaged for the purpose of present petition). It is pertinent to note that even on the vakalatnama the workman has put his signature. Further, even the The vakalatnama (Exh.6) given by the workman to the union representative (to conduct the reference case) and the nomination and declaration form submitted by the claimant for the purpose of Provident Fund Act also bear and reflect the signature of the claimant. Even on said documents the claimant has not put his thumb impression.

14.13 There are several documents in the Record & Proceedings of the reference case [e.g. identity card issued by the company (Exh.57), copy of the application dated 21.10.2013 submitted by the workman (Exh.59), another application dated 18.12.2013 submitted by present claimant to the General Manager of the company (Exh.62), the application seeking interim relief (Exh.11) dated 24.6.2015, the document dated 16.6.2015 which is a letter addressed by Senior Manager – Employees



Relations (Mr.Kamlesh S. Shah) addressed to the concerned claimant] wherein also the claimant has put his signature. The said documents and the claimant's signature thereon *prima facie* demonstrate that the workman can put and he actually puts his signature and he does not make thumb impression.

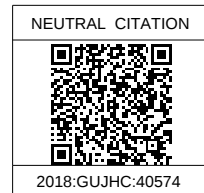
14.14 In light of the said documents the learned Tribunal should have posed the question that if it was the claimant who had made such declaration, then he would have put his signature (instead of putting thumb impression) but why a workman, who could put his signature, would put a thumb impression on the document? The company's reply and explanation should have been called for and the learned Tribunal ought to have examined the declaration form more carefully and cautiously and ought not have mechanically accepted veracity of the document and should not have proceeded on the basis of the said document without taking into account this anomaly.



14.15 Another important aspect which the learned Tribunal failed to consider is about identification of the thumb impression (on the said document / so-called declaration) i.e. the evidence that the thumb impression is of the claimant.

14.16 There is nothing on record which would even *prima facie* establish and satisfy the Court to believe that the thumb impression is of the claimant. In absence of satisfactory evidence, the learned Tribunal should not have assumed that the thumb impression on the said document is of the claimant.

14.17 Another anomaly or irregularity also strikes out from the document i.e. the date of the document. A glance at the document gives out that the said document bears and reflects the date on which the petitioner allegedly executed i.e. 2.12.1983 the said so-called declaration (by putting his thumb impression).



On this count, it is pertinent to note that the petitioner came to be appointed on 9.11.1984.

The company's claim (viz. that the workman submitted said document / declaration) would mean that the workman executed the said declaration almost one year before he came to be appointed (inasmuch as his appointment is in November, 1984 whereas the document was executed in December 1983).

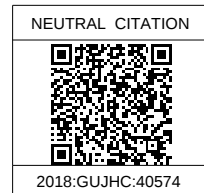
14.18 Therefore, the learned Tribunal should have raised a question – rather doubt viz. why would a person execute such declaration one year in advance / one year before his appointment and whether in absence of any evidence or explanation such situation was palatable.

14.19 From the aspects mentioned above, it comes out that (a) the said document (so-called declaration) is not a document with unimpeachable probity and evidentiary value; (b) in absence of forensic evidence or any other reliable evidence



with regard to the thumb impression, it could not have been assumed or believed that the thumb impression is of the workman; (c) in absence of any evidence or satisfactory explanation which could clarify the huge gap between the date of the document and the date of the appointment, the document should not have been readily and mechanically accepted and relied upon so as to throw out the workman's case; (d) the printed format / statement did not qualify as reliable evidence which could be mechanically relied on so as to bind the workman and dismiss his case.

14.20 It comes out from the award that none of the said anomaly or irregularity have been taken into consideration and have not been addressed and decided by the learned Tribunal. Actually, the learned Tribunal ought to have examined this aspect and ought to have dealt with above discussed aspects and anomalies and the learned Tribunal should have also considered the fact that the company did not lead any evidence to



explain the said irregularity and anomaly.

