

State of M.P.

Vs

R. P. Sharma

Civil Appeal No. 10225 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

26.07.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The respondent, a Chief Engineer had entered the government service on 20-8-1962 as Junior Engineer. In the M.P. Civil List published on 1-7-1964 his name was at Serial No. 153 and his date of birth was mentioned therein as 30-11-1936. Equally, for the next year 1965 he was at Serial No. 162 and the date of birth continued to be the same, i.e., as entered in the record. It would appear that subsequently, the service register was not available; as a consequence, he was called upon to produce the service-book which he did not produce; instead, he supplied a photostat copy of his date of birth certificate showing 28-6-1938 as his date of birth. The report was called for from the Secondary School in which the respondent admittedly had studied which is placed at p. 12 of Vol. II of the paper-book. The report also shows that the school authorities had certified that his date of birth was 30-11-1936. His college certificate is also to the same effect. A report was called also from middle school in which the respondent had studied which is part of the record at p. 105 of Vol. II of the paper-book. Therein also, his date of birth is shown as 31-11-1936. He admittedly filed an application on 31-8-1978 for sanction of loan to purchase a car. Therein, he had specifically mentioned his date of superannuation as 30-11-1994. On the basis thereof, when an action was sought to be taken, he filed an application before the Chief Minister for correction of his date of birth. On the basis of that the Chief Minister made an endorsement that his date of birth as per the service record might be incorporated which was accordingly done.

4. It would appear that subsequently, the same was withdrawn and reentered as 28-6-1938. One S.S. Tiwari made a complaint to the Lokayukta alleging fabrication of actual date of birth of the respondent. The Lokayukta while conducting an elaborate enquiry like the trial of a suit, considered the stand of the respondent that he had studied in the primary school at Vikrampur and his date of birth therein was 28-6-1938 and also later his statement that he studied in Haryana for a part of time and the certificate thereunder produced was also considered, had a doubt on the authenticity of the primary school records. The Lokayukta had sent for the opinion of the handwriting expert and the report of the handwriting expert was that the documents were fabricated by the respondent. After elaborate consideration of the entire records the Lokayukta had recorded the finding as under :

"To conclude, I have no hesitation in coming to the conclusion that the correct date of birth of Shri Sharma is 30-11-1936 and it was this date of birth which was declared and entered originally in the Service-Book when he joined service as Junior

Engineer. Till at least 1978 when Shri Sharma applied for advance for purchase of a car he acted on the footing that his date of birth is 30-11-1936. It was at some stage thereafter that taking advantage of wrong entries in the Gradation Lists Shri Sharma started fraudulently claiming that his date of birth is 28-6-1938 and to that end he manipulated and altered the Service-Book and got it replaced by a photocopy. Later Shri Sharma manipulated to get the Vikrampur School Register altered by getting a page inserted which was (sic not) originally there. On the basis of his real date of birth Shri Sharma should have retired on 30-11-1994. The fraudulent conduct of Shri Sharma continued even after the fraud was detected and orders Annexures 4 and (sic) were issued respectively on 31-5-1994 and 19-9-1994, which would have required him to retire on 30-11-1994. Shri Sharma then misled the Chief Minister by filing a representation on the basis of manipulation in forged Service-Book on 26-9-1994 and succeeded in obtaining a favourable order on 14-11-1994 (Annexure 6). Shri Sharma is guilty of grave misconduct of cheating, forgery and using forged documents and continuing to earn his salary as Chief Engineer for the period after 30-11-1994 to which he was not entitled.

The Chief Minister was misled by the representation of Shri Sharma and committed a mistake in allowing it but no case was made out for taking any action against him and, therefore, no notice was issued to him. Similarly, the Under Secretary only complied with the directions of the Chief Minister and he was not in any way at fault in issuing the order (Annexure 6)."

5. The Lokayukta made his recommendations to the Government to the following effect :

"In view of my finding reached in para 8 above, my recommendations are :

(A) The Government should revoke the order dated 14-11-1994 (Annexure 6) and retire Shri Sharma with effect from 30-11-1994.

(B) Proceedings be taken against Shri Sharma under Rules 8 and 9 of the M.P. Civil Services (Pension) Rules, 1976 for withholding his pension and for recovering back the salary paid to him for the period after 30-11-1994.

(C) Criminal case be registered against him for cheating and forgery or abetting forgery in relation to the Service-Book and Vikrampur School Register and for using as genuine the forged documents."

