Delhi Transport Corporation and Another Vs Jiwan Kishore

Court: Delhi High Court

Date of Decision: May 22, 1979

Citation: (1981) ILR Delhi 548

Hon'ble Judges: M.L. Jain, J

Bench: Single Bench

Advocate: N.C. Talukdar, Ambrish Kumar and G.K. Sharma, for the Appellant;

Judgement

M.L. Jain, J.

(1) The plaintiff was working as a senior clerk in the Delhi Transport Corporation when he was informed by an order dated January 29, 1975 that

he shall be retired with effect from June 30, 1975 having by then attained the age of 58 years. He filed the present suit on June 28, 1975 for

declaration that his date of birth was June 19, 1927 and not June 19, 1917 and that he will superannuate in 1985, for quashing of the said order

and for restraining the defendant Corporation from retiring him before June 30, 1985. The suit was decreed by the court of the first instance and

the court of the first appeal. Hence, this second appeal by the Corporation.

(2) The facts appear to be that the plaintiff respondent joined the Gwalior Northern India Transport Company in June 1947 as a conductor. His

services were first transferred to the Delhi Transport Service a Central Government Department in terms of an agreement dated April 23, 1948

between the said transport company and the Central Government. Later on upon the constitution of the Delhi Road Transport Authority on April

1, 1950, his services were transferred to that Authority. He passed his matriculation in 1951. His service register Ex. Public Witness 1/10 was

prepared on June 24, 1952 which bears his signatures against the column "Signature of Employee"" and also his left thumb impression taken on

that date. In the column relating to date of birth what was entered in June 19, 1917. In the column relating to educational qualification the entry is

"Passed metric in 1951". The service register further shows that one E. Shalome the then Traffic Superintendent on March 10, 1955, scored

1917" and inserted 1927" in the column relating to date of birth. That alteration is the bone of contention. The services of the plaintiff then were

transferred to the Delhi Transport Undertaking of the .Delhi Municipal Corporation in 1958 and to the Road Transport Corporation in 1971. He

was also sent up for medical examination and the doctor assessed his age at 50 years on June 13, 1975.

(3) The respondent succeeded in justifying his claim in the lower courts on the basis of Regulation 8 of the Delhi Road Transport Authority

(Conditions of Appointment and Service) Regulations, 1952. But these Regulations came into force on September 1, 1952 that is two months after

the service sheet was prepared and was signed and marked by the respondent in June 1952. May it be noted that the service sheet itself was

prepared a year after he received his metric certificate. The said Regulation stipulates that the record of service of every employee shall be

maintained in the prescribed manner which it is said has not yet been prescribed, The date of birth contained in the record of service shall be that

recorded in the matriculation certificate. In cases in which matriculation examination or its equivalent is not passed, the date of birth shall be proved

by documentary evidence to the satisfaction of the appointing authority. Though the original is not on record but the copy of the matriculation

certificate of the Punjab University shows that the plaintiff-respondent passed the examination held in March 1951 of which the said certificate was

issued on June 10, 1951. It no doubt shows his date of birth as June 19, 1927. I may state, however, that the date given in the certificate is no

necessarily the date on which the employee is born. It is a mode of proof of such date generally accepted in almost all the establishments in India. If

the employee has given an earlier date, then he is bound by it unless he proves that there has been a mistake. Regulation 8 does not mean to

supersede an actual date by the date given in the matriculation certificate. The courts below were wrong in holding otherwise.

(4) Now, when the plaintiff entered the witness box, he admitted his thumb mark but declined to admit his signatures on the service sheet. This

happened because his signatures were not shown to him but what was shown was his name entered at mark against the column ''Left thumb

impression''. If this court is permitted to compare his signatures in the relevant column with signatures on the plaint, .under section 73 of the Indian

Evidence Act, 1872, I can say that the two tally remarkably well. Even otherwise, the date June 19. 1917 stands authenticated by the thumb mark

of the plaintiff which he has admitted and which is an evidence much surer than the signatures themselves. It appears to me, Therefore, that the

original date was changed on the basis of the metric certificate after the plaintiff-respondent and the Traffic Superintendent became aware of the

commencement of the Regulation. Is the Corporation bound by this alteration specially when this was the date given in the L.I.C. and E-S.I. and

could the plaintiff be not retired without a prior notice to restore the date initially entered as it amounts to an alteration in the date of birth and

premature termination of service ? Reliance is mainly placed upon Kamla Jaiswal v. Nagar Mahapalika reported in 1972 S.LR. 882.

(5) The Corporation maintained that the subsequent alteration was made surreptitiously without an application for the change and without the

knowledge of the appointing authority and they are not bound by it. There was firstly no requirement of a notice under the Regulations or under the

principles of natural justice and secondly because the plaintiff had an opportunity of post-decisional representation before the actual date of

retirement.