14.21 Since the award is passed without appreciating the said aspects and by mechanically and heavily relying on such document and since the conclusions and final decision are based on such document, the findings and decision are bad in law and they deserve re-consideration.

14.22 The parties will have to place relevant and reliable evidence on record before the learned Tribunal to explain such discrepancy and the learned Tribunal shall have to decide all aspects related to (and which arise from) relevant documents (declaration form, the school leaving certificate and other documents).

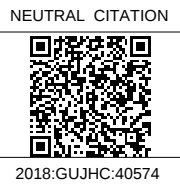
This Court would, at this stage, refrain from expressing any opinion or conclusion with regard to the said document (or other documents).

15. Now, so far as the reason mentioned by the learned Tribunal for not entertaining and accepting workman's claim viz. delay in



approaching the company and submitting the request, is concerned, it is relevant to note that before the learned Tribunal the claimant urged that he had raised the grievance almost 2 years before the date of superannuation (according to the company's record) and long time before actual retirement inasmuch as he had submitted written application – representation in 2013 (i.e. almost 2 years before the date which, according to the company's record, would be the date for his superannuation) and that, therefore, his case should not have been rejected on the ground that he raised the request after long delay.

15.1 So as to oppose the ground which the company urged to justify its decision the claimant relied on a provision under a settlement. He claimed that the company and the union have entered into a settlement which provides that the workmen can submit appropriate request for correction of the entry in the register with regard to birth date



(at) any time before actual retirement /
superannuation.

15.2 In this context, learned advocate for the company claimed that the claimant could not have raised or justified or supported the claim on the basis of settlement when such plea was not raised in the statement of claim.

15.3 The said objection is not sustainable and the said contention does not deserve acceptance, more particularly because the claimant invoked the said settlement and relied on the provision in said settlement to oppose and rebut the company's objection against his request and to demonstrate that the company's objection contrary to its settlement according to the provision in the settlement his request was submitted within time limit.

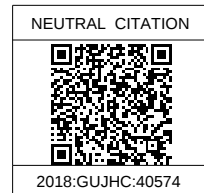
15.4 Though it is obvious that copy of the settlement (arrived at between the company and the union in 1979) would not be available with an



employee but it would be with the company, the learned Tribunal, unfortunately, did not entertain the said submission by the workman only on the ground that the workman did not submit copy of the settlement on record.

15.5 On the other hand, the company was party as well as privy to the said settlement and the settlement was within the knowledge of the company and the settlement was in company's possession. The document which was in possession with the company should have been submitted by the company. The employer – having knowledge as well as possession of the document should place it on record. It was the company's obligation to not keep back or hide the said settlement from the Court. However, the company kept back the said settlement.

15.6 The learned Tribunal failed to appreciate that obligation to place on record relevant document would be on the person who has exclusive possession.



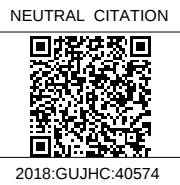
15.7 The learned Tribunal committed error in holding the workman responsible for placing on record said settlement which was undisputedly in the hands of the company. The learned Court even rejected the claim on this ground.

15.8 The learned Tribunal ought to have considered that the company did not dispute the factum of settlement and/or did not claim that such settlement was never arrived at, rather in its written statement (file in different case) the company had admitted that such settlement was entered into with the union. Further, the company did not claim that the settlement was subsequently terminated and/or the settlement had expired. On one hand such case was not set up and not proved by the company whereas on the other hand the company did not place the settlement on record). In this backdrop, the learned Tribunal, on its own motion and in absence of such plea and proof, could not have assumed that the settlement might not be in force. The learned Tribunal,



without a glance at the settlement and without examining the terms of the settlement and without verifying as to whether the settlement contains any provision about the life of the settlement (i.e. whether there is any provision in the settlement which restricts applicability or operation or life of the settlement) could not have reached to the conclusion and/or could not have even assumed that the settlement might not be in operation or that the period of operation of the settlement might have expired.

