

High Court for the State of Telangana

**THE HONOURABLE THE CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY**

Writ Petition No.28395 of 2019

Date: 24.02.2020

Between:

K.Bhasker Babu

... Petitioner

... And

Union of India, represented by
The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 071
and two others

... Respondents

Counsel for the petitioner : Mr. M.Venkanna

Counsel for the respondents : Mr.T.S.Venkataramana

The Court made the following:

ORDER: *(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

With the dismissal of OA by the Central Administrative Tribunal, Hyderabad Bench ('the learned Tribunal', for short) by order dated 29.11.2019 in OA/020/00389/2014, the petitioner has approached this Court.

2. Briefly the facts of the case are that, on 02.01.2004, the Union of India, respondent No.1, , had introduced a Scheme called 'Safety Related Retirement Scheme' for Drivers and Gangmen, which is also otherwise known as "Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS)" ('the Scheme' for short). According to the Scheme, those employees who were within the age group of 55 to 57 years as on 30.06.2010, and whose wards possessed the educational qualifications required for recruitment to the post of Assistant Loco Pilot, as required for direct recruitment through RRB. Such employees could submit an application for retirement; their wards were to be considered for the lowest recruitment grade in the category of Assistant Loco Pilot subject to he being declared fit in all respects. The said Scheme was also circulated through circular dated 28.06.2010. The petitioner's father submitted his application on 26.07.2010 wherein he sought voluntary retirement under the Scheme, and sought employment for the petitioner, his son. Accordingly, the petitioner was asked to appear for the written examination held on 06.03.2012. According to the result dated 01.05.2012, the petitioner had qualified in the written examination. Therefore, on 07.05.2012 and 08.05.2012, he was subjected to aptitude test under the Scheme. The petitioner qualified the same. However,

despite the fact that the petitioner had qualified and fulfilled all the eligibility requirement, he was not appointed immediately to the post of Trainee Assistant Loco Pilot. Therefore, his father again filed a representation on 08.08.2012. On the basis of the representation dated 08.08.2012, the petitioner's father was permitted to retire voluntarily on 19.11.2012; the petitioner was issued appointment letter on 08.02.2013 for the post of Trainee Assistant Loco Pilot. Consequently, the petitioner underwent training programme. By order dated 08.07.2013, he was appointed on regular basis.

3. However, the Senior Divisional Personnel Officer, respondent No.3, informed the petitioner that on 11.03.2014, the Divisional Railway Manager (Personnel Branch), respondent No.2, has taken a decision to issue notice for termination of services to the petitioner. For, it was discovered that since his father was ineligible for the benefit of the Scheme, the petitioner's appointment was an illegal one. The notice dated 11.03.2014 was received by the petitioner was on 03.04.2014. Immediately on 05.04.2014, he filed reply to the said notice. Since the petitioner was aggrieved by the notice for termination of services dated 11.03.2014, he challenged the same before the learned Tribunal. However, by the impugned order, the learned Tribunal had dismissed the OA filed by the petitioner. Hence, this petition before this Court.

4. The learned counsel for the petitioner has vehemently contended that since the father had filed the application under the Scheme, the petitioner had a legitimate expectation that once

appointed, his appointment would not be disturbed by the respondents. Secondly, merely because his father was fifty-seven years two months and twenty-three days old as on 30.06.2010, on this technical ground the respondents are not justified in issuing the notice for termination of services dated 11.03.2014. Therefore, the learned Tribunal ought to have set aside the notice dated 11.03.2014. Thirdly, that merely because the appointment is against the eligibility requirement as mentioned in the Scheme, the appointment is not an illegal one, but is merely an irregular one. Lastly, there is no misrepresentation of fact by the petitioner's father. Hence, the impugned order deserves to be interfered with.

5. On the other hand, the learned counsel for the respondents submits that the Scheme was part of the State largesse in the appointment of the wards of those employees, who are seeking voluntary retirement. Therefore, the said appointment cannot be made contrary to the Scheme. Once it was discovered that, in fact, the petitioner's father had crossed the upper limit of fifty-seven years, the respondents were justified in issuing the initial notice dated 23.08.2013 wherein it was brought to the notice of the petitioner that his appointment is purely provisional, and is likely to be terminated any time as he was not eligible for the appointment. Moreover, since the decision had been taken by the Railway Board on 23.08.2013 that as the petitioner's appointment was illegal *ab initio*, on 11.03.2014, a notice of termination was issued to the petitioner. Thirdly, the petitioner cannot have a legitimate expectation contrary to the law. Hence, the learned Tribunal was justified in dismissing the OA filed by the petitioner. Therefore, the learned counsel has supported the impugned order.

6. A bare perusal of the terms of the Scheme produced by the petitioner in his OA clearly reveals that according to the Scheme, the employee has to be in the age group of 55 to 57 years as on 30.06.2010. Admittedly, the petitioner's father was fifty-seven years two months and twenty-three days old as on 30.06.2010. Therefore, obviously the petitioner's father did not fall within the age group as prescribed by the Scheme. Hence, the benefit of the Scheme could not be given to the petitioner's father.

7. The learned counsel for the petitioner is unjustified in claiming that there can be a legitimate expectation contrary to the law. The legitimate expectation, in fact, arises only in terms of the law and not contrary thereto. Therefore, merely because the petitioner was appointed to the post of Assistant Loco Pilot, he cannot have a legitimate expectation that his appointment shall not be disturbed even it was made contrary to the law. Therefore, the contention raised by the learned counsel that the petitioner has a legitimate expectation is a misplaced argument.

8. Moreover, once a decision has been taken by the Railway Board that as the petitioner's father was ineligible, the very appointment becomes an illegal one *ab initio*. Thus, the learned Tribunal had no other option but to dismiss the OA filed by the petitioner. For, the learned Tribunal cannot direct the Railway Board to violate its own Scheme. Needless to say, a learned Tribunal, or a Court cannot be an accomplice in violating the law. Therefore, the learned Tribunal was legally justified in dismissing the OA filed by the petitioner.

9. For the reasons stated above, this Court does not find any illegality or perversity in the order passed by the learned Tribunal. The writ petition is hereby dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A.ABHISHEK REDDY, J)

24th February, 2020

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