

Arunachalam Vs. the Depnty Chief Mechanical Engineer, Southern Railway and anr.

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SooperKanoon Citation : sooperkanoon.com/806798

Court : Chennai

Decided On : Jan-20-1975

Reported in : (1975)ILLJ270Mad

Judge : Venkataraman and ;Krishnaswami Reddi, JJ.

Appellant : Arunachalam

Respondent : The Depnty Chief Mechanical Engineer, Southern Railway and anr.

Advocate for Pet/Ap. : Mrs. Leelie Seetharam

Judgement :

ORDER

Venkataraman, J.

1. The appellant was employed in the Loco Works, Perambur, in the Southern Railways. He was removed from service with effect from 30-7-1973 by order dated 28-7-1973 by the Deputy Chief Mechanical Engineer, Mechanical Works, Perambur. He preferred an appeal to the Superintendent, Mechanical Works (Personnel). That authority dismissed the appeal on 29-8-1973. To quash the order of removal, he filed W.P. 502 of 1974 in this Court, which was dismissed by Ismail, J., at the admission stage. this writ appeal has been filed, against the order

of Ismail, J.

2. The appellant entered the railway service as a trade apprentice on 20-2-1948. The rules required that an applicant for that post must have attained the age of 17 year and should not have attained the age of 19 years on 1-12-1947. The appellant, in his application dated 9-2-1948, gave his date of birth as 20-4-1929. On 20-2-1948 he was appointed, on the basis that his date of birth was 20-4-1929. If that was his date of birth, he was certainly eligible for the appointment. In support of the date of birth furnished by him, the appellant is alleged to have produced a transfer certificate purporting to have been issued by the Methodist Mission Secondary School, St. Thomas Mount, and that showed his date of birth as 20-4-1929. In his application, the appellant gave his father's name as Loganathan and in fact he styled himself as L. Arunachalam. On the basis of the above representation, he was appointed.

3. After the appellant had put in 21 years of service, ill-feeling developed between him and one Sahadevan. Sahadevan claims that he and the appellant are sons of one Ekambaram but by different wives, Sahadevan being the son by the Second wife and the appellant being the son through the third wife. According to Sahadevan, the appellant never studied in any school in St. Thomas Mount. He gave a complaint to the Vigilance Department of the Railways, stating that the appellant had secured his job by false representation. The complaint was enquired into and according to the department, the transfer certificate which the appellant had produced was a bogus certificate. According to the department, the appellant did not study at all in the Methodist Mission Secondary School in St. Thomas Mount and such a certificate had not been issued at all by the authorities of that school. Further, according to the department, the real date of birth of the appellant was 10-5-1926. Further, the appellant's father was Ekambaram and not Loganathan. The case of the department is that if the appellant had given his real age and his father's name, he would not have been eligible at all for appointment in view of the age restrictions and that was why he produced a bogus transfer certificate giving his date of birth which would make him eligible and in order to cover up any possible investigation he also gave out his father's name wrongly as Loganathan instead of Ekambaram, Further particulars of the fraud played by the

appellant are also alleged. The department accordingly framed the following charge against the appellant on 21-3-1970.

That you secured appointment as Trade Apprentice on 20-2-1948 in Carriage Works P.W.P. by producing,

1. a bogus transfer certificate,
2. Showing your uncle's name as your father's name.

You thus produced appointment on false antecedents.

Enquiry was made by one Sri N. Aravamudhan. He held the charge to be proved. The disciplinary authority accepted the findings and removed the appellant from service.

4. Against that order, the appellant filed W.P. 460 of 1972. Ramaprasada Rao, J., allowed itis 17-4-1972 on the ground that that the enquiry had not been properly conducted. He gave liberty to the department to hold a fresh enquiry.

5. Accordingly, a fresh enquiry was made, by one Sri V. Rama Iyer. It was an elaborate enquiry. He submitted his findings holding the charges proved. The disciplinary authority agreed with the findings and gave an opportunity to the appellant to show cause as to why he should not be removed from service. After considering his explanation, the disciplinary authority passed the order of removal on 28-7-1973. Against that order, the appellant filed W.P. 4393 of 1973. Ramaprasada Rao, J., dismissed it on the ground that a departmental appeal was the proper remedy, and observed.'

