

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.3273 of 2001

ORDER:

This writ petition is filed by the employee viz., K.Etta Reddy challenging the award passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D.No.287 of 1999 dated 08.05.2000 published on 04.10.2000.

The petitioner joined as a Driver in the 2nd respondent-corporation in the month of April 1985 after his due selection by the selection committee. At the time of joining service, he submitted his original transfer certificate issued by Victoria Memorial Home High School, wherein his date of birth was recorded as 10.05.1950. The petitioner studied upto 6th class and was not conversant with the procedure for submitting application for appointment in the 2nd respondent-corporation. In the application for his appointment, he signed, as he is a literate. The petitioner was permitted to join duty, after verifying the records and medical report and was discharging his duties as a Driver since the date of his joining.

While matters stood thus, the 2nd respondent-corporation issued a charge sheet dated 15.06,1993 alleging that the petitioner altered his date of birth as 10.05.1956, though the original date of birth was recorded as 10.05.1950, and secured employment as a Driver in the corporation, which amounts to misconduct. The petitioner submitted his detailed explanation thereto, reiterating that he was born on 10.05.1956 and that it is not possible for him to access to the records available with the administrative staff of the 2nd respondent-corporation. Therefore, the alleged alteration of date of birth is not correct.

A regular departmental enquiry was conducted against the petitioner, wherein the petitioner was found guilty of misconduct and after following due procedure, punishment of removal was imposed against him by order dated 07.10.1993. Aggrieved thereby, the petitioner preferred appeal and review petition. Both ended in dismissal by orders dated 23.04.1994 and 05.07.1994. Thereupon,

the petitioner filed I.D.No.56 of 1996, which was later re-numbered as I.D.No.287 of 1999.

The specific contention of the petitioner was that he had no opportunity to access to the records and thereby the question of altering his date of birth in the records available with the administrative staff of the corporation does not arise. Hence, finding him guilty for the grave misconduct by the enquiring authority is erroneous and consequential imposition of grave punishment of removal is arbitrary.

The 2nd respondent-corporation filed a counter denying the material allegations contending that during the course of routine check up and enquiry, it was revealed that the date of birth of the petitioner was altered in the certificate as 10.05.1956 and the said alteration was noted as a result of contradiction that the very same certificate mentions that he sought admission into the school on 10.06.1959. With the result, a communication was sent to the said Victoria Memorial Home High School and the Head Master of the School vide letter dated 09.01.1992 intimated that the date of birth of the petitioner was recorded in the school records was 10.05.1950. Based on the information collected in terms of averments of the petitioner in un-numbered paragraph 4 of the claim statement, the 2nd respondent came to the conclusion that the date of birth was altered as 10.05.1956 from 10.05.1950 to mislead the authorities. Thereupon, an enquiry was initiated against the petitioner, after following due procedure, and after the enquiry, the petitioner was found guilty of altering the date of birth in the transfer certificate to secure employment, which amounts to grave misconduct, and finally prayed for dismissal of the I.D., since the punishment is commensurate with grave misconduct.

After due enquiry, the Industrial Tribunal confirmed the punishment imposed by the Department by award dated 08.05.2000 by passing a one paragraph order, which is cryptic in nature.

The only contention of the learned counsel for the petitioner before me is that there is no possibility to access to the records available with the administrative staff of the 2nd respondent-corporation by the petitioner to alter the date of birth and that the alteration, if any, is not

attributable to the petitioner, but to the administrative staff of the Corporation. Therefore, the petitioner cannot be faulted and such conduct does not amount to misconduct and that the punishment imposed by the Department is disproportionate to the misconduct.

Whereas, learned Standing Counsel for the 2nd respondent-corporation supported the order passed by the Industrial Tribunal contending that by the date of his application for appointment, he was not qualified for appointment if his original date of birth was 10.05.1950. Thus, the petitioner submitted a certificate making necessary alteration as 10.05.1956. Therefore, the order of the Tribunal is in accordance with law and prayed for dismissal of the writ petition.

Undoubtedly, the petitioner applied for the post of Driver in the 2nd respondent-corporation and he was selected and appointed on 01.07.1985 after medical examination by the selection committee. Even according to the petitioner, as stated in the affidavit filed in support of the writ petition, he was discharging duties from April 1985. If he was born on 10.05.1950, as recorded in the original transfer certificate, he was not eligible to be appointed as Driver by the date of his application as his age was exceeding 35 years. Thus it is evident from the record that by the date of his joining of service, he submitted a certificate with altered date of birth but not with original date of birth as 10.05.1950 only to secure employment as Driver in the Department and when the petitioner is guilty of such grave misconduct, imposition of punishment of removal is not disproportionate. In ***Superintendent of Post Offices vs. R.Valasina Babu*** while considering similar question of obtaining appointment by fraud, relying on ***State of Maharashtra vs. Ravi Prakash Babulasing Parmar*** held that the authorities concerned would have jurisdiction to go into the said question and pass appropriate orders and the effect of cancellation of Caste Certificate was also noticed in ***Bank of India vs. Avinash D.Mandivikar*** wherein it was held that if employee concerned had played fraud in obtaining appointment, he should not be allowed to get the benefits thereof, as the foundation for appointment collapses.

In the present case also the petitioner played fraud in obtaining appointment by producing false date of birth certificate, though he was not eligible for appointment due to over age. Hence, the punishment imposed by the 2nd respondent-corporation is just and

reasonable and proportionate to the proved misconduct of the petitioner.

One of the contentions of the learned counsel for the petitioner is that the Tribunal passed a cryptic order of one paragraph consisting of 10 lines. Though the order of the Tribunal is cryptic, still the material on record shows that the petitioner is responsible for submitting transfer certificate with altered date of birth only to secure employment. Therefore I find no ground to interfere with the award passed by the Tribunal dated 08.05.2000.

Hence, the writ petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY, J

Date: 07.11.2015

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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