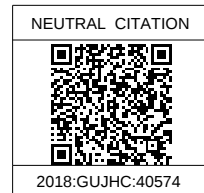
15.9 Not only this, the learned Court also failed to appreciate that (a) the company would be bound by the said settlement (unless the said settlement was, subsequently, terminated in accordance with law or the life of said settlement had, on account of specific provision, expired before 2013 (i.e. before the claimant approached the company with his request); and (b) by raising such objection the company cannot wriggle out of the settlement, if it was alive



and in operation in 2013 and applicable in case of the claimant.

15.10 This issue should have been decided by the Court in light of relevant evidence and not by finding fault with the workman that he failed to place on record the said settlement. The learned Tribunal should have called for (directed the company to place on record) the said settlement and should have closely examined the terms of the settlement and the issues (e.g. whether the settlement is applicable to the claimant or not) and whether it is in force or not could have been decided only after examining the terms of the settlement.

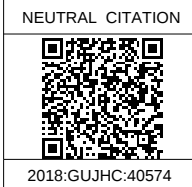
16. At this stage, it may be mentioned that this Court directed the company to place on record of this petition the said settlement. The company has, in response, placed on record the said settlement. However, this Court shall refrain – at this stage – from making any observation or from expressing any opinion with reference to



said settlement.

17. In this view of the matter, actually, it was for the company to act in accordance with the settlement or to establish that the settlement was terminated or it had expired, however, the company failed on both counts. Instead, it raised said objection before this Court which does not deserve to be entertained.

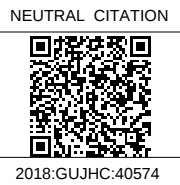
18. The learned Tribunal also failed to appreciate that the submission was raised on ground of arbitrariness and discrimination, more particularly because such benefit was granted to other co-worker. The learned Tribunal also ignored that the workman demonstrated that the company had extended benefit of said settlement to other co-worker and that actually, the company had acted upon the said settlement in case of another employee. The learned Tribunal passed the order without calling for any explanation from the company. The entire process of adjudication with regard to the workman's grievance and his



claim is faulty and defective and the errors have rendered the award unsustainable and the said aspects establish that the case deserves reconsideration by the learned Tribunal.

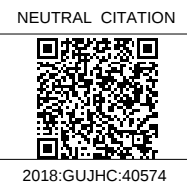
19. Before this Court, learned advocate for the company also tried to claim that the said settlement would be applicable to the employees who were on the rolls of the company on the date when the settlement was arrived at and it would not be applicable to the employees who joined the service subsequently. Even the said aspect should be determined by the learned Tribunal after taking into account the terms of the settlement and after taking into account evidence from both the sides. It would not be just or proper for this Court to make any observation lest it may influence the decision of the learned Tribunal.

20. Learned advocate for the company also claimed with reference to the submission that though the school leaving certificate was available with the workman since 1980, he approached the company



with the request in 2013 and that, therefore the request did not deserve consideration.

20.1 It is relevant to note that such objection should either fail in view of the settlement which, as claimed by the workman, permits the employees to approach the company for rectification of birth date (recorded in the register) at any time before actual retirement or it can be sustained if the learned Tribunal, after scrutiny of the provision under the settlement, reached to the conclusion that the settlement is not in operation or it is not applicable to the case of the claimant. To determine said issue the learned Tribunal should have examined the settlement and answered the question: whether the settlement is alive and in force and whether the claimant falls within the purview of the said settlement. If the learned Tribunal find that answer to both the questions are in affirmative then the company's objection should fail because according to the provision



under the settlement a workman can approach the company at any time before actual retirement. For the same reason the ground on which the learned Tribunal dismissed workman's claim would fall.