This is not a case where prima facie. It appear to me that the rules of natural justice have been violated.

Writ Appeal No. 145 of 1973 was filed against the said order, but was dismissed on 9-8-1973. The appellant then filed an appeal departmentally to the Superintendent, Mechanical Workshops, and that authority dismissed the appeal by order dated 29-8-1973. Against that order, this writ petition W.P 502 of 1974 was filed.

6. Before the departmental authority, the appellant maintained that his real date of birth was 20-4-1929 and not 10-5-1926. He admitted that his father was Ekambaram and that Loganathan whom he mentioned as his father was only his father's brother. But he claimed that Loganathan brought him up as his foster father and that was why he mentioned Loganathan as his father. He alleged that it was long afterwards he came to know that his father was Ekambaram,

7. It was stated before us by Sri G. Ramaswami, the Senior Standing Counsel for the Railways that the punishment of removal was imposed under the Railway Servants Discipline and Appeal) Rules, 1968. The particular provision appears under Section 2 and is to the following effects:

The following penalties may for good and sufficient reasons and as hereinafter provided be imposed on a railway servant, namely .:

(viii) removal from service which shall not be a disqualification for future employment under the Government or railway administration : (ix) dismissal from service which shall ordinarily be a disqualification for further employment under the Government or railway administration.

Mrs. Leelie Seetharam, learned Counsel for the appellant, contended before us (1) that the disciplinary authority had no jurisdiction at all to pass the order of removal, (2) that there was no evidence before the departmental authority in support of the charge and he only acted on suspicion, and (3) that grave injustice was caused to the appellant, because the enquiry was started 21 years after the alleged misrepresentation and the necessary material evidence had disappeared and it was unfair to the appellant.

8. It would be convenient to take up points 2 and 3 first. It is well-settled that if there is some evidence before the department, this Court cannot interfere in writ proceedings. *State of Andhra Pradesh v. Sri Rama Rao* : (1964)IILLJ150SC . But, if there is no evidence this Court can interfere. That is why the appellant's learned Counsel represents that there is no evidence, We have gone through the records. But, we find that there were sufficient materials before the department in support of the charge. In fact, the materials were ample. It is not necessary even to

indicate the materials because the orders of the Enquiry Officer, Sri V. Rama Iyer and the disciplinary authority Sri Krishnamurthy are very detailed. It is enough to point out the following. It is strange that the appellant should have given his father's name as Loganathan when his father was Ekambaram. He himself admits that fact now; but he would say that he came to know his father's name only later. His explanation is absolutely unacceptable. The appellant would say that he was brought up by Loganathan. But it is disproved by the evidence of Sahadevan and another witness Ramachandran. According to their evidence, the appellant did not study at all in any school in St. Thorns Mount, but studied only in St. Paul's High School, Vepery. Actually, that is what appears from the records of St. Paul's High School, Vepery and the earlier school Calavala Cunniah Chetty High School, Perambur. The admission registers and the transfer certificates of these schools have been brought by the relevant authorities of those schools and the records have come from proper custody. They show that one E. Arunachalam, whose date of birth was 10-5-1926, was admitted in Calavala Cunniah Chetty High School, Perambur. on 16-6-1943 and that he left the school on 15-4-1944. His guardian is mentioned as E. Murugesan. (The evidence of Sahadevan is that this Murugesan is his brother). This E. Arunachalam joined St. Paul's High School, Vepery. Madras on 26-6-1944 and left it in April, 1946. There again, his name was mentioned as E. Arunachalam. His guardian was mentioned as E. Murugesan, and the appellant's date of birth was mentioned as 10-5-1926.

