

R.S.A.No. 1572 of 2004.

Present: None for the appellant.

Shri Shailender Jain, Advocate, for the
respondents.

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The learned counsel for the respondents prays for an
adjournment to enable the parties to arrive at a compromise.

Adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

R.S.A.No. 2536 of 2004.

Present: Mr.Lalit Goyal, Advocate, for the appellant.

Mr. Arun Kumar, Singal, Advocaqte, for the
respondents.

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For aguments, adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

R.S.A.No. 4463 of 2004.

Present: Mr.R.S.Ghuman, Advocate, for the appellant.

Mr.Ashwani Chopra, Sr.Advocate, for the
respondents.

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Learned counsel for the appellant seeks more time to
comply with the orders dated November 22, 2004.

Adjourned to May 18, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 6179 of 2004 (O&M).

Present: None for the petitioner.

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None has put in appearance on behalf of the petitioner
since morning.

Dismissed for non-prosecution.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.M.No.4095-C of 2005 in
R.S.A.No. 1506 of 2005 (O&M)

Present: Shri Ranmjit Saini, Advocate, for the appellants.

Shri Kulvir Narwal, Advocate, for the respondents.

There is an adjournment slip on behalf of the counsel for
the appellants.

Adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R. No. 1748 of 2005.

Present: Shri S.S.Panag, Advocate, for the petitioners.

Shri Y.P.Khullar, Advocate, for the
respondents.

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Civil Misc. No. 6852-CII of 2005 is allowed. Documents
annexures P-1 to P-5 are allowed to be taken on the record, subject
to all just exceptions.

Adjourned to July 06, 2006 for arguments.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

R.S.A.No. 3036 of 2005.

Present: Shri J.S.Rathee, Advocate, for the appellant.

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Admitted.

To be heard along with R.S.A.No. 3062 of 1996.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 3400 of 2005.

Present: None for the petitioner.

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Dismissed for non-prosecution.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

The case has been taken up again at the oral request of learned counsel for the petitioner, who has put in appearance along with Shri Maharaj Kumar, advocate, for the respondents.

For the reasons explained by the learned counsel for the petitioner, orally, the order passed in the early hours of the day, is recalled and the petition is adjourned to July 06, 2006 for arguments.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 3510 of 2005

Present: Shri R.D.Bawa, Advocate, for the petitioner.

Shri A.S.Brar, Advocate, for the
respondents.

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At the request of the learned counsel for the parties,
adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 3647 of 2005.

Present: Shri Chetan Mittal, Advocate, for the petitioner.

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Civil Misc. No.13947-CII of 2005 is allowed. Documents Annexures P-1 to P-6 are allowed to be taken on the record, subject to all just exceptions.

Adjourned to July 24, 2006. To be heard with C.R.No. 5491 of 2004.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 3648 of 2005.

Present: Shri Chetan Mittal, Advocate, for the petitioner.

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Civil Misc. No.13948-CII of 2005 is allowed. Documents Annexures P-1 to P-6 are allowed to be taken on the record, subject to all just exceptions.

Adjourned to July 24, 2006. To be heard with C.R.No. 5491 of 2004.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

R.S.A.No. 3768 of 2005.

Present: Shri M.S.Bedi, Advocate,. For the appellants.

The learned counsel for the appellants very fairly conceded that the parties have compromised the matter and prays that the instant appeal be dismissed as withdrawn.

Ordered accordingly.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 4039 of 2005.

Present: Shri R.K.Singla, Advocate, for the petitioner.

Shri I.S.Mann, Advocate, for respondent No.1.

Civil Misc. No. 15341-CII of 2005 is allowed. Documents annexures P1 to P16 are allowed to be taken on the record, subject to all just exceptions.

At the request of the counsel, adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 4133 of 2005..

Present: Shri Tribhawan Singla, Advocate, for the petitioner.

As per office report respondents 1 to 4, 16, 24, 27, 30, 9, 10, 14, 15, 22, 31, 26 and 29 have been served. But none has appeared on their behalf. Similarly, respondent No.125 refused to accept the notices. They are, accordingly, proceeded against ex-parte.

Respondent Nos. 6, 7, 17, 18 and 23 are reported to be not residing at the given address. The learned counsel for the petitioner is directed to file the complete particulars of the respondents and the process fee within a period of 10 days and after his doing so, the above said respondents be served for the next date of hearing.

Respondent Nos. 5, 11, 12 and 13 are reported to have died. The learned counsel for the petitioner is directed to take steps for bringing on record the L.Rs of the deceased.

Adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 4039 of 2005.

Present: Shri R.K.Singla, Advocate, for the petitioner.

Shri I.S.Mann, Advocate, for respondent No.1.

Civil Misc. No. 15341-CII of 2005 is allowed. Documents annexures P1 to P16 are allowed to be taken on the record, subject to all just exceptions.

At the request of the counsel, adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 4132 of 2005.

Present: Shri Tribhawan Singla, Advocate, for the petitioner.

List along with Civil Revision No. 4133 of 2005.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 4242 of 2005.

