

A. Devadass Vs. Managing Director, Ksrtc

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Court : Karnataka

Decided On : Jun-29-1994

Reported in : ILR1994KAR2489; 1994(3)KarLJ521; (1995)IILLJ11Kant

Judge : R.V. Raveendran, J.

Appeal No. : W.P. No. 9967 of 1994

Appellant : A. Devadass

Respondent : Managing Director, Ksrtc

Judgement :

ORDER

Raveendran, J.

1. This matter listed for orders is finally heard by consent.

2. The Petitioner entered the employment of the respondent Corporation (KSRTC) on 19-3-1951 giving his age as 18 years. Apparently he did not give his date of birth. In the absence of date of birth, on the basis that he was 18 years as on 19-3-1951 he would have completed 58 years and attained the age of superannuation on 19-3-1991. It was however observed that when he applied for the post of Tinker II Grade in response to an advertisement dated 23-2-1957, he had given his date of birth as 4-1-1936. Hence by notice dated 15-2-1991 he was called upon to

produce proof of his date of birth. In response to it, the petitioner produced a transfer certificate said to have been issued by the School where he studied, showing his date of birth as 28-11-1938.

3. The second respondents considered the matter, and passed the impugned order dated 16/17-8-1993 ordering that the petitioner was relieved from his duties with immediate effect on the ground that he had attained the age of superannuation namely 58 years, as on 19-3-1991 and that he was eligible for all terminal benefits as per the Regulations in force in the Corporation. The said order recites that if the date of birth of the petitioner, is to be taken as 28-11-1938 as claimed by him, he would have been only twelve and half years of age when he was appointed, while he had given his age at the time of appointment as 18 years. Therefore, the respondents proceeded on the basis that the age entered in the Service Records, based on the information given by the petitioner when he entered into service that he was 18 years old as on 19-3-1951 was correct. The second respondent also noted in the order that though action could be taken against an employee for giving a false age, he was treating petitioner's case leniently on humanitarian grounds, by accepting petitioner's age as 18 years as on the date of appointment as entered in the Service Register at the time of initial appointment. The petitioner has challenged the said order dated 16/17-8-1993 of the Second respondent in this Writ Petition. He seeks quashing of the impugned order and a direction to respondents to continue him in service till the date of superannuation on the basis that his date of birth is 18-11-1938 (that is up to 27-11-1996) and also grant him consequential annual increments, leave encashment etc.

4. The contention of the petitioner is that he ought to have been heard in the matter before rejecting his request to alter his date of birth as 28-11-1938 in the Service Record and failure to do so amounts to violation of the principles of Natural Justice. He relied on the Decision of the Supreme Court in State of Orissa v. Binapani Dei : (1967)11LLJ266SC . In that case, the date of birth recorded in the service record of employee (10-4-1910) was changed to detriment of the employee (as 16-4-1907) without holding an enquiry. Rejecting the contention of the employer that the order refixing the age was an administrative order and that

that power under Article 226 could not be exercised to interfere with such order, the Supreme Court held :

'An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority is under a duty to give the person against whom an enquiry is held, an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the Authority which is sought to be relied upon to his prejudice.....

For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applied alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.'....

It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that enquiry officer was never disclosed to respondent-1. Thereafter respondent-1 was required to show cause why 16 April 1907 should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated must be made consistent with the rules of natural justice after informing respondent-1 of the case the State, the evidence in support thereof and after

giving an opportunity to respondent-1 of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.'

But the facts of the case on hand are different. Here, the employer did not alter the date of birth of the employee to his detriment. The employer is not using any evidence or material against the employer without giving an opportunity to the employer to controvert it. On the other hand, all that is done is to reject the employee's request for alteration of the recorded age. Hence, the Decision in Binapani's case is not applicable to this case.