9. Apart from all these, evidence was forthcoming from the records of the Methodist Mission Secondary School, St. Thorns Mount, that no certificate like the transfer certificate Ex. P. 1 was issued at all from that school. It was clearly a bogus certificate, There were thus ample materials before the departmental authorities to come to a finding that the charge had been proved. We are thoroughly satisfied that the enquiry was conducted after observing all the formalities and principles of natural justice. It is true that the enquiry was started after 21 years. But, there is no legal bar and we are satisfied that the evidence which has been produced is such that could be accepted even after a lapse of 21 years. There is no substance in points 2 and 3 made by the learned Counsel for the appellant.

10. We shall now proceed to consider the question of jurisdiction. This is but on more than one ground by the learned Counsel for the appellant. The main ground put forth is that the alleged fraud of the appellant was committed before he was entertained in service, that is to say, when he was not in Railway Service, and such bad antecedents could not be made a ground of punishment, particularly 21 years later. Before discussing the authorities relied on by the learned Counsel, we would observe that the words 'for good and sufficient reasons' which occur in the Railway Servants (Discipline and Appeal) Rules, one of sufficient amplitude so as to permit the department to take account the fraud played by the appellant for entering the job. If he had mentioned the real facts, he would not have been eligible at all. Such a fraud, which goes to the very root of his appointment, is a good and sufficient reason even for his dismissal if the authorities so choose. If we were to hold otherwise, it would mean that if somehow an applicant, who plays a fraud, totally happens to be entertained in service, the department would be totally powerless to remove him from service and it would be obliged to continue him in service. That would be putting a premium on dishonesty. It is even possible to conceive of an extreme case of a candidate bribing the appointing authority on a false representation as to his age and getting employment. If, as the learned Counsel contends, the department cannot interfere once he has been entertained, that would be a sorry state of affairs. It is necessary to remember that the fact that the fraud was detected 21 years afterwards is not at all relevant in deciding this question, because if the submission of the learned Counsel were correct, it would mean that even if the fraud had been discovered just a day after the appellant was entertained in service, the department would have had no jurisdiction to remove him from service.

11. There are two unreported decisions of the Court directly supporting the view which we have indicated above, viz., (1) order dated 21-11-1963 of Srinivasan, J. in W.P. No. 1041 of 1961 C. Perumal v. The Southern Railway and (2) the judgment of Anantanarayanan, C.J., and Natesan. J., dated 16-10-1967, in W.A. 162 of 1964' confirming the above order. The petitioner was alleged to have obtained employment by falsely representing that he was the son of one Chella Perumal, who was a Railway employee, since Railway employees were given preference in the matter of appointment to inferior posts. The department alleged

that he was not the son of Chella perumal. The petitioner claimed that he had been adopted by Chella Perumal, but that was disproved. The petitioner was entertained in 1944 and the proceedings were started in 1960. A similar contention was advanced that a misrepresentation before he was entertained could not be taken note of. This contention was repelled by Srinivasan, J., thus:

The contention that the Railway has no authority to punish a misconduct where such misconduct was not committed during the course of the employment may no doubt be generally correct. But it seems to me where this misconduct has relation to the employment, in the sense that by a false representation the petitioner successfully obtained the employment but for the alleged false relationship, the fact of false representation made by the petitioner which is so intimately linked with procuring the order of employment from the railway, and the misconduct to my mind, becomes a misconduct which the railway cannot ignore and is competent to take note of. This contention also fails.

This reasoning was affirmed by the Bench in the appeal. The Bench observed:

12. The words 'serious misconduct' are not qualified by any such further expression as misconduct in relation to the service or duty of the concerned employee, after his appointment. We can very well conceive of a case where, for instance, by the gross blackmail of an appointing authority by a person who knows some fact about such authority's private life, which that authority would dread to be disclosed, an appointment is actually obtained. Can it be pleaded, for moment, that this is not 'serious misconduct' which the Railway Administration can take notice, when the true facts later come to light

13. In the book 'Employees Misconduct' by Alfred Avins, at pages 496-498, it is pointed out that while there is some difference of opinion on the question whether getting a job by false representation as to age would amount to an offence of cheating, by way of contract, the cases are unanimous that obtaining employment by lying to get the job is industrial misconduct.

