

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WA.No. 1827 of 2014 () IN WP(C).30646/2012

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AGAINST THE ORDER/JUDGMENT IN WP(C) 30646/2012 of HIGH COURT OF KERALA
DATED 13-11-2014**

APPELLANT(S)/RESPONDENT NO.5:

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MICHAEL A.F
S/O.FRANCIS, ARACKAL HOUSE, KOTHAD PO
KOTHAD PIN 682 027.**

**BY ADVS.SRI.M.M.MONAYE
SRI.DESI MATTHAI**

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 4 AND 6:

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- 1. P.M.ASHOK KUMAR
ELUTHARA HOUSE, KOTHAD PO, CHITTOOR
ERNAKULAM DISTRICT, PIN 682 027.**
 - 2. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
CO-OPERATIVE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001.**
 - 3. THE JOINT REGISTRAR (GENERAL)
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), KAKKANAD, PIN 682 030.**
 - 4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL)
OFFICE OF THE ASSISTANT REGISTRAR
OF CO-OPERATIVE SOCIETIES(GENERAL)
KANAYANNUR, ERNAKULAM 682 016.**
 - 5. THE KORAMPADAM SERVICE CO-OPERATIVE BANK LTD.NO. 178,
KOTHAD PO, VIA, CHITTOOR
ERNAKULAM 682 027, REPRESENTED BY THE SECRETARY**
 - 6. THE HEAD MISTRESS
HIGHER SECONDARY SCHOOL OF JESUS, KOTHAD, KOTHAD PO
ERNAKULAM 682 027.**

**R6 BY ADV. SRI.V.G.ARUN
R6 BY ADV. SRI.T.R.HARIKUMAR
R1 BY ADV. SRI.N.MANOJ KUMAR
R1 BY ADV. SMT.JAYASREE MANOJ
R5 BY ADV. SRI.V.V.SIDHARTHAN (SR.)
R5 BY ADV. SRI.M.PAUL VARGHESE
BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24/7/15 ALONG WITH
WA NO.1836/2014, THE COURT ON 04/09/2015 DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 1827 & 1836 of 2014

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Dated this, the 4th day of September, 2015

J U D G M E N T

Shaffique, J.

These two appeals are filed by the common appellant against the common judgment dated 13/11/2014 in WP(C) Nos. 30646/2012 and 6401/2013. The appellant is the petitioner in WP (C) No. 6401/2013 and the 5th respondent in WP(C) No.30646/2012.

2. WP(C) No. 30646/2012 was filed by the 1st respondent in WA No.1827/2014, hereinafter referred to as the 1st respondent, seeking for a declaration that the appointment of the appellant as Attender cum Driver in the Korampadam Service Co-operative Bank Ltd., (hereinafter referred to as the Bank) is illegal and void. He also challenged Exts.P10 and P22 orders and sought for a direction to appoint him as Attender cum Driver in the Bank. Ext.P10 is a communication issued by the Assistant Registrar (General) on 7/8/2010 intimating the 1st respondent that the

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appointment made to the post of Driver in the Bank is in accordance with the prescribed procedure and is legal. Ext.P22 is an order dated 14/5/2012 passed by the Joint Registrar (General) in the matter relating to the claim made by the 1st respondent and forming an opinion that the appointment of the appellant was in accordance with the Rules.

3. The short facts involved in the writ petition would disclose that the appellant as well as the 1st respondent were applicants to the post of Attender cum Driver in the Bank, as notified in terms of advertisement dated 18/6/2008. It is stated that the candidate should have crossed 18 years and should not have crossed 37 years as on 01/04/2008. Relaxation has been provided to Latin Christian candidates coming under Other Backward Community. They were entitled to apply upto the age of 40 years as on the effective date. The appellant and the 1st respondent submitted their applications. The appellant had produced certificate showing his date of birth as 19/1/1969. He became the 1st rank holder. The 1st respondent was the second

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rank holder. He alleged that the appellant had declared his date of birth in the driving licence which he had obtained in the year 1985 as 19/1/1964. Going by the said declaration of age, he had completed 44 years of age and was not eligible for being considered to the said post in terms of the notification. The 1st respondent submitted complaints which were gone into by the competent authority who confirmed the age verification of the appellant and approved his appointment. The 1st respondent challenged the same by filing WP(C) No. 22988/2011 and as directed by this Court, the Joint Registrar (General) conducted an enquiry and rejected the claim of the 1st respondent by Ext.P22. It is in the light of the said circumstances that the 1st respondent had filed the above writ petition.

