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• STATE OF MADHYA PRADESH

v.

R.P. SHARMA

JULY 26, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

C *Date of Birth—Correction of—Opportunity of hearing to be afforded to employee—Date of birth of respondent recorded in Secondary School Certificate and College Certificate as also in service register as 30.11.1936—Service Register misplaced—Respondent supplying a photostat copy of a certificate showing his date of birth as 28.6.1938—Date of birth corrected as 28.6.1938—Complaint made to Lokayukta against the employee alleging that*
D *the employee fabricated the documents showing his date of birth as 28.6.1938—Lokayukta conducted an elaborate inquiry like trial of a suit, considered the stand of the employee gave him opportunity to lead evidence and recommended inter alia that the Government should retire the employee w.e.f. 30.11.1994 (i.e. taking the date of birth of employee as 30.11.1936)—On*
E *an application filed by the employee Administrative Tribunal held that the Government on accepting the report of Lokayukta should have given notice to the employee and after hearing his submission should have passed final order—Held, principles of natural justice cannot be stretched to ridiculous*
F *edge of opportunity at every stage and must be pragmatically allowed fruitful play to meet the given fact situation—When the employee had the opportunity before the Lokayukta and had adduced all the evidence, no further opportunity need be given at the time of correcting the date of birth on the basis of the report submitted by the Lokayukta—Tribunal was grossly in error in directing that the employee should be given an opportunity afresh before*
G *correcting the date of birth.*

Administrative Law :

H *Principles of natural justice—Held, no further Opportunity of hearing need be given to the employee at the time of correcting his date of birth on the basis of the report submitted by the Lokayukta.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10225 of 1996. A

From the Judgment and Order dated 30.12.95 of the Madhya Pradesh Administrative Tribunal, Jabal Pur in O.A. No. 859 of 1995.

Anoop G. Choudhary, Adv. Genl., K.S. Wadhwa, S.K. Agnihorti, Mrs. Suchitra and A. Chitale for the Appellant. B

K. Madhava Reddy and Mrs. S. Janani for the Respondent.

The following Order of the Court was delivered :

Leave granted. C

We have heard learned counsel on both sides.

The respondent, a Chief Engineer had entered the Government service on August 20, 1962 as junior Engineer. In the M.P. Civil List published on July 1, 1964 his name was at Serial No. 153 and his date of birth was mentioned therein as November 30, 1936. Equally, for the next year 1965 he was at Serial No. 162 and the date of birth continued to be the same, i.e., as entered in the record. It would appear that subsequently, the service register was not available; as a consequence, he was called upon to produce the service book which he did not produce; instead, he supplied a photostat copy of his date of birth certificate showing June 28, 1938 as his date of birth. The report was called for from the Secondary School in which the respondent admittedly had studied which is placed at page 12 of Volume 11 of the paper book. The report also shows that the school authorities had certified that his date of birth as November 30, 1936. His college certificate is also to the same effect. A report was called also from middle school in which the respondent had studied which is part of the record at page 105 of Volume II of the paper book. Therein also, his date of birth is shown as November 30, 1936. He admittedly filed an application on August 31, 1978 for sanction of loan to purchase a car. Therein, he had specifically mentioned his date of superannuation as November 30, 1994. On the basis thereof, when an action was sought to be taken, he filed an application before the Chief Minister for correction of his date of birth. On the basis of that the Chief Minister made an endorsement that his date of birth as per the service record might be incorporated which was accordingly done. D
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A It would appear that subsequently, the same was withdrawn and
recorrected as June 28, 1938. One S.S. Tiwari made a complaint to the
Lokayukta alleging fabrication of actual date of birth of the respondent.
The Lokayukta while conducting an elaborate enquiry like trial of a suit,
B considered the stand of the respondent that he had studied in the primary
school at Vikrampur and his date of birth therein was June 28, 1938 and
also later his statement that he studied in Haryana for a part of time and
the certificate thereunder produced was also considered, had a doubt on
C authenticity of the primary school records. The Lokayukta had sent for
opinion of hand-writing expert and the report of the hand-writing expert
was that the documents were fabricated by the respondent. After elaborate
consideration of the entire record, the Lokayukta had recorded the finding
as under :

