

17 of the Contract Act, 1872. Section 45 of the Act deals only with trivial incorrect statements made in the proposal form to deny liberty to the insurance company to avoid insurance contract within period of two years. But where the material facts have been withheld or incorrect information furnished, the contract of insurance, independent of Section 45 of the Act, would entitle the insurance company to repudiate the claim.

(20) In view of the above, We are of the opinion that the Award of Permanent Lok Adalat is not based upon correct interpretation of Section 45 of the Act. Thus we allow the present writ petition and set aside the award dated 24th February, 2007, Annexure P-22 with no order as to costs.

R.N.R.

Before Mehtab S. Gill & Augustine George Masih, J.J.

MAHIPAL,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 19357 of 2007

22nd October, 2008

Constitution of India, 1950—Art. 226—Allegations of tampering of service book—Over-writing/cutting in date of birth—Petitioneer continued to serve beyond date of attaining age of superannuation—Not entitled to benefit of said period towards pensionary benefits and salary—Petitioner drawing salary on continuance of said period of service beyond the period of superannuation—Petitioner an illiterate person can be compensated for said period by granting minimum of pay scale—Excess payment, if any, made to petitioner for said period ordered to be recovered from retiral benefits treating him to have retired from service with effect from actual date of superannuation.

Held, that the records would reveal that the petitioner was to retire on 30th June, 1999 and therefore, could not have been continued in service after the said date; however, he continued in service till 31st March, 2003 and, as a matter of fact, performed the duties as Chowkidar with effect from 1st July, 1999 to 31st March, 2003. Since he could not have continued in service beyond 30th June, 1999, the date he attained the age of superannuation, he cannot be granted the benefit of the said period towards his pensionary benefits, nor can be held entitled to the pay which he has otherwise drawn on continuance of the said period of service beyond the period of superannuation. However, since the petitioner is an illiterate person and has worked as Chowkidar, he can be compensated for the duties performed by him from 1st July, 1999 to 31st March, 2003. Thus, it would be in the interest of justice that he be granted the minimum of the pay scale for the said period and excess payment, if any, made to the petitioner for the said period i.e. 1st July, 1999 to 31st March, 2003 be recovered from the retiral benefits to be granted to him. The retiral benefits of the petitioner shall be released to him after deducting the excess payment, if any, made to the petitioner treating him to have retired from service with effect from 30th June, 1999.

(Paras 5&6)

D.S. Nain, Advocate *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana.

AUGUSTINE GEORGE MASIH, J.

(1) The petitioner has prayed for the issuance of a writ in the nature of Certiorari for quashing the order dated 16th January, 2007 (Annexure P-3) passed by the Executive Engineer, Pundri Water Services Division, Kaithal whereby his claim for release of retiral benefits has been rejected and for an issuance of a writ in the nature of Mandamus directing the respondents to release the retiral benefits from the date of retirement alongwith arrears and interest.

(2) It is the submission of the petitioner that he was appointed as a Chowkidar in the Irrigation Department on daily wage basis in the year 1977. He contends that he is an illiterate and continued in

service till 31st March, 2003. He has submitted that for the first time,— *vide* letter No. 533-35/6E, dated 31st March, 2003, the petitioner was informed that there was an over writing/cutting in his date of birth and his date of birth as entered in the service book has been changed from 20th June, 1939 to 20th June, 1949. In response to the said letter, the petitioner submitted a reply, whereafter a departmental enquiry was initiated against him wherein it was held that there is an over-writing/cutting in the date of birth as 20th June, 1949 in place of 20th June, 1939 which is clearly revealed from his service book, which amounts to tampering with the records. Since the said entry regarding the cutting in the date of birth was only to the benefit of the petitioner and no one else, he was held responsible for the same. The petitioner was accordingly relieved from service with effect from 31st March, 2003 but he was deemed to have been relieved with effect from 30th June, 1999 on having attained the age of 60 years as per his actual date of birth i.e. 20th June, 1939. While passing the order dated 20th January, 2006 in compliance with the directions passed by this Court, the Executive Engineer, Pundri Water Services Division, Kaithal passed an order wherein the salary for the period 1st July, 1999 to 31st March, 2003 was ordered to be deducted from the retiral benefits of the petitioner on the ground that he was to actually retire on 30th June, 1999 and therefore, could not have continued in service beyond the said date as he had attained the age of superannuation on the said date. Since the petitioner was not entitled to continue in service, therefore, the salary paid after the said date of retirement deserves to be recovered from him. The petitioner has now challenged this order whereby respondent No. 4 has ordered recovery of salary from his retiral benefits.

(3) Upon notice having been issued, the respondents have put in appearance and have defended the order dated 21st January, 2006 (Annexure P-3). However, the factual aspect has not been disputed by the respondents.

(4) We have heard counsel for the parties and with their able assistance have gone through the records of the case. It is true that in the departmental enquiry, it has been concluded that there is an over-writing/cutting in the date of birth of the petitioner as 20th June, 1949 in place of 20th June, 1939 which reveals that the service book of the petitioner has been tampered with. It is also true that this entry would

have benefitted the petitioner alone and no one else. The Photocopy of the servie book which has been attached by the respondents along with the reply, reveals that at all places where the signatures of the employee were to be appended, the petitioner put his thumb-impression which shows that he is an illiterate person. However, it has not come on record that the tampering was done by the petitioner himself or he had got it done through some other official. Though it is not in dispute that the petitioner was not in custody of the service record, the tampering whereof has been alleged but he cannot be fully exonerated of the responsibility.

(5) The records would reveal that the petitioner was to retire on 30th June, 1999 and therefore, could not have continued in service after the said date however, he continued in service till 31st March, 2003 and, as a matter of fact, performed the duties as Chowkidar with effect from 1st July, 1999 to 31st March, 2003. Since he could not have continued in service beyond 30th June, 1999, the date he attained the age of superannuation, he cannot be granted the benefit of the said period towards his pensoinary benefits, nor can he be held entitled to the pay which he has otherwise drawn on continuance of the said period of service beyond the period of superannuation.

(6) However, since the petitioner is an illiterate person and has worked as Chowkidar, we are of the considered view that he can be compensated for the duties performed by him from 1st July, 1999 to 31st March, 2003. Thus, it would be in the interest of justice that he be granted the minimum of the pay-scale for the said period and excess payment, if any, made to the petitioner for the said period i.e. 1st July, 1999 to 31st March, 2003 be recovered from the retiral benefits to be granted to him. The retiral benefits of the petitioner shall be released to him after deducting the excess payment, if any, made to the petitioner treating him to have retired from service with effect from 30th June, 1999. Needful be done within a period of three months from the date of receipt of copy of this order.

(7) This petition is disposed of accordingly.