4. In the meantime, the appellant filed WP(C) No. 6401/2013 challenging Ext.P3, an order issued by the licensing authority cancelling his licence under Section 19 of the Motor Vehicles Act, 1988. It was found that he had obtained the driving licence in the year 1985 by misrepresentation. Though the

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appellant preferred an appeal against Ext.P3 order, the same was rejected in terms of Ext.P5 and therefore writ petition is filed challenging the said orders.

5. Learned Single Judge after considering the rival contentions observed that if the school records were taken as an authentic document, the appellant could not have been given licence in the year 1985 since he had not attained the age for driving a motor vehicle. As the licence was obtained by showing the wrong date of birth and by misrepresentation, the licensing authority was justified in cancelling the licence. With reference to Ext.P22 order passed by the Joint Registrar (General), the learned Single Judge observed that in view of the cancellation of licence, which itself was obtained by misrepresentation, the appellant would not have been entitled to be appointed in the Bank. Further, Joint Registrar (General) did not take into consideration the directions issued in Ext.P21 judgment while passing Ext.P22 order. It was observed that since the appellant was not eligible to be appointed, the 1st respondent being the next rank holder, was

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entitled to be appointed after verification of his credentials and existence of a valid driving licence as on 01/04/2008, which is current.

6. Having regard to these factual issues, it was argued by the learned counsel for the appellant Sri.M.M.Monaye that the enormity of judicial decisions would clearly indicate that the extract of school admission register is the best evidence to prove a person's age. As per the extract of school admission register, which was produced as Ext.P7 in WP(C) No.30646/2012, the date of birth of the appellant is admittedly 19/1/1969. While submitting application in terms of Ext.P1 notification, appellant had produced the extract of admission register as evidence of the date of birth. Therefore, as far as the submission to the Bank is concerned, there is no misrepresentation or fraud on the part of the appellant. In regard to the licence issued in the year 1985, it is submitted that the appellant did not complete his studies and he left the school after completing 7th standard on 5/5/1980. The licence obtained by him in 1985 was only for the purpose of eking

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out the livelihood and should not have been treated as a fraud or misrepresentation on the part of the appellant in order to vitiate an appointment that he has already obtained. It is submitted that the said licence had been subsequently renewed and therefore the licensing authority was not justified in cancelling the driving licence.

7. On the other hand, learned counsel appearing on behalf of the 1st respondent while supporting the judgment of the learned Single Judge submitted that he had complained of the age of the appellant even at the time when he was appointed. Information received under the Right to Information Act from the licensing authority clearly disclosed his date of birth and that he was overaged at the time of submitting the application. Under such circumstances, the learned Single Judge was justified in quashing the appointment given to the appellant and directing appointment of the 1st respondent to the said post.

8. Learned counsel for the appellant relied upon various judgments in support of his argument.

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(i) Reference is made to the Division Bench judgment of this Court in WA Nos.315, 361 and 362/1975, **(1976 KLT SN 60 - Case No.135)** in which the Division Bench held that “It is clear from Sections 7 and 11 read with Form B that the renewal of a licence really takes effect as a fresh grant. That being so, even assuming that there was some infirmity at the time of the original licence, the defect has been amply cured by the renewal obtained by the writ petitioners subsequent to their having obtained majority”. This judgment was rendered in the light of the Motor Vehicles Act, 1939.

(ii) Reference is also made to the judgment of the learned Single Judge of the Madras High Court in **A. Maniyara Manickam v. Tamil Nadu State Transport Corporation** in which the Madras High Court relied upon the judgment of the Division Bench of the Kerala High Court. That was also a case in which the petitioner obtained driving licence when he was underaged, in 1983. However, an endorsement was made in the licence permitting him to drive heavy motor vehicles from 1987

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onwards. He was considered for appointment as Driver of heavy vehicle in the year 1997. It was held by the Madras High Court that the respondent should consider the age of the petitioner as on the date of the interview and not as on the date of obtaining licence. It was also held that petitioner, being a major as on the date of interview, is entitled to drive a heavy transport vehicle in a public place and his licence was valid.

(iii) The learned counsel also relied upon the Supreme Court judgment in ***Umesh Chandra v. State of Rajasthan*** [(1982) 2 SCC 202]. That was a case in which the question involved was regarding the determination of age of the accused with reference to the date of commission of offence. It was held at paragraphs 21 and 22 as under;

“21. It appears that as the father of the appellant was subsequently transferred from Jaipur sometime in June 1966 to Dhausa and he was admitted to the Sanskrit Pathshala in Dhausa, for the first time in this school the date of birth of the appellant was changed from June 22, 1957 to September 22, 1956. The explanation given by his father is that as by this time the boy had become almost 10 years of

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age and as clause 10 of Chapter XVIII of the Rajasthan Board of Secondary Education Regulations required that no candidate could take the Higher Secondary Examination until he had attained the age of 15 years on the 1st of October of the year in which the examination was held, he had to give an affidavit to change this fact in order to enable his son (appellant) to appear in the Higher Secondary Examination. This position was not disputed by the State. The High Court seems to have made much of this lacuna and has gone to the extent of labelling Gopal Sharma, appellant's father, as a liar having gone to the extent of making a false affidavit. Here also, we think the High Court has taken a most artificial and technical view of the matter. In our country, it is not uncommon for parents sometimes to change the age of their children in order to get some material benefit either for appearing in examination or for entering a particular service which would be denied to a child as under the original date of birth he would be either underaged or ineligible.

