

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 340/2017

THE DY.G.M(HR)INDIAN OIL CORP.LTD(MD)
AND ANR.

Appellant(s)

VERSUS

ANUP KUMAR PANDA & ANR.

Respondent(s)

O R D E R

1. The case has a chequered history. The respondent - Anup Kumar Panda was appointed as a Junior Operator by the Indian Oil Corporation Ltd. (in short, "IOCL") by virtue of the fact that the land belonging to his family had been acquired and in terms of the policy, he was entitled to obtain the employment. However, he applied on 21.06.1995 in the capacity of 'land loser'. He mentioned his Date of Birth as 23.04.1975 and submitted Provisional Certificate of Date of Birth indicating the said date. However, the certificate issued by the Board of Secondary Education on 31.08.1995 reflected his Date of Birth to be 23.04.1979 instead of 23.04.1975.

2. However, by virtue of the application and the Provisional Certificate which was filed, the respondent obtained the employment and joined the services in the capacity of Junior Operator on

26.05.1996. Later on, after approximately 10 years, on 31.10.2005, a complaint was lodged indicating that the Date of Birth of the respondent was recorded in the certificate of Board of Secondary Education as 23.04.1979. Thus, by playing the fraud, the respondent submitted a Provisional Certificate indicating the Date of Birth as 23.04.1975 instead of 23.04.1979 and obtained the employment. Ultimately, departmental proceedings were commenced against the delinquent employee and the representation filed by the respondent to the Board of Secondary Education for correction of the Date of Birth was also rejected on 12.01.2007.

3. Thereafter, the respondent filed a Writ Petition, being W.P.(C) No. 2161 of 2007 for correction of the Date of Birth and seeking quashing of the Charge Sheet dated 23.08.2006. The same was dismissed on merits. Notwithstanding, the dismissal of the case on merits for the purpose of declaration of Date of Birth to be 23.04.1975, a Misc. Application, being Misc. Case No. 8469 of 2009 was moved before the High Court, which was allowed vide order dated 24.07.2009 and the delinquent employee was permitted to avail the remedy of filing of the suit for declaration of Date of Birth to be 23.04.1975.

4. On 27.07.2009, he filed a civil suit, being C.S.No. 756 of 2009 leading to the present appeal. During the pendency of the suit, the respondent was dismissed from service on 13.07.2010. The application was filed for amendment and to quash the order of termination of services. The suit was dismissed by the trial Court on 10.08.2010.

5. However, in appeal, the Appellate Court reversed the Judgment and Decree passed by the trial court and declared the Date of Birth to be 23.4.1975. The High Court has dismissed the Second Appeal. Thus, the IOCL has come up in this appeal, by way of special leave.

6. We have heard the learned counsel for the parties at length and have perused the Judgments and orders and the documents placed on record. In our opinion, the Judgment and Decree passed by the trial court dismissing the suit was appropriate and holding that the attempt made for correction of date of birth as 23.4.1975 in the Certificate of Board of Secondary Education was not acceptable. The Board has also rejected the application which was filed on behalf of the delinquent employee. There was no rhyme or reason to reverse the aforesaid finding with respect to the Date of Birth recorded by the trial court. Thus, we

have no hesitation in setting aside the Judgment and Decree passed by the first Appellate Court with respect to declaration of Date of Birth as 23.04.1975.

7. Coming to the question of Res Judicata, obviously, after the dismissal of the writ application, remedy of filing of the suit was not available to the delinquent employee. However, the court has granted permission in the misc. application. Though it was wrongly granted, but the order has attained finality. Thus, the decision in the writ application cannot operate as res judicata as the concerned court has itself granted the permission notwithstanding the fact that the writ application was dismissed on merits.

8. Be that as it may, since the delinquent employee was of the 'land loser category', we are inclined to take a lenient view in his favour by directing his reinstatement. At the same time, equity has to be settled by denying him the back-wages from the date of dismissal till the date of this order. Hence, it is directed that for the aforesaid period, i.e. from 13.07.2010 till the date of this order, he shall not be entitled for any back-wages. We are not upholding the order of dismissal of the services only on the ground that the land had been acquired and the family

was left without means and the proceedings were started after 10 years of obtaining the employment. The delinquent employee obtained the advantage of one year and one month, the period for which he was short of age for obtaining the employment, completion of 18 years was necessary to obtain the employment.

9. In the peculiar facts and circumstances of the case, in order to do complete justice, we set aside the order of termination and direct the reinstatement, however, without any back-wages. The period during removal and reinstatement shall be counted towards continuity for other service benefits. However, the respondent will not be entitled for any back-wages, as ordered hereinabove.

10. With the aforesaid modifications and directions, the appeal is partly allowed.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

New Delhi;
February 21, 2019.

ITEM NO.1

COURT NO.5

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 340/2017

THE DY.G.M(HR)INDIAN OIL CORP.LTD(MD) AND ANR. Appellant(s)

VERSUS

ANUP KUMAR PANDA & ANR. Respondent(s)

(IA 70255/2017)

Date : 21-02-2019 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Tushar Mehta, ASG
Mr. Indrani Ghosh, Adv.
Mr. Kunal Singh, Adv.
Mr. Palzer Moktan, Adv.
Ms. Arushi Arora, Adv.
Ms. Dharitry Phookan, AOR

For Respondent(s) Mr. Ashok Kumar Panigrahi, Adv.
Mr. Gautam Kumar Laha, Adv.
Dr. V. P. Appan, AOR

Mrs. Kirti Renu Mishra, AOR
Ms. Apurva Upmanyu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is partly allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)