

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 2756 of 2004
Date of Decision : May 30, 2008

State of Punjab and others

....Appellants

Versus

Hussan Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Palvinder Singh,
Senior Deputy Advocate General, Punjab.
for the appellants.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Gursewak Singh Mann, Advocate
for the respondent.

T.P.S. MANN, J.

Suit for declaration filed by respondent herein that his correct date of birth was 19.11.1952 and the date of birth recorded in his service-book on the basis of matriculation certificate as 17.7.1950 was wrong, against the real facts and liable to be corrected by the defendants-appellants in the relevant record as 19.11.1952 with a consequential relief for permanent injunction so as to restrain the defendants from retiring him on the basis of his date of birth as recorded in the service-book and for mandatory injunction directing the defendants to correct the date of birth in the relevant record, was decreed by learned Civil Judge (Junior Division), Hoshiarpur on

8.6.2000. Appellants-herein filed an appeal against the same, but it was dismissed on 27.4.2004. Still not satisfied, the defendants filed the present second appeal under Section 100 of the Code of Civil Procedure.

The case of the plaintiff-respondent was that he was appointed as Sub Divisional Officer by the defendants with effect from 18.10.1977. On 7.11.1997, he was promoted as Executive Engineer. When he joined the service, initially his date of birth was recorded in his service-book as 17.7.1950 on the basis of his matriculation certificate. However, a few days earlier to the filing of the suit, his mother Smt. Tilak Rani came to him at Amritsar and told him that his date of birth was 19.11.1952, as she herself was married on 20.4.1951. His date of birth as 17.7.1950 was got recorded, though wrongly, by his illiterate grandfather at the time of his admission in the school. On receiving this information, the plaintiff approached the office of the Registrar, Births and Deaths, Municipal Corporation, Jalandhar and obtained certificate which mentioned his correct date of birth, i.e. 19.11.1952. Under these circumstances, he claimed that he was entitled to have his correct date of birth entered in the official record of the defendants.

In their written statement, the defendants stated that at the time of joining the service, the plaintiff himself produced his matriculation certificate mentioning his date of birth as 17.7.1950. The suit was filed by him after a lapse of about 21 years from date of

his entry into service, and, therefore, it was hopelessly time barred. He had equally efficacious remedy to approach the Punjab State for correction of his date of birth in his service records as per notification dated 22.6.1994. However, the same was required to be done within a period of two years from the issuance of the said notification. As he had not availed of the same, he could not be granted the relief in the present suit.

On May 21, 2008, when the appeal came up for hearing, the Court observed that birth certificate Ex. P1 showing the date of birth of the plaintiff-respondent as 19.11.1952 had not been formally proved by the plaintiff-respondent by examining any official from the office of Local Registrar, Births and Deaths, Municipal Corporation, Jalandhar. Instead, when he had appeared as PW1, he brought on record certificate Ex. P1. Accordingly, the Court felt the necessity of summoning the records pertaining to registration No. 721 dated 21.11.1952 made by Local Registrar, Births and Deaths, Municipal Corporation, Jalandhar. This record was produced today before me. I have perused the entry against registration No. 721. Apparently, the same had been recorded on 21.11.1952. It is an old record. There is neither any interpolation nor addition nor any over-writing in the entry. Under these circumstances, I felt satisfied with the genuineness of the certificate Ex. P.1.

Learned counsel for the appellants submitted that it was the plaintiff-respondent himself, who at the time of joining as Sub

Divisional Officer on 18.10.1977 with the defendants, gave a declaration and submitted his matriculation certificate which showed his date of birth as 17.7.1950. Therefore, the same cannot be got corrected by the plaintiff by filing a suit and, that too, after about 22 years of his joining the service.

The plaintiff-respondent had not denied that at the time of joining the service on 18.10.1977, he himself gave a declaration and submitted copy of his matriculation certificate which showed his date of birth as 17.7.1950. However, it was his case that sometime before filing of the suit, his mother met him and told him that he was born on 19.11.1952 and not on 17.7.1950, as she herself got married on 20.4.1951. Further, that at the time of his admission in the school, it was his illiterate grandfather, who stated his date of birth incorrectly as 17.7.1950, whereas it should have been 19.11.1952. Upon receiving this information, the plaintiff was able to obtain certificate Ex. P.1, wherein his date of birth was recorded