Union Of India & Ors vs M. Bhaskaran on 30 October, 1995

Equivalent citations: 1996 AIR 686, 1995 SCC SUPL. (4) 100, AIR 1996 SUPREME COURT 686, 1995 AIR SCW 4703, 1996 LAB. I. C. 581, 1996 (1) UJ (SC) 600, 1995 (4) SCC(SUPP) 100, (1995) 4 SCJ 708, (1996) 1 LABLJ 781, (1996) 32 ATC 94, (1996) 1 SCT 469, 1996 SCC (L&S) 162

Author: S.B Majmudar

Bench: S.B Majmudar, B.P. Jeevan Reddy

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
M. BHASKARAN

DATE OF JUDGMENT30/10/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1996 AIR 686 1995 SCC Supl. (4) 100
1995 SCALE (6)214

ACT:

HEADNOTE:

JUDGMENT:

W I T H CIVIL APPEAL NO. 9637 OF 1995 (Arising out of S.L.P. (C) No. 14326 of 1995) Union of India & Ors.

V. G. Radhakrishnan A N D CIVIL APPEAL NO. 9638 OF 1995 (Arising out of S.L.P. (C) No. 14330 of 1995) Union of India & Ors.

V. C Devan J U D G M E N T S.B. Majmudar.J. Leave granted in these petitions.

By consent of learned advocates appearing for respective parties the appeals were taken up for final hearing.

The short question involved in these three appeals is as to whether the respondent-workmen who had obtained employment in Railway service run by appellant-Union of India, on the basis of bogus and forged casual labourer service cards could be continued in Railway service once such fraud was detected by the Railway authorities. The Central Administrative Tribunal, Ernakulam Bench has taken the view that as the aforesaid misconduct of the respondent- Railway employees does not fall within the forecorners of Rule 3(1)(i) and (iii) of Railway Services (Conduct) Rules, 1966 (hereinafter referred to as `the Rules'), the orders of removal from service passed against the respondents could not be sustained and they were entitled to be reinstated in Railway service with all conse uential benefits. The aforesaid view of the Tribunal is brought on the anvil of scrutiny in the present proceedings moved by the appellant- Union of India and the concerned Railway authorities under whom the respondent-workmen worked at the relevant time.

The Tribunal in the impugned judgments has placed reliance on its earlier decision in O.A. No.892 of 1993 decided on 22nd June 1994 for taking the view that such misconduct would not attract Rule 3(1)(i) and (iii) of the Rules. It is not in dispute between the parties that the concerned respondent-workmen had got employment in Railway by producing bogus and forged casual labourer service cards purported to have been issued by their earlier employers. However, according to the Tribunal such a misconduct would not attract Rule 3(1)(i) and (iii) of the Rules as the concerned employee even though engaged as a casual employee could not be said to be governed by the Rules at the time when he obtained such employment and that he was not guilty of any misconduct committed during the Railway service.

The aforesaid view of the Tribunal can be better appreciated in the light of the relevant provisions of the Rule itself. Rule 3(1) reads as under:

> "3. General.- (1) Every railway servant shall at all times-
>
> (i) maintain absolute integrity;
>
> (ii) maintain devotion to duty; and
> (iii do nothing which is subversion of law and order and is unbecoming of a railway government Servant."

Now it is no doubt true that on the express language of the Rule the concerned Railway servant has to maintain absolute integrity and has not to do any thing which is subversion of law and order and which is unbecoming of a railway or a government servant. That would certainly apply to a railway servant who is alleged to have misconducted himself while in Railway service. However, learned senior counsel for

> appellants vehemently submitted that the misconduct alleged in the present case, of snatching railway employment in the basis of bogus certificates or casual labourer cards, would indeed show that the concerned employee had exhibited a conduct which was unbecoming of a railway servant.

It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the concerned railway employees, respondents herein have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the concerned employees. Consecuently, it has to be held that respondents were guilty of misrepresentation and fraud perpetrated on the appellant employer while getting employed in Railway service and had Snatched such employment which would not have been made availeble to them if they were not armed with such bogus and forged labourer cards. Learned counsel for the respondents submitted that for getting service in Railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates service cards for getting employed in Railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in Railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer- appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basic of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer.In this connection we may usefully refer to a decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. V. M. Tripura Sundari Devi (1990) 3 SCC

655. In that case Sawant, J. speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disrgard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the

aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the concerned candidate acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision if by committing fraud any employment is obtained such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for respondents, However, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual Labourers,, started departmental proceeding years back in 1987 and these proceedings have dragged on for number of years. Earlier removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present case in favour of the respondents then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted.

For all these reasons, therefore, these appeals are allowed. The impugned orders of the Tribunal are set aside and the original applications filed by the respondents before the Central Administrative Tribunal, Eranakulam Bench are dismissed. However, in the facts and circumstances of the cases there will be no order as to costs all throughout.