D "To conclude, I have no hesitation in coming to the conclusion that
the correct date of birth of Shri Sharma is 30.11.1936 and it was
this date of birth which was declared and entered originally in the
Service Book when he joined service as Junior Engineer. Till at
least 1978 when Shri Sharma applied for advance for purchase of
E a car he acted on the footing that his date of birth is 30.11.1936.
It was at some stage thereafter that taking advantage of wrong
entries in the Gradation Lists Shri Sharma started fraudulently
claiming that his date of birth is 28.6.1938 and to that end he
manipulated and altered the Service Book and got it replaced by
a photo copy. Later Shri Sharma manipulated to get the Vikrampur
F School Register altered by getting a page inserted which was
originally there. On the basis of his real date of birth Shri Sharma
should have retired on 30.11.1994. The fraudulent conduct of Shri
Sharma continued even after the fraud was detected and orders
Annexures 4 and were issued respectively 31.5.1994 and 19.9.1994,
G which would have required him to retire on 30.11.1994. Shri Shar-
ma then misled the Chief Minister by filing a representation on
the basis of manipulation forged service book on 26.9.1994 and
succeeded in obtaining a favourable order on 14.11.94 (Annexure-
6). Shri Sharma is guilty of grave misconduct of cheating, forgery
and using forged documents and continuing to earn his salary as
H Chief Engineer for the period after 30.11.94 to which he was not
entitled.

The Chief Minister was misled by the representation of Shri Sharma and committed a mistake in allowing it but no case was made out for taking any action against him and, therefore, no notice was issued to him. Similarly, the Under Secretary only complied with the directions of the Chief Minister and he was not in any way at fault in issuing the order (Annexure-6)"

The Lokayukta made his recommendations to the Government to the following effect :

"In view of may finding reached in para 8 above, may recommendations are :

- (A) The Government should revoke the order dated 14.11.94 (Annexure-6) and retire Shri Sharma with effect from 30.11.1994.
- (B) Proceedings be taken against Shri Sharma under Rules 8 and 9 of the M.P. Civil Services (Pension) Rules, 1976 for withholding his pension and for recovering back the salary paid to him for the period after 30.11.94.
- (C) Criminal case be registered against him for cheating and forgery or abetting forgery in relation to the Service Book and Vikrampur School Register and for using as genuine the forged documents."

Based thereon and they being bound by the recommendations, the appellants corrected the date of birth of the respondent on November 30, 1936. The respondent filed the O.A. in the Administrative Tribunal. The Chairman of the Tribunal in its impugned order dated 30.12.95 in O.A. No. 859/95 concluded as under :

"The applicant could be retired only after the change in the date of birth in the service record after affording him as opportunity, before doing so; which was not done in the case probably presuming that appearance of the applicant before the Lok Ayukt in the enquiry is a sufficient compliance of the principles of natural justice. But actually the enquiry of the Lok Ayukt results in report to the Government and once the Government accept the report the proceeding for changing the date of birth in the service book

A has to be undertaken and during that process a notice had to be
 given to the applicant and after hearing his submission in the
 matter, final order has to be passed which has not been done in
 this case. Consequently it is held that the applicant shall be deemed
 to be continued in service from the date he was retired and he
 B shall be relegated to the position which he enjoyed on the date of
 retirement. He is also entitled to all consequential benefits which
 may accrue because of the continuance in service. However, the
 State shall be free to initiate any proceedings for change in the
 date of birth after following the principles of natural justice. The
 applicant shall also be entitled to get costs of Rs. 500 from the
 C respondents. Application is allowed."

Thus, this appeal by special leave.