14. In *Hiro Lilaram Chablant v. State of Hyderabad* A.I.R. 1955 Hyd 48, an officer was dismissed on the ground that he had given a false date of birth at the time of

his appointment. The order of dismissal was set aside on the ground that there had been a violation of the constitutional guarantee contained in Article 311 of the Constitution. The detailed discussion would have been totally unnecessary, if it was felt that no order of dismissal could be passed, because the furnishing of the false date of birth was prior to the appointment and was, therefore, irrelevant. This case is, therefore, an implied authority for the position that furnishing a false date of birth can always be made a ground for removal from service.

15. In *Ishwar Shingh v. The President of District Board, Muzaffarnagar and Ors.* : AIR1961 All292 , the services of one Ishwar Sing were terminated on the ground that he was not a qualified person to hold the post since he had not passed the Vernacular Final Examination. In his initial application for appointment, he had misrepresented that he had passed the Vernacular Final Examination. The only plan put forward by him was that he was dismissed by the vice-president while he could be dismissed only by the president. It was held that actually the vice-president was competent to exercise the powers because of the incapacity of the president. This case is also an implied authority for the position that on the ground of disqualification as to age, an order of removal can be passed.

16. Mrs. Leelie Seetharam on her part has not been able to cite any direct decision in favour of the appellant. She cited the decision of Fazal Ali, J., in *Shiv Dass Khajuraia v. State of Jammu and Kashmir A.I.R. 1959 J.K. 13*. The petitioner there was a temporary clerk and was discharged without any opportunity being given to him to defend himself before the order was passed. It was on that ground that the writ petition was allowed. Mrs. Leelie Seetharam, however, relied on the following passage at para 17:

Lastly, it was contended by the Advocate General that the petitioner misrepresented his age to the Department at the time of his appointment was, therefore, itself ultra vires. This argument, however, cannot, be entertained at this stage for the simple reason that it was the duty of the department to satisfy itself about the competency of the candidate before this appointment. After the department had chosen to appoint the petitioner he would certainly be clothed with all the rights and safeguards that the Constitution provides and these rights cannot

be taken away merely by the fact that there was mis-representation at the time of appointment. These matters are absolutely extraneous and irrelevant for the purpose of the present case.

Mrs. Leelie Seetharam relies on the observation that it was the duty of the department to satisfy itself about the competency of the candidate before his appointment. It may be noted that in that case no regular charge had been framed that the petitioner had misrepresented his age and that, therefore, he was liable to be discharged. Hence, that case can be distinguished. If the observation means that the department would have no jurisdiction to frame a charge and discharge him after due enquiry, we would respectfully differ from the observation.

17. Mrs. Leelie Seetharam then refers to the decision of Asthana. J., as he then was, of the Allahabad High Court, in Abdul Aziz Khan v. Union of India (1973) S.L.J. 597. There, one Abdul Aziz Khan was terminated from Railway Service on the ground that he had procured the appointment as loco cleaner by deceitful means and had, therefore, committed gross misconduct and failed to maintain absolute integrity and devotion to duty. He filed a suit to set aside the order. The trial Court decreed the suit. The appellate Court dismissed the suit. In the second appeal, the trial Court's decree was restored, Asthana, J., found that the charge had not been proved at all and there was no evidence to support the charge. The case is, therefore, distinguishable. However, some observations were made, and Mrs. Leelie Seetharam relies on these observations which read:

Further he was accused of having continued in the railway service without disclosing true facts to the administration. If anything the charge so framed is not only vague to a great extent but also is defective. Securing appointment as loco cleaner by deceitful means could not be in the course of performance of his duty as a railway servant by the plaintiff. It is, therefore, not easily understandable how the alleged appointment of the plaintiff as a cleaner in loco department would amount to gross misconduct and will show lack of maintenance of absolute integrity and devotion to duty. Assuming that the plaintiff did procure any appointment as lococleaner by resorting to deceitful means no question of the disclosure arises to the administration. It would be for the administration to

discover the fraud which it alleges to have discovered them Sri Dahiya, the Assistant Personnel Officer, examined the matter of appointment while reconstructing the records.