21. Besides this, irrespective of the settlement and such provision the learned Tribunal should have objectively examined as to whether the company was justified in rejecting the workman's request on the ground of delay in submitting the request.

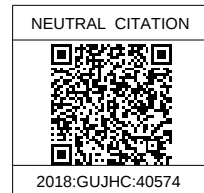
21.1 It is also relevant to recall that the standing orders of the company recognise school leaving certificate as one of the acceptable documents / evidence for the purpose of company's record (so far as recording birth date of employee is concerned).

21.2 Undisputedly, a school leaving certificate would be better and more reliable evidence than the report / certificate issued by the Medical



Officer after ossification test. Ossification test admits error or latitude of +/- 2 to 5 years. The learned Tribunal should also consider that there is material and glaring inconsistency between the birth date recorded in the school leaving certificate and the age mentioned by the Medical Officer in his certificate / the date recorded in the company's register. On the other hand, the declaration allegedly given by the workman gives rise to many anomalies and it is not completely reliable and acceptable document or evidence.

21.3 Therefore, the learned Tribunal should have also addressed the issue (a) as to whether it was proper to prefer opinion / certificate by Medical Officer in preference over school leaving certificate; and (b) why should school leaving certificate be not given preference over medical opinion / certificate, more so when there is no doubt about veracity of the school leaving certificate.



21.4 In present case aforesaid issues are more relevant because the claimant did not rely only on one document viz. school leaving certificate but he also placed on record copy of the policy issued by Life Insurance Corporation as well as a copy of the extract of the register from the office of Regional Transport Officer, Jamnagar. None of the documents are found to be forged or fabricated. Even the Principal of the school admitted the school issued said school leaving certificate and that 1.6.1961 is entered in the school's record (as claimant's birth date).

21.5 When such evidence was available on record, the learned Tribunal should have posed and answered the question as to whether the claim should be rejected merely on the ground that the claimant submitted the application in 2013 though two documents (both recognised, under the Rules, as acceptable documents) viz. school leaving certificate and the life insurance policy give out and reflect that the claimant's birth date is

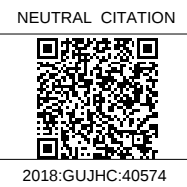


1.6.1961. The conjoint effect of the said documents should have been considered before dismissing reference case.

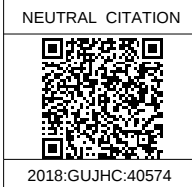
21.6 In light of the documents submitted by the workman the company was obliged to make out more sound and impressive and appealable ground for not accepting the request.

22. The learned Tribunal ought to have examined the workman's claim and grievance instead of superficial inquiry and mechanical approach.

22.1 At this stage, it is necessary to mention that the Court is conscious of the fact that ordinarily the dispute (about birth date entered into the company's register) are not entertained (and it is, more often than not, held that such dispute would not be entertained by the Court) if it is raised at the end of tenure of the service. However that principle is not 'master key' to the storage which contain several questions and issues – answers to which should be searched by

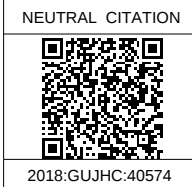


the trial Court in light of 'case-specific-evidence' and not in the shadow of said principle. The precedent (in this regard) do not declare that the said principle is inflexible and any inquiry – even in deserving cases – is impermissible and prohibited once it is shown that the dispute is tainted by and/or preceded by 'delay'. Search for truth is supreme and the court proceedings are the 'process of search' and quest for 'actual fact' and 'hidden truth'. That is the Court's duty and it should not be abandoned – least by the Court – by diverting the process on the alternative route by placing, on main path, the note that 'on account of delay further journey is impermissible and the road is blocked', more particularly when law (statute) advisedly does not prescribe limitation for raising dispute and/or when delay occurred due to reasons and circumstances beyond control and/or when satisfactory explanation is offered and sufficient cause is made out.