22. *Thus, the appellant's father has given a cogent reason for changing the date of birth and there is no reason not to accept his explanation particularly because the offence was committed seven years after changing the date of birth, and, therefore, there could be no other reason why Gopal Sharma*

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should have gone to the extent of filing an affidavit to change the date, except for the reason that he has given”.

(iv) Another judgment relied upon is ***Nazar v. Union of India*** (2013 (4) KLT 34), in which the learned Single Judge of this Court relied upon another judgment in ***Swapna Siju v. Union of India*** (2012 (4) KLT 419) and reiterated the position that in the absence of the extract of register of births and the birth certificate issued by the competent authority in respect of a person born before 26/1/1989, an extract of the school admission register can be relied upon by the Passport Officer for the purpose of making changes in the entries in the passport.

(v) Another judgment relied upon is that of the Division Bench of Delhi High Court in ***Commissioner of Police v. Mukesh Kumar*** (LAWS (DLH)-2001-9-224). In that case, the question involved was whether a driving licence issued to an underaged person would automatically become invalid or void without it being revoked/cancelled in accordance with the procedure contained in the Motor Vehicles Act despite the fact

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that it was renewed/revalidated after the holder had attained the requisite prescribed age. Having considered the issue in a batch of writ petitions, it was held at paras 5 and 6 as under;

“5. THE question that arises, therefore, is where a licence was issued to an underage person for whatever reason, whether by mistake, inadvertence or misrepresentation, fraud, etc. does it automatically render such licence void on being noticed and by whosoever or would it require to be declared so under the prescribed statutory procedure. It does not appear to us that such a licence would be void ab initio unless it was declared so by the competent Licensing Authority in accordance with the procedure established by law for the purpose. Because it would require to be examined as to how and in what manner such licences were issued by the authority and whether it was obtained by any fraud or misrepresentation to render it liable for revocation/cancellation and for this, the authority would have to adopt the prescribed procedure and satisfy the requirements of natural justice, etc. Even the Licensing Authority would not be able to revoke/cancel it or to treat it invalid and illegal suo motu what to talk of any other extraneous authority and if it was acted upon later when the holder had crossed the age bar and had overcome the prohibition to drive the vehicle in

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a public place, it could not be brushed aside or discarded merely because it was issued when the person was underage.

6. IT is a different matter that an employer may not accept it for some other reason but it can't be declared illegal by him in suppression or usurpation of powers enjoyed by the Licensing Authority under the Act to deny consideration of appointment to the holder”.

9. Having regard to these factual and legal issues raised by the learned counsel for the appellant, the questions which are to be decided are;

(i) whether there was any justification on the part of the licensing authority to cancel the licence issued in favour of the appellant after having renewed the same periodically?

(ii) whether the learned Single Judge was justified in directing cancellation of the appointment granted in favour of the appellant and directing the 1st respondent to be appointed in the said vacancy?

10. The documents relied upon are as described in WP(C) No. 30646/2012, unless otherwise stated. It is not in dispute that

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the appellant had obtained the licence from the Regional Transport Office, Ernakulam as per licence No.7/416/1985 showing his date of birth as 19/1/1964. The licence was issued on 25/1/1985. He was permitted to drive autorickshaw from 25/1/1985 and light motor vehicles from 4/4/1987. The licence was renewed for driving transport vehicles from 23/5/2005 to 22/5/2008. The 1st respondent had applied for the details under the Right to Information Act and the answers obtained are Ext.P6 (2). However, it is stated that the application submitted by the appellant was not available. It is therefore apparent that there was definitely a mistake or error in the date of birth as shown in the licence viewed in the light of Ext.P7, the extract of school admission register where the date of birth is shown as 19/1/1969. There is also no dispute about the fact that Exts.P6 and P7 related to the same person. Therefore, authenticity has to be given to the extract of school admission register in relation to the application for licence. What was the basis for issuance of licence is not known. At any rate, in 1985, the licence is seen issued for

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driving autorickshaw. Thereafter, he had obtained licence for driving transport vehicles from 23/5/2005 onwards. Therefore, as on the date when the appellant qualified to drive transport vehicles, he had attained the age of majority and was having a valid licence. Therefore, we have to proceed on the basis that the appellant's age is as shown in the extract of school admission register, Ext.P7. Then the question is whether there was justification on the part of the licensing authority to cancel the said licence. As already held by the Division Bench of this Court, the licence does not become invalid merely for the reason that the original licence was issued when the said person was underaged. As held by the Supreme Court in **Umesh Chandra's case** (supra), there might be various circumstances, when licences are being obtained by the parties concerned especially when the petitioner was a minor during the relevant time.