D Shri Chowdhary, learned Advocate General of M.P., has contended
 that the unimpeachable evidence on record coupled with the admission of
 the respondent in his loan application that his superannuation date is
 November 30, 1994 clinchingly establishes that the correct date of birth of
 the respondent is November 30, 1936 and the service register was found
 now to have been tampered with. Under these circumstances, the State
 Government on the recommendation made by the Lokayukta which is
 E binding on the State Government had corrected the date of birth. There is
 no need for a fresh opportunity be given to the respondent before correct-
 ing the date of birth. The view of the Tribunal therefore, was not correct
 in law. Shri Madhava Reddy, learned senior counsel for the respondent,
 contended that though the respondent had an opportunity to lead evidence
 F before the Lokayukta, the report of the Lokayukta was not supplied to the
 respondent. Since the action taken by the State Government pursuant to
 the report submitted by the Lokayukta visits with civil consequences, the
 principles of natural justice require that he should be given an opportunity
 before an action is taken for correcting the date of birth. That opportunity
 was not given. Therefore, the view of the Tribunal was not incorrect in law.

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 H Having regard to the respective contentions, the question that arises
 for consideration is : as to what is the correct date of birth on the basis of
 which the respondent requires to be superannuated? It is seen that his
 middle school certificate, secondary school certificate and college certifi-
 cate clearly show that his date of birth is November 30, 1936. It is seen that

he entered into the service in 1962. His gradation list of 1964 and 1965 at the earliest point of time do indicate that his date of birth is November 30, 1936. It would be obvious that these entries came to be made pursuant to the school certificate produced at the time of the entry. His service record was opened as per the secondary school and college record produced by him. In his application dated August 31, 1978 for grant for loan by Government it was clearly admitted that he was due to retire from service on November 30, 1994. Thus, the finding of the Lokayukta that his date of birth is November 30, 1936 remains unassailable and unimpeachable. Obvious, therefore, Shri Madhava Reddy did not make any attempt to tread on the path nor attempted to reply upon primary school certificate, the trump card of the respondent which was found to be fabricated. The service record was also found fabricated. As to who committed the fabrication of the date of birth is not material for our purpose since that is a matter to be gone into may the criminal court consequent on receipt of a complaint now lodged for the forgery etc. We, therefore, refrain from dealing with it. The Lokayukta had admittedly given an opportunity to the respondent to lead evidence in that behalf. After a full-fledged trial practically as in a civil Court, the Lokayukta had conducted the enquiry, given full opportunity and recorded the findings. The Lokayukta had the report of the hand-writing expert. On the basis of those findings now action has been taken by the the State Government. The only material relied on by Shri Madhava Reddy is the withdrawal of superannuation on November 30, 1994 due to correction of date of birth as June 28, 1938; the reasons are not far to seek. Skillful political manoeuvre had given edge to lodge back into service and the complaint of the Tiwari hooked him up at the spot with findings of the Lokayukta.

The question arises : whether a further opportunity need to be given to the respondent? In our considered view, the principles of natural justice cannot be stretched to the ridiculous edge of opportunity at every stage. Since Lokayukta, a retired Chief Justice, had undertaken full-fledged trial whereat the respondent had been given ample opportunity to prop up his best trump card and had given his report in the light of the unimpeachable evidence repeat performance by the Government would an empty ritual. The principle of natural justice must be pragmatically allowed fruitful play to meet the given fact-situation. When the respondent had the opportunity before the Lokayukta and had adduced all the evidence, no further opportunity need to be given at the time of correcting the date of birth on the

A basis of the report submitted by the Lokayukta. It would, therefore, be seen that the Tribunal was grossly in error in directing that he should be given an opportunity afresh before correcting the date of birth.

B The appeal is accordingly allowed with costs quantified at Rs. 10,000 to be paid within four months from the receipt of this order, to the Supreme Court Legal Services Committee. On default, it would be recovered by Committee as a decree.

R.P.

Appeal allowed.