22.2 In light of peculiar and special facts of present case the learned Tribunal should have considered as to whether delay should be placed above the need for effective and meaningful justice and as to whether delay should be given more weightage and importance than substantive justice.

22.3 This Court is of the view that the learned Labour Court's duty is to stop or to remove and undo injustice. The learned Labour Court's obligation is to right the wrong. The learned Labour Court and the Industrial Tribunal should strive to do substantial and meaningful justice instead of binding themselves or allowing restrictions on their jurisdiction on ground of delay alone. In absence of anything more, delay alone should not outweigh the merits – unless the delay is gross and inordinate and leads the Court to the conclusion or justifies the conclusion that a dead dispute or stale claim is sought to be resurrected.



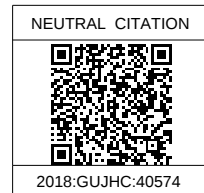
22.4 It is pertinent that in the cases where limitation is not prescribed by law / under relevant statute but the claimant is confronted by employer with objection (against the claim) on ground of delay whereas the claim – request for appropriate relief is based on material and substantive evidence, then the objection on ground of delay – in absence of anything more – would be a 'plea of frustration' and weapon of 'helpless and unsympathetic employer – defendant' who may, probably, not have meritorious defence, impressive contention and appealable evidence but wants to thrive and succeed on ground of delay (particularly in case where limitation is not prescribed by law / under relevant statute).

22.5 I would hasten to add and clarify that this is not to say (or to mean that) that delay should be totally ignored or that the said ground should always fail and such objection should not be entertained.



22.6 Actually, in the cases where limitation is not prescribed by relevant statute but the claim is resisted on ground of laches (delay) relative and comparative weightage should be evaluated and analysed and the Court should judiciously find out whether the scale tilts in favour of delay or in favour of the prayer supported by cogent evidence. The ground of delay without something more is a very misleading ground in those cases where law / statute does not prescribe limitation.

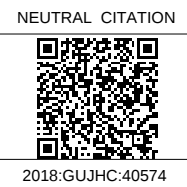
22.7 This position is not relevant and applicable in case where limitation is prescribed by statute i.e. in case where statutory limitation applies. Where law / statute prescribes limitation, it would apply strictly and with all vigour and said provision cannot be and should not be diluted or nullified by 'lenient view' or on 'sympathetic consideration'. A right accrued to other side cannot be damaged or belittled or taken away lightly or casually and in absence of strong and



solid justification.

22.8 However, where law / statute does not prescribe limitation for raising dispute / claim, different consideration and yardsticks should apply and principle of laches may not, always, eclipse or overshadow equity, justice and fairness.

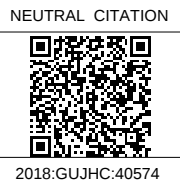
22.9 In the case where the defendant – employer demonstrates that a substantive right has accrued in its favour and such right will be adversely affected and material loss or damage will be caused if delay is ignored or condoned or in the cases where the claim is, *ex facie*, hit by inordinate and inexcusable and gross delay which is not explained or which – on face of it, is unjustified or in the case where the claim is not supported by cogent evidence or in cases where negligence and indolence are writ large on the face of the claim or where apparently the claim / dispute is raised as afterthought and/or where *mala fides* and afterthought are covered under the



garb and crook of 'circumstances' or where the claim is raised only for 'unjust enrichment' or to extract amount and the case where sufficient cause is not made out and satisfactory explanation is not offered, the Court may not ignore the delay or the objection on ground of delay but the Court may demand that the workman / claimant – plaintiff must satisfy the Court about the cause and circumstances due to which delay occurred and about the steps taken by the workman to mitigate or reduce the period of delay.

22.10 In a given case, where delay is caused purely and apparently on account of negligence, the Court may, on its own motion, take cognizance of inordinate and unexplained delay, and in such cases the Court may refuse to exercise jurisdiction and may refuse to entertain the claim and to grant any relief.