The observations must be understood in the light of the charge framed. The learned Judge does not say that if it had been established that the appellant secured the appointment by deceitful means, it would not be a valid ground for removing him from service. Indeed, the detailed discussion shows that because the learned judge felt that if the charge had been established, the appellant could be removed from service, there is a detailed discussion of the merits. Indeed, at page 604, the learned judge refers to the fact that there was no evidence before the committee that the plaintiff was in conspiracy with the clerks in the office and was instrumental in procuring the letter of appointment. This suggests that if there had been evidence, the conclusion would have been different. In this case, however, it has been established that the plaintiff got his appointment by deceitful means,

18. Mrs. Leelie Seetharam then relies on *Viswanandham v. Deputy Director of Agriculture, Adilabad* (1974) A.P.H.N. 141. The extract of the judgment of Gopal Rao Ekbote, C.J., and Lakhmiah, J., relied on, runs as follows:

A careful and analytical reading of Rule 24(a) would disclose that the termination of probation is postulated on the subsequent conduct of the probationer. Under Sub-rule (a)(1) his probation can be suspended and he can be discharged from service for want of vacancy which naturally is a subsequent event. Likewise under Sub-rule (a)(iii) the probation can be put under another officer in order to find out whether the previous report was correct. No. doubt, Sub-rule (a)(iii) confers discretion either to extend the period of probation or terminate the probation and discharge him from service after giving him one month's notice or pay in lieu of such notice But it is obvious that such a discretion has to be exercised not only keeping in view the purpose for which it is conferred but also in accordance with well-settled principles in that behalf. If that provision is read along with the other contextually connected provisions of that rule, it will be clear that the probation can be either extended or terminated under that provision only because of any event

which occurs subsequent to his being placed on probation. It is, therefore, highly doubtful whether his probation can be terminated on the ground that his character and antecedents were such that he was not eligible for appointment. This is further strengthened by the language of Rule 12(b)(i)(i).

If a person's character and antecedents disqualify him from being appointed as a Government servant, then his appointment itself will have to be cancelled, and in such a case no question of terminating the probation can arise.

We may note in the first place that this decision deals with the character and antecedents prior to the appointment; but the question of the eligibility on the ground of age is an entirely different matter. Further, even the report shows that it was open to the authorities to cancel the appointment itself, and that is what was done in the present case by removing the appellant himself.

19. Mrs. Leelie Seetharam then cited the decision of the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Dei and Ors.* : (1967)11LLJ266SC . In that case according to the age given by Binapani Dei, a doctor she should have retired only in 1968. But, the department re-fixed her age, and compulsorily retired her with effect from 1963 itself. It is relevant to note that at page 1271. It has been observed: 'The State was undoubtedly not precluded merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry, if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth.' This sentence itself shows that similarly in this case it was open to the respondent to re-open the question of date of birth and remove the appellant from service. In this case there was no proper enquiry. That was the reason why the order of the State compulsorily retiring the officer was set aside. Here, however, there was a proper enquiry.

20. Mrs. Leelie Seetharam then referred to the decision in *Rama Varma Raja v. State of Kerala.* : (1970)11LLJ526Ker . There the order of the department re-fixing the date of birth of the petitioner was set aside on the ground that there was a predetermination of the issue without observing the principles of natural justice. But, it has recognised that the department could go into the question of the date of birth by holding a proper enquiry.

21. The next decision, L. K, Krishnan v. State of Madras : (1972)1MLJ1 , was a case where an Assistant Engineer was reduced to the grade of Supervisor on the ground of his having given a false statement as to his qualifications to the Superintending Engineer. That again shows that a false statement about the date of birth can be made a ground for the imposition of the punishment of removal.

22. Thus, the first submission of Mrs. Leelie Seetharam that the departmental authority had no jurisdiction because the mis-representation was before the appointment, is entirely untenable.

