

SUPREME COURT OF INDIA

Himachal Road Transport Corpn.

Vs.

Hukam Chand

C.A.No. 595 of 2009

(R.V.Raveendran and Markandey Katju JJ.)

03.02.2009

ORDER

1. Leave granted. Heard.

2. When the respondent entered the employment of appellant, as he did not produce any documentary proof regarding his date of birth, his date of birth was entered in the service record as 11.1.1948 on the basis of his affidavit dated 4.2.1982 declaring the said date as his date of birth. As the age of retirement in the appellant corporation was 58 years, the respondent was to retire on 31.1.2006, with reference to the said date of birth.

3. On the basis of a complaint received, alleging that the real date of birth of respondent was 2.4.1945, the appellant by letter dated 26.8.1994, called upon the respondent to produce his school certificate. It also secured a school leaving certificate from the school where the respondent had studied, on 23.1.1995, which showed his date of birth as 2.4.1945. Respondent was prosecuted by the State for offences punishable under sections 420, 468 and 471 IPC in Cr. Case No.109-II/1998 on the file of the Chief Judicial Magistrate, Kangra at Dharamshala. The prosecution case was that though the appellant's date of birth was 02.4.1945, and his school records showed that date of birth, he had given a false affidavit claiming to be an illiterate born on 11.1.1948 to have a longer period of service. After trial, the learned Magistrate, by judgment dated 25.11.2002, accepted the prosecution case and held the respondent guilty of having submitted a false affidavit regarding age at the time of employment and sentenced him to rigorous imprisonment for one year.

4. The respondent submitted his pension claim papers on 3.3.2003 in the prescribed form, giving the details of his family members and declaring his date of birth as 2.5.1945. Acting on the said declaration of date of birth as 02.5.1945, furnished by the respondent voluntarily and unconditionally, the respondent was superannuated from service on 31.5.2003.

5. In the meanwhile, the respondent had challenged his conviction in the criminal case, by filing an appeal. A few months after his retirement, the Sessions Court, by judgment dated 1.9.2003, allowed his appeal, set aside his conviction, and acquitted him by giving the

benefit of doubt. The respondent thereafter approached the HP Administrative Tribunal alleging the employer had altered his date of birth to his disadvantage, without holding any enquiry, merely on the basis of a conviction in the criminal case, and consequently, prematurely retired him from service on 31.5.2003; and when the appellate court held him not guilty, the basis for changing his date of birth disappeared and he was entitled to be reinstated and continued in service till 31.1.2006. The Tribunal allowed the said application by order dated 12.9.2006 holding that the respondent's date of birth could not have been changed to his disadvantage, without enquiry, and therefore, he ought to have been continued in service till 31.1.2006 with reference to the date of birth earlier entered. The Tribunal held that the respondent was entitled to salary and other service benefits for the period 31.5.2003 to 31.1.2006. That order was confirmed by the High Court by dismissing appellant's writ petition. The said order is challenged in this appeal.

6. The Tribunal and the High Court have proceeded on the assumption that the appellant changed the recorded date of birth of the respondent from 11.1.1948 as 02.5.1945 solely on the basis of a conviction by the criminal court in regard to false declaration of age, without any independent enquiry. It is true that the criminal court found the respondent guilty of having concealed his date of birth and furnished a false affidavit with wrong date of birth and convicted on 25.11.2002. It is also true that there was no 'enquiry' before altering the date of birth in the service record. But what was ignored by the Tribunal and the High Court is the fact that the conviction in the criminal case was not the only reason for the change of date of birth as 02.5.1945. After his conviction, the respondent had submitted his pension claim papers on 03.3.2003, declaring his date of birth as 2.5.1945 and date of retirement as 31.5.2003. It is relevant to note that he did not state while making such declaration that he was giving the said date of birth without prejudice to his contention that his date of birth was 11.1.1948, nor did he assert that 02.5.1945 was not his actual date of birth, nor stated that he was giving the altered date of birth without prejudice to his pending criminal appeal. There was thus a categorical and voluntary declaration and admission on 03.3.2003 that his date of birth was 2.5.1945. The appellant merely acted on the said declaration and request and retired him on 31.5.2003. Compliance with principles of natural justice, either by holding an enquiry or by giving the employee an opportunity of hearing or showing cause, is necessary, where an employer proposes to punish an employee on a charge of misconduct which is denied, or when any term or condition of employment are proposed to be altered to the employee's disadvantage without his consent. On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate principles of natural justice.

7. In the circumstances, the Tribunal and the High Court were clearly wrong in accepting the claim of the respondent. The absence of enquiry before altering the date of birth as 02.5.1945 did not affect the validity of the retirement of respondent. Nor did the acquittal in the

criminal appeal subsequent to his retirement, entitle the respondent to claim that his date of birth should have been treated as 11.1.1948 or that he should have been reinstated and continued in service till 31.1.2006.

8. We therefore allow this appeal, set aside the order of the High Court and the Tribunal and dismiss respondent's application (OA No.85/2005) before the Tribunal.