5. If the employer has entered the age or date of birth of an employee in the service record of the employee, on the basis of the statement/representation made or document given by the employee, the employer cannot subsequently alter the same to the detriment or disadvantage of the employee without or disadvantage of the employee without holding an enquiry. Any such alternation without an enquiry and without giving an opportunity to the employee to controvert the employee's claim to alter the date of birth would be contrary to the principles of Natural Justice. But on the other hand, if the employee requests for alteration of his date of birth entered in the Service Records, refusal to accede to such a request by the employer need not be preceded by an enquiry. The principles of Natural Justice do not contemplate grant of hearing in such a case, as an employee has no legal right to require the employer to change his date of birth so as to increase the period of his service. Even if the employer enquires into the matter to satisfy itself about the genuineness of the employee's claim, the employee need not be heard in the matter. In fact even if the employee obtains a declaration regarding date of birth from a competent Court, the employee does not get a right to seek alteration of the age of date of birth in the Service Records. This is because when a person is employed, the contract is based on the date of birth or age given by the employee, which determines the period of service. Unless the service conditions or contract of employment specifically permits the employee to claim correction of date of birth entered in the Service Record, the employee cannot claim correction of date of birth as of right and there is no obligation on the part of the employer to accept or act upon such altered date of birth. The above position is however subject to the

following well recognised exception :- (a) Where a competent Court not only gives a declaration regarding date of birth, but also directs the employer to change the date of birth in a suit or proceedings to which the employer is a party (where such a suit is maintainable and not bared under any law); (b) Where the Rules and Regulations governing the conditions of service of the employee or the contract of employment provide not only for recording the age/date of birth, but for alternation of the age/date of birth and the employee has complied with the procedure prescribed therefor, thereby entitling him to recording of the altered age/date of birth; (c) Where the employer had accepted the request of the employee for alternation of the date of birth.

This case case not fall under any of the aforesaid exceptions. Hence there was no obligation on the part of the employer to consider the request for alteration. Consequently there was no obligation or need to hear the petitioner before rejecting his request for change of date of birth.

6. This Court will not go into the disputed question whether the altered date of birth put forth by the petitioner is his correct date of birth. However on a prima facie examination to find out whether the employer was justified in rejecting the request of the employee for alternation, it is seen that the petitioner has given his date of birth as 18 years when he entered into service on 19-3-1951 and if the alternation sought, if accepted, would lead to an absurd result of petitioner being about 12 years of age when he entered service.

7. For the aforesaid reasons, it has to be held that the impugned order does not suffer from any irregularity or error. The impugned order also provides that petitioner will be entitled to all terminal benefits as per the Regulations. The petitioner has also been paid salary upto 16-8-1993, even though he had attained the age of superannuation on 19-3-1991. Hence, the challenge to the impugned order is liable to be rejected.

8. The petitioner next contended that though he was treated as having attained the age of superannuation on 19-3-1991, he in fact continued in the service of respondent-Corporation till the date of the impugned order, namely 17-8-1993; and he was paid only the salary upto 17-8-1993, but not the annual increments and

leave encashment in regard to the period between the age of superannuation and the date of his actually leaving service, that is between 19-3-1991 and 17-8-1993. the petitioner contends that as he continued in employment till 17-8-1993, he was entitled to the benefits of annual increments and leave encashment till that date and the fact that he attained superannuation on 19-3-1991 was wholly irrelevant. This contention also cannot be sustained. When an employee continued in service beyond the date of superannuation, either on account of any dispute raised by the employee or on account of any doubt in regard to age of superannuation, then the service of the employee subsequent to the date of superannuation cannot be said to be an 'authorised service'. When the employee retired from service on reaching the age of superannuation all the benefits have to be calculated with reference to his pay and qualifying service as on the date of his reaching the age of superannuation. An employee is entitled to 'increments' and 'leave encashment' only during the period when an employee has a legal right to continue in service, that is upto the age of superannuation. Consequently the employee is entitled to annual increment and leave encashment only during the period of service upto the date of superannuation, that is the period during which he has a right to continue in service. But he will not be entitled for any annual increments and leave encashment for the period subsequent to the date of superannuation, even if he is continues in service thereafter due to unavoidable reasons.

9. Hence, the petitioner is not entitled for any of the reliefs claimed in the Petition. Accordingly the petition is rejected.

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