(6) It was contended that E. Shalome had no authority to alter the date recorded in the service sheet. This argument was rejected by the learned

first appellate court for want of evidence. No material was placed before me in support of the contention and I will assume that Shalome was

competent to make the alteration and did so not in a clandestine manner. I have already explained the position of the Regulation vis-a-vis the actual

date or the date admitted by the plaintiff. As regards prior notice under natural justice. I have had an occasion to examine the matter in Swadeshi

Cotton Mills Co. v. Union of India in Civil Writ Petition No. 408 of 1978 (2), in my judgment dated December 14, 1978, I had then come to ''the

conclusion that in administrative matters affecting the rights of a person, what the authority is required to do is to act fairly. Even in the land of its

birth and growth, natural justice, it is increasingly realised, is required to be kept within certain bounds. The retreat is visible in McInnes v. Onslow

Fane & another (1978) 3 All. E.R. 211 (Ch, D.) wherein it was observed that justice is far from being a ''natural'' concept. The closer one goes to

a state of nature, the less justice does one find. The further the question is removed from what may reasonably be called a justifiable question, the

more appropriate it is to reject an expression which includes the word justice and to use instead terms such as ''fairness'' or ''the duty to act fairly''.

The courts must be slow to allow an implied obligation to be fair to be used as a means of bringing before the courts for review honest decisions of

bodies exercising jurisdiction over activities which they are better fitted to judge than the courts. This is so even where these bodies are concerned

with the means of livelihood of those who take part in these activities. The concepts of natural justice and the duty to be fair must not be allowed to

discredit themselves by masking unreasonable requirements and imposing undue burdens. Individual must indeed be protected against impropriety;

but any claim of his for anything more must be balanced against what the Ã¯Â¿Â½ public interest requires. But since Mrs. Maneka Gandhi Vs. Union of

India (UOI) and Another, , natural justice in our country has been embedded in Article 14 of the Constitution and its vital aspects have been

incorporated in our criminal, civil, constitutional, quasi-judicial & administrative jurisprudence. And yet ""it cannot be fixed on a rigid frame and

fundamental fairness is not unresponsive to circumstances"", vide AIR 1979 745 (SC) . In the circumstances of this case, there was, Therefore, no

need to give notice or hearing. Even then, the order of retirement was made on January 29, 1975 six months before the date thereof. On February

7, 1975 his Depot Manager obtained his matriculation certificate in original and sent the same to the Personnel Officer with a request to withdraw

the order of retirement. The Personnel Officer by his letter dated March 13, 1975 asked him to submit school leaving certificate and certificate

from the municipal committee in support of his date of birth. On May 31, 1975 the plaintiff replied that he had no other document with him. On

June 26, 1975 his representation was rejected. This attitude of the Corporation was reasonable and benign. They reconsidered the matter and that

fulfilled the needs of natural justice. There was absolutely no justification for altering the date in 1955 by Mr. E. Shalome on the basis of the

Regulation the scope of which was not correctly understood by him. The Regulation could not be applied in case of the record of service which

was inherited first by the Municipal Corporation and then by the Road Transport Corporation from the Authority. The record was not being

prepared for the first time. ""The regulation did not provide for bringing the previously recorded dates of birth in accordance with the matriculation

certificates. A matriculation certificate is one good way of determining the age of a person, but there are other equally good means of doing so,

perhaps even better such as the record of birth maintained by municipal and cantonment bodies. I also do not dispute the right of the authority

concerned to alter the date of birth but it cannot be said that once having done so or once having acquiesced in it, it cannot do so again and revise

its decision. Assuming that Shalome had the authority to change the date, the retiring authority could reopen the matter and accept the date

recorded earlier.

(7) Now let us examine the Allahabad judgment of Asthara J. in Kamla Jaiswal (supra). In that case the date of birth given in the Admission

Examination of the Banaras Hindu University, passed in 1935 was directed to be accepted though the petitioner had joined service in 1932 or

1933, because the relevant rule gave such a certificate the pride of place in the documentary evidence as to age. This had to be done because the

service record was lost. The court refused to draw any inference of admission from the application in which she requested for change of her date

from 1909 to 1915 and also from a declaration made in a school long before she entered service. The learned Judge, however observed, ""Had

Mahapalika proved a declaration of her age by the plaintiff when she joined service, certainly an estoppel would have arisen"". There is no

application on record of the plaintiff in this case for change of the date, though he claims to have made one He deposed that when he applied for

the entry of educational qualification to be made in the service book the clerk told him that the date of his birth was not entered correctly.

Therefore, he also wrote in his application that the date of birth be also corrected. E. Shalome (Public Witness 2) confirms this fact. Now,

fortunately, in this case the original entry and its alteration both are before us. The plaintiff also admitted in his rejoinder that he. had authenticated

the entry, vide para 5, Estoppel, Therefore, operates against him and he cannot be allowed to misconstrue the regulation to his benefit. The age

shown in E.S.I. etc. does neither operate as estoppel so as to determine the age and restore the one entered in service record as long as the

authority is neither unfair nor capricious.

(8) Can this court disturb the findings of fact arrived at by the two courts below ? I think this can be done because a substantial question of law

that arises in this case is the legal effect of the original declaration of age under the plaintiff"s signatures and thumb mark and its subsequent

alteration in accordance with the matriculation certificate under Regulation 8.

(9) I, Therefore, accept this appeal, quash the decrees of the courts below and dismiss the suit. However, in the circumstances of the case, the

parties shall bear their own costs here and below.