

Baba Visram Vs. Divisional Railway Manager (Establishment) Western Railway and ors.

Baba Visram Vs. Divisional Railway Manager (Establishment) Western Railway and ors.

SooperKanoon Citation : sooperkanoon.com/741613

Court : Gujarat

Decided On : Feb-18-1983

Reported in : (1983)2GLR1162

Judge : A.S. Qureshi, J.

Appellant : Baba Visram

Respondent : Divisional Railway Manager (Establishment) Western Railway and ors.

Judgement :

A.S. Qureshi, J.

1. In this petition the petitioner challenges the order No. ET/28/ 203 dated 31-12-82 purporting to be issued by the Divisional Railway Manager (B), Western Railway, Baroda, whereby the petitioner was told that he would be retired from the Railway service with effect from 8-1-1983 A. N. as having reached the age of superannuation, whereupon the petitioner filed the present petition in this Court on 6-1-1983. This Court issued notice and granted interim stay on 7-1-83.

2. The petitioner belongs to the back-ward class community of Harijan and was employed as Sweeper in the Railways on and from 25-10-1944. At that time the

petitioner did not have any proof of his birth date. Hence he was sent for medical examination to ascertain his age. His approximate age having been ascertained by the medical officers, the date of his birth was entered into the register as 6-12-1924 which was signed by the petitioner as having been accepted by him to be nearly correct. During the period of his service the petitioner did not take any steps to find out his correct birth date. Only when he was due to be superannuated that he seemed to be-stir himself to search out some piece of evidence with regard to his correct birth date. Ultimately it turned out that the petitioner who appeared to be illite-rate had, in fact, gone to the Railway Primary School and had attended the same for some years. The Railway Primary School, Sabarmati has issued School Leaving Certificate which shows the birth date of the petitioner as 7-3-1928 and that he was admitted to the School on 24-6-1936 in the First Standard and that his name was struck off from the School register on 18-1-1941 on the ground that the petitioner had remained absent for a very long period. The petitioner is shown to have been in Std. IV of the said Primary School when his name was struck off and his conduct and work was certified to be average and good.

3. Relying on this School Leaving Certificate, Mr. B. K. Amin, the learned Counsel for the petitioner has urged that the petitioner belonging to a back-ward class community having irregularly attended the School for some time and his name having been struck off for long absence shows that at the highest he could be regarded as semi-literate. Mr. Amin has urged that at the time of the recruitment of the petitioner his date of birth was not known to him and, therefore, the Railway Administration had obtained the medical opinion regarding the petitioner's age which could only be approximately correct and the exact date of birth could not have been ascertained by the medical examination. Hence Mr. Amin submits that 6-12-1924 could not be the correct date of birth of the petitioner as entered in the service sheet. Mr. Amin has also urged that now the School Leaving certificate issued by the Primary School, Sabarmati run by the Western Railway itself, is the most reliable piece of evidence and the Railway Authorities should have no hesitation in accepting the said certificate and the birth date of the petitioner shown therein as correct.

4. Against these submissions of Mr. Amin, Mr. R.P. Bhatt, the learned Counsel for the respondent has urged that representation of the petitioner at the time of his recruitment that he did not know his birth date and also not having disclosed that he had been to School was fraudulent in nature and the petitioner should not be allowed to benefit from his own fraudulent representation. Mr. Bhatt has also argued that the petitioner had an opportunity to have his birth date corrected when the Railway Administration had as a general policy declared that all those employees whose birth dates were incorrect should get the same corrected within the specified time. According to Mr. Bhatt petitioner having not taken the advantage of the opportunity it is not open to him to claim the correction of his date of birth just before his reaching the age of superannuation.

5. The first contention of Mr. Bhatt as regards the fraudulent misrepresentation by the petitioner about his age must be rejected because in the case of the petitioner belonging to a backward class having gone to school intermittently for sometime could not be regarded as having sufficient knowledge that he could produce the certificate about his birth. The petitioner could not be credited with the knowledge that he could get his birth date from the school leaving certificate. Not having attended the school regularly, he is as good as an illiterate person. In the circumstance of the case it would be safer to hold that he had no knowledge or information with regard to his correct date of birth on the date of his joining service.

6. For holding that a person has made fraudulent mis-representation it must be shown that the person had full and complete knowledge about the fact and that he deliberately wanted to suppress that fact with a view to mislead other persons for his personal gain. In the circumstances of this case, it does not appear that there was any such fraudulent intention on the part of the petitioner and hence the -first contention of Mr. Bhatt must fail and must be rejected.

7. As regards the second contention of Mr. Bhatt 'it is true that the Railway Administration had afforded an opportunity to the employees to have their birth date corrected if they so desired. But that again presupposes sufficient intelligence and' understanding on the part of an employee to try and find out his correct date of birth. There is nothing on the record to show that it was brought to the notice of

the petitioner that he had an opportunity to get his birth date corrected. He as a manual worker was interested in working for a living. It was only when he was sought to be superannuated that it might have occurred to him that he may try and find out, if there was any reliable evidence regarding his correct date of birth. He seems to have been lucky enough to have gone to a Primary School run by the Railway Administration itself and having studied therefor sometime though intermittently and the certificate issued by the Railway Primary School, Sabarmati is the strongest piece of evidence with regard to the petitioner's correct date of birth which even Mr. Bhatt was constrained to admit could not be opposed by the Railway Administration.

8. In the circumstances of the case, the petition has to be allowed. The impugned order of retiring the petitioner with effect from 8-1-83 has to be quashed and set aside. Hence the Rule is made absolute. The impugned order of retiring the petitioner 'with effect from 8-1-1983 is quashed and set aside.

9. The respondents are directed to correct the birth date of the petitioner from 6-12-1924 to 7-3-1928 in the service sheet and other records of the Railway and to superannuate him on the basis of this corrected birth date as stated above. In the circumstances of the case, there shall be no order as to costs.