22.11 In every case, the decision would depend on facts of each case and the Court or the Tribunal should not mechanically accept or reject plea /



objection on ground of delay and should not mechanically reject or allow all applications / claims opposed on ground of delay.

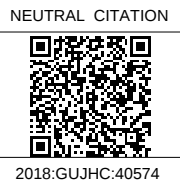
22.12 Relative and comparable facts and factors, in each case, must be considered, evaluated and objectively and judiciously analysed and on proper appreciation appropriate final decision should be taken.

23. In present case, the learned Tribunal ought to have appreciated that when school leaving certificate and life insurance policy and extract of RTO's register were available on record and when it was established that the documents are not forged or fabricated, there was no justification to completely discard or ignore the said documents. The learned Tribunal should have examined and decided workman's claim on merits instead of allowing the company to hide behind the ground of delay or behind alleged declaration. The said documents would actually implore and beseech the Court to examine the



request on merits rather than to be influenced by or to get overwhelmed by the employer's objection on ground of delay. Unfortunately, the learned Tribunal failed to undertake this process and permitted its vision to be clouded and the decision influenced by plea of delay without having regard to and by ignoring the documents and without addressing the issue: in light of such facts of the case can it be said that the claim is hit by vice of inordinate and gross delay and whether it can be said that delay caused prejudice to the company and/or affected any accrued right.

24. In light of the facts and circumstances of present case, above mentioned and several other aspects, issues and facts which are relevant and have substantial bearing on the controversy, deserved proper consideration by the learned Tribunal have not been considered and the claim has been thrown out by the learned Tribunal without examining various relevant aspects and



only on ground of delay or on assumptions and conjectures.

25. Since some of the aspects mentioned above are such which would necessitate evidence, this Court has refrained from deciding the said issues and/or expressing any opinion or offering any opinion or remark in that regard, so that the decision by the learned Tribunal, on fresh consideration, may not be influenced in any manner.

26. Above mentioned observations in present decision are *prima facie* and not on merits of the facts or documents and they have made only with a view to highlight the fact that the aspects connected with the document have not been examined by the learned Tribunal and that the said aspects deserve proper consideration and findings of fact should be recorded by the learned Tribunal with regard to the said aspects and that the learned Tribunal conducted the proceedings in irregular manner and the award is

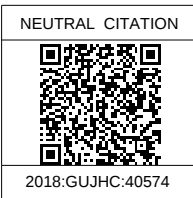


vitiated on the ground of procedural irregularity besides the error and defect that the award suffers from non-application of mind to the relevant facts or relevant aspects.

27. For the reasons mentioned above, the case deserves re-consideration and the award deserves to be set aside and the said case deserves to be remanded to the learned Tribunal for fresh consideration with the clarification that all contentions of both sides are kept open by this Court and that this Court has not expressed any opinion with regard to the issues mentioned above and the issues involved in the case. With the said clarification, following order is passed:

(a) The impugned award dated 31.12.2015 passed by the learned Industrial Tribunal at Jamnagar in Reference (IT) No.42 of 2014 is set aside.

(b) The said Reference (IT) No.42 of 2014 is remanded to the learned Tribunal for fresh



consideration and fresh award.

(c) The learned Tribunal will allow the parties to lead further, fresh and additional evidence if the petitioner and/or the respondent company want to lead such evidence.

(d) The learned Tribunal will consider, address and decide, on merits, all issues which arise in the case, including the issues mentioned hereinabove.

(e) The learned Tribunal will decide the reference case by passing fresh award without being influenced by the impugned award and the learned Tribunal shall, independently, pass fresh award on merits on the basis of the evidence which may be placed on record by both sides.

(f) The learned Tribunal shall endeavour to decide the reference case as expeditiously as possible and preferably within four weeks.



With the aforesaid clarifications and directions, the petition is disposed of. Notice is discharged.

Sd/-

(K.M.THAKER, J)

BHARAT