11. Under such circumstances, when the licence was already renewed after the appellant becoming a major, there was no justification on the part of the competent authority to have

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cancelled the licence and permanently debarring him from obtaining a license. Considering the facts of the case, at best, the appellant could have been given an opportunity to correct the date of birth in the licence. In Ext.P3 order dated 29/8/2012 (in WA No.1836/2014), the Regional Transport Officer observed that the action was initiated on the basis of a complaint given by the 1st respondent herein, the appellant having obtained licence before attaining the age of 18 years. Therefore, even according to the 1st respondent, the licence was obtained by misrepresentation. The authority also relied upon the extract of school admission register to arrive at a conclusion that the date of birth of the appellant is 19/1/1969. He proceeded on the basis that the licence was obtained by producing bogus certificate of date of birth. Since there was no valid explanation forthcoming, the appellant was disqualified for driving motor vehicles permanently under Section 19 of the Motor Vehicles Act, 1988. But it is relevant to note that no materials are available with the Department to ensure under what circumstances the licence was

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granted in favour of the appellant. If he was a minor at the relevant time, proceeding on the basis that his date of birth was 19/1/1969, it will be too harsh on the part of the authority to have cancelled the licence permanently under Section 19 of the Act. Though an appeal was filed before the Deputy Transport Commissioner, the same came to be rejected. Section 19 of the Act permits the licensing authority to disqualify a person from holding or obtaining a driving licence or to revoke any such licence and one of the reason is that the holder of the licence "has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation". From the materials available on record, it is clear that the licence to drive a transport vehicle was obtained by the appellant only on 23/5/2005 and he had obtained licence to drive light motor vehicle from 4/4/1987 which is seen to have been renewed from 23/5/2005.

12. Going by the judgment cited above, at the time of renewal, the appellant was not underaged, He was also not

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underaged at the time when he had obtained the right to drive transport vehicle. The misrepresentation apparently was in relation to obtaining licence to drive an autorickshaw. Under such circumstances, the right to drive autorickshaw alone could have been interfered by the authority concerned. But, since the same also had been renewed from time to time, there was no reason to take such a harsh approach in the matter. As held by the Supreme Court in ***Umesh Chandra's case*** (supra), in our country, it is not uncommon for parents sometimes to change the age of their children in order to get some material benefit either for appearing in examination or for entering a particular service which would be denied to a child as under the original date of birth he would either be underage or ineligible. Admittedly, even the appellant had obtained the licence to drive an autorickshaw at the time when he was a minor whereas he obtained licence to drive light motor vehicle after becoming a major. Going by his date of birth as 19/1/1969, he would have completed the age of 18 years as on 4/4/1987. Under such

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circumstances, we are of the view that despite the misrepresentation on behalf of the appellant for having obtained a licence to drive an autorickshaw in the year 1985 while he was a minor, interest of justice required that the licence ought not have been cancelled and a more reasonable view ought to have been taken by the authorities concerned. Hence, we are of the view that Exts.P3 and P5 in WP(C) No.6401/2013 have to be set aside and we do so, and permitting the appellant to apply for correction of date of birth in the licence granted in his favour along with necessary documents and, if required, for renewal of the licence with the correct date of birth, which shall be considered by the competent authority in accordance with law and appropriate entries has to be made in that regard.

13. As far as the appointment of the appellant in the Bank is concerned, he had not made any misrepresentation. He relied upon the extract of school admission register for the purpose of applying for the job which is a document that has been relied upon by the Bank and approved by the competent authorities as

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well. Under such circumstances, when he is the first rank holder and since we have already held that the appellant has licence to drive motor vehicle at the relevant time, he is entitled to continue the employment and the contrary view taken by the learned Single Judge stands set aside.

In the result, these appeals are allowed. WP(C) No.30646/12 is dismissed and WP(C) No.6401/2013 is allowed setting aside Exts.P3 and P5 and permitting the appellant to apply for correction of date of birth in the licence granted in his favour along with necessary documents, and if required for renewal of the licence with the correct date of birth, which shall be considered by the competent authority in accordance with law and appropriate entries shall be made in that regard in the light of the observations made above.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

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P.S. to Judge