23. The second ground on which Mrs. Leelie Seetharam urges that the department did not have jurisdiction to dismiss the appellant from service, in that under Rule 1945 of the Indian Railway Establishment Code, the only power of the department was to correct the date of birth from 20-4-1929 to 10-5-1926. Rule 145(1) says that every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. Sub-rule (3) says:

The date of birth as recorded in accordance with these rules shall be held to binding and no alternation of such date shall ordinarily be permitted subsequently. It shall, however, be open, to the President, in the case of a gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered.(i) Where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in services longer than if the alteration had not been made, or...

This rule primarily contemplates the railway servant himself seeking to get his date of birth altered. However, we shall assume that the rule enables the departmental authority to correct the age suo moto. But, that is not exhaustive of its power in the matter. The rule does not prohibit the department from punishing railway servants for false declaration of age, from inflicting even the punishment of removal. If the intention of Rule 245 was that it was exhaustive of the power of the departmental authorities when false age is given and would preclude the authorities from taking disciplinary action under the Discipline and Appeal Rules, we would expect suchto

intention to have been expressed in clear language.

24. The third ground on which the learned Counsel for the appellant would argue that the departmental authority had no jurisdiction is that a period of 21 years had elapsed and the principles of laches and equitable estoppel would apply. In our view, there is no scope at all for the application of those principles in a case like this. Those principles can be invoked only by an innocent person and not a guilty person like the appellant who procured his appointment by deceitful means. The subject of laches is dealt with in Halsbury's Laws of England, Third Edition Vol. 14, at page 641 onwards. At page 643 it is observed that when equitable remedy is in respect of fraud, there, is no laches so long as the party defrauded remains, without any fault of his own, in ignorance, of the fraud. It will be seen that in this case the fraud played by the appellant come to light only in 1969 and immediately the departmental authorities took action. The subject of estoppel is dealt with in Halsbury's Laws of England, Third Edition Vol. 15 from Page 168 onwards. In particular, equitable estoppel is dealt with at page 223. The principle is that an innocent party should have altered his position on the faith of the representation or conduct amounting to representation by the other party. Here, it cannot be said that the department was aware of the fraud committed earlier than in 1969 and induced any belief in the appellant that no action would be taken as against him on that ground.

25. Mrs. Leelie Seetharam cited the decision in *Uma Sanket Misra v. Board of High School and Intermediate Education, Uttar Pradesh and Ors.* : AIR1974 All290 . That was a case where a college student was declared to have come out successful in the Matriculation examination and subsequently he was allowed to appear for the Intermediate examination which he passed and then he studied the B.A. course also. It was held that the university authorities were estopped from contending that he had actually not passed the Matriculation examination. The important point to note is that the allegation made by the university that the student had been guilty of fraudulent mis-representation was not supported by any evidence. That is what distinguishes that case from the present one.

26. Finally, it is urged by Mrs. Leelie Seetharam that considering the fact that the appellant had been in service for 21 year and it is not stated that his service was otherwise unsatisfactory, the order of removal works great hardship. It is, however, settled law that the departmental authorities are the sole judges of what the proper punishment is. For instance, *State of Orissa. v. Vtdya Bhusan Mahapatra* : (1963)ILLJ239SC , and *L.K. Krishnan v. State of Madras (supra)*, may be noted. At the same time, we must observe that we feel considerably distressed that the appellant should have been removed from service though he has put in 21 years of service and his service is not otherwise stated to have been unsatisfactory. There may be other cases of persons who have given false age and have been continuing in service because their misrepresentation has not been detected. Anyway, it is harsh on the appellant. He has a family to support and he would be thrown on the streets by the order of removal. It seems to us that once this Court has by this judgment vindicated the stand of the department that they have got power to remove the appellant from service on account of his having secured the job by false misrepresentation about his age' that would suffice to serve as a precedent on the question of law and recommend that on humanitarian grounds and consideration of justice and mercy, the department may take him back, if need be with some reduction in rank or in emoluments.

27. With this recommendation the appeal is dismissed but without costs.