Present: Shri R.K.Singla, Advocate, for the petitioner.
Shri G.S.Nagra, Advocate, for the respondents.

Civil Misc. Nos. 16352 to 16354-CII of 2005 are allowed
and the documents are permitted to be taken on the record, subject
to all just exceptions.

Adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R. No. 4344 of 2005.

Present Shri R.K.Singla, Advocate, for the petitioner.

Civil Misc. Nos. 16787 to 16789 are allowed and the documents are allowed to be taken on the record, subject to all just exceptions.

Adjourned to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 5971 of 2005.

Present: None for the petitioner.

Shri G.S.Nagra, Advocate, for the respondents.

Civil Misc. No.23094-CII of 2005 is allowed. Documents P-1 to P-4 are allowed to be taken on the record subject to all just exceptions.

Adjourned to May 09, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 6605 of 2005.

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Present:- None for the petitioner.

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Civil Misc. No. 25243-CII of 2005 is allowed. Documents P-1 to P-4 are allowed to be taken on the record, subject to all just exceptions.

Adjourned to May 09, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

R.S.A.No. 102 of 2006.

Present: Shri Deepak Arora, Advocate, for the appellant.

Shri Y.S.Khullar, Advocate, for the respondents.

At the request of counsel for the parties, adjourned to
May 09, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

R.S.A. No. 200 of 2006.

Present: Shri M.M.Mohan, Advocate, for the appellant.

Heard. Issue notice to the respondents for condonation of delay of 134 days in refiling the appeal, for July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

RSA No. 527 of 2006.

Present: Shri Rajesh Kumar Girdhar, Advocate, for
the appellant.

Notice of motion for July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No;. 293 of 2006.

Present: Shri Puneet Jindia, Advocate, for the petitioner.

Shri Pardip Bhandari, advocate, for respondents 1 to 5.

At the request of counsel for the respondents, adjourned
to July 06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 730 of 2006.

Present: Shri C.L.Sharma, Advocate, for the petitioner.

Shri K.S.Cheema, Advocate, for the respondent.

At the request of counsel for the parties, adjourned to July
06, 2006.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.Mo. 2374 of 2005.

Present: Shri R.S.Virk, Advocate, for the petitioner.

Respondents No. 2 to 4 are reported to have been served but none has put in appearance on their behalf. They are, accordingly, proceeded against exparte.

Respondent No.1 is reported to lodged in Jail. He be served through his counsel in the trial court, for July 06, 2006. The learned counsel for the petitioner is directed to take necessary steps within 7 days from today.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik

C.R.No. 3915 of 2004.

Present: Shri Akshay Bhan, Advocate, for the petitioner.

Shri B.R.Mahajan, Advocate, for the respondents.

R.S.MADAN, J (Oral)

This petition is directed against the order dated August 06, 2004 passed by Shri K.K.Garg, Additional District Judge, Jalandhar, whereby the application for setting aside the ex-parte order dated 11.05.2004, which was filed within the period of limitation, was dismissed.

The learned counsel for the respondent admitted at the bar that the application for setting aside the order dated 11.05.2004 was moved by the counsel within thirty days of the passing of the order, except that the petitioner has not come to the court with clean hands. The plea is not tenable. It is the cardinal principle of natural justice that the party must be given a chance to contest the case on merits.

In view of the position explained above, the petition is accepted, and the order dated August 06, 2004, dismissing the application for setting aside of ex-parte order, is set-aside, subject to

-2-

payment of Rs.1500/- as costs to be paid by the petitioner herein on the first date of hearing, before the trial court. The parties are directed to appear before the trial court on May 18, 2006.

The trial court is directed to proceed further, in accordance with law, and is directed to dispose of the case expeditiously, preferably within a period of one year.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

C.R.No. 5043 of 2005.

SURAT SINGH VS MANGAL SINGH AND OTHERS.

Present: Shri G.S.Sandhu, Advocate, for the petitioner.

 Shri Akshdeep Mahajan, Advocate, for respondents
 1 to 4.

R.S.MADAN, J

 This petition under Article 227 of the Constitution of India, has been filed by Surat Singh petitioner, vide which he has sought that the order dated September 13, 2005 (Annexure P-2), passed by Civil Judge (Jr.Division), Gurdaspur, be set aside, whereby the application of the petitioner for permission to tendered certain documents in evidence, has been declined.

 On behalf of the petitioner, it has been contended that the documents which are now sought to be proved are the certified copy of the order dated August 31, 1988, statement of Puran Singh plaintiff in the appeal which was decided on August 31, 1988 as well as the copy of the order dated February 01, 1992, passed by the court of the then Sub Judge 1st Class, Gurdaspur along with the other documents.