6. Based thereon and they being bound by the recommendations, the appellants corrected the date of birth of the respondent as 30-11-1936. The respondent filed the OA in the Administrative Tribunal. The Chairman of the Tribunal in its impugned order dated 30-12-1995 in OA No. 859 of 1995 concluded as under :

"The applicant could be retired only after the change in the date of birth in the service record after affording him an opportunity, before doing so; which was not done in the case probably presuming that appearance of the applicant before the Lokayukta in the enquiry is a sufficient compliance of the principles of natural justice. But actually the enquiry of the Lokayukta results in a report to the Government and once the Government accepts the report the proceedings for

changing the date of birth in the Service-Book has to be undertaken and during that process a notice had to be given to the applicant and after hearing his submission in the matter, final order has to be passed which has not been done in this case. Consequently it is held that the applicant shall be deemed to be continued in service from the date he was retired and he shall be relegated to the position which he enjoyed on the date of retirement. He is also entitled to all consequential benefits which may accrue because of the continuance in service. However, the State shall be free to initiate any proceedings for change in the date of birth after following the principles of natural justice. The applicant shall also be entitled to get costs of Rs 500 from the respondents. Application is allowed."

Thus, this appeal by special leave.

7. Shri Chowdhary, learned Advocate General of M.P., has contended that the unimpeachable evidence on record coupled with the admission of the respondent in his loan application that his superannuation date is 30-11-1994 clinchingly establishes that the correct date of birth of the respondent is 30-11-1936 and the service register was found now to have been tampered with. Under these circumstances, the State Government on the recommendation made by the Lokayukta which is binding on the State Government had corrected the date of birth. There is no need for a fresh opportunity to be given to the respondent before correcting the date of birth. The view of the Tribunal, therefore, was not correct in law. Shri Madhava Reddy, the learned Senior Counsel for the respondent, contended that though the respondent had an opportunity to lead evidence before the Lokayukta, the report of the Lokayukta was not supplied to the respondent. Since the action taken by the State Government pursuant to the report submitted by the Lokayukta visits with civil consequences, the principles of natural justice require that he should be given an opportunity before an action is taken for correcting the date of birth. The opportunity was not given. Therefore, the view of the Tribunal was not incorrect in law.

8. Having regard to the respective contentions, the question that arises for consideration is as to what is the correct date of birth on the basis of which the respondent requires to be superannuated ? It is seen that his middle school certificate, secondary school certificate and college certificate clearly show that his date of birth is 30-11-1936. It is seen that he entered into the service in 1962. His gradation list of 1964 and 1965 at the earliest point of time do indicate that his date of birth is 30-11-1936. It would be obvious that these entries came to be made pursuant to the school certificate produced at the time of the entry. His service record was opened as per the secondary school and college record produced by him. In his application dated 31-8-1978 for grant of loan by the Government it was clearly admitted that he was due to retire from service on 30-11-1994. Thus, the finding of the Lokayukta that his date of birth is 30-11-1936 remains unassailable and unimpeachable. Obvious, therefore, Shri Madhava Reddy did not make any attempt to tread on the path nor attempted to rely upon primary school certificate, the trump card of the respondent which was found to be fabricated. The service record was also found fabricated. As to who committed the fabrication of the date of birth is not material for our purpose since that is a matter to be gone into by the criminal court consequent on receipt of a complaint now lodged for the forgery etc. We, therefore, refrain from dealing with it. The Lokayukta had admittedly given an opportunity to the respondent to lead evidence in that behalf. After a full-fledged trial practically as in a civil court, the Lokayukta had conducted the enquiry, given full opportunity and recorded the findings. The Lokayukta had the report of handwriting expert. On the basis of those findings now action has been taken by the State Government. The only material relied on by Shri Madhava Reddy is the withdrawal of superannuation on 30-11-1994 due to correction of date of birth as 28-6-1938; the

reasons are not far to seek. Skilful political manoeuvre had given edge to lodge back into service and the complaint of Tiwari hooked him up at the spot with findings of the Lokayukta.

9. The question arises whether a further opportunity needs to be given to the respondent ? In our considered view, the principles of natural justice cannot be stretched to the ridiculous edge of opportunity at every stage. Since the Lokayukta, a retired Chief Justice had undertaken full-fledged trial whereat the respondent had been given ample opportunity to prop up his best trump card and had given his report in the light of the unimpeachable evidence repeat performance by the Government would be an empty ritual. The principle of natural justice must be pragmatically allowed fruitful play to meet the given fact-situation. When the respondent had the opportunity before the Lokayukta and had adduced all the evidence, no further opportunity needed to be given at the time of correcting the date of birth on the basis of the report submitted by the Lokayukta. It would, therefore, be seen that the Tribunal was grossly in error in directing that he should be given an opportunity afresh before correcting the date of birth.

10. The appeal is accordingly allowed with costs quantified at Rs 10,000 to be paid within four months from the receipt of this order, to the Supreme Court Legal Services Committee. On default, it would be recovered by the Committee as a decree.