 The petitioner has based his claim before the trial court on these documents, which are in his custody. However, the petitioner at the time of leading evidence in affirmative, failed to place on the record, all these documents, which according to the petitioner were the foundation of the suit filed by him. It is admitted by the petitioner that no such documents were placed on the file of the case at the time of leading evidence in affirmative. After the evidence of the defendant was closed, the petitioner sought that these documents be ordered to be placed on the record. Since,

the petitioner was not vigilant while leading evidence in the affirmative despite the fact that the documents which are now sought to be placed on the record, were the basis of the claim setup by him in his plaint and were in his possession. A valuable right has vested in the respondents, which cannot be taken away due to the lapse on the part of the petitioner. Thus the impugned order of the trial court is in order and does not suffer from any infirmity, no ground for any interference is called for. Hence, the petition is dismissed.

(R.S.MADAN)
JUDGE

April 17, 2006.
Malik

R.S.A.No. 2657 of 2005.

MAHIPAL SINGH VERSUS STATE OF HARYANA AND OTHERS.

Present: Shri Ravi Verma, Advocate, for the appellant.

R.S.MADAN, J

This appeal has arisen out of the dismissal of the suit filed by the plaintiff with respect to correction of his date of birth and subsequently the appeal filed by him was also dismissed by the learned District Judge, Bhiwani.

Briefly the facts of the case are that initially the plaintiff had filed suit for permanent injunction restraining the defendant-respondents from retiring him from service. Later on he was allowed to amend the plaint whereby he challenged his retirement order dated 31.01.2001. It is the case of the plaintiff that he was appointed on the post of Bhajan Party Leader and he joined as such in the year 1987. His services were regularized vide order dated 7.12.1993 passed by respondent No.2. At the time of his appointment he furnished his School Leaving Certificate in which his date of birth was recorded as 16.01.1947, which as per him, was wrongly mentioned. Having learnt about the actual date of birth which was 17.06.1945 as recorded in the office of Additional District Registrar, Birth and Death, he after getting copy of birth certificate from the office of Additional District Registrar, furnished the same in the office and he was asked to furnish the affidavits with respect to the ages of his brothers and sisters. According to the plaintiff his date of retirement would have been in January 2005, on attaining the age of 60, but he was retired from service on 31.1.2001. He has, thus, prayed that his retirement from service be declared as illegal, null and void.

On behalf of the respondents, the State contested the suit. In the written statement filed on behalf of the defendants they reiterated that the plaintiff has been rightly retired from service with effect from 31.01.2001. It is further alleged that the plaintiff committed gave misconduct by concealing the fact regarding his actual date of birth. After joining his duties in the Public Relation Department, he submitted an affidavit regarding his date of birth as 1.1.1947 and he was informed vide letter dated 23.1.1999 that the affidavit filed by him was not accepted because in the School Leaving Certificate his date of birth was mentioned as 16.01.1941. In the bio-data also, which was submitted by the plaintiff, the date of birth of the plaintiff is mentioned as 16.01.1941 and as such he was rightly retired from service on attaining the age of 60 years. The certificate issued by the District Registrar, Birth and Death - cum- Civil Surgeon, Bhiwani on 7.7.2000 regarding the birth of a male child, did not indicate that it pertained to the plaintiff and it has no connection whatsoever. It was thus pleaded that he was not entitled to any correction of date of birth and that too at the fag end of his retirement.

Both the parties were put to trial on the following issues:-

- 1) Whether the order dated 17.01.2001 circulated vide endorsement No. PRDH (Estt-4) LBP-5/2001/4582-89 dated 19.01.2001 ordering the retirement of plaintiff w.e.f. 31.01.2001 is illegal, null and void and is liable to be set aside as alleged? OPP.
- 2) Whether the suit is bad for want of notice under section 80 CPC? OPD.
- 3) Whether the plaintiff has not exhausted the alternative remedy by way of representation or appeal before the appropriate authority, if so, its effect? OPD.
- 4) Relief.

Both the parties adduced their evidence in support of their

respective claims. After considering the evidence available on the record, both the courts below returned the finding on issue No.1 against the plaintiff and on issues No.2 and 3 in favour of the plaintiff, observing that the birth certificate placed on the record does not connect him in any way as in the School Leaving Certificate which he has himself supplied, the date of birth has been recorded as 16.01.1941 and there is no other evidence to rebut the same. On issues No. 2 and 3 it was observed that the suit can be filed even if the plaintiff has not exhausted all the remedies, available to him. Both the courts below while returning the findings have placed reliance on Bishnudas Behera Vs. State of Orissa 1997(1) Criminal Court Judgements 142 and Raunki Saroop Versus The State 1970 P.L.R. 332, Brij Mohan Singh Vs. Priya Bhat Narain Sinha and others AIR 1965 S.C. 282 and Karam Singh Versus The State 1971 PLR 21.

The learned counsel for the appellant has not been able to point out any illegality in the orders passed by the courts below. The Hon'ble Apex Court and the various High Courts have rendered catena of authorities wherein it has been observed that an employee's date of birth recorded in the School Leaving Certificate which has formed the basis of his employment and he continued to serve the department on the basis of said entry, cannot be allowed to get the date of birth correct at the fag end of his career. In the result, there is no force in this appeal. The same is dismissed with no order as to costs.

(R.S.MADAN)
JUDGE

April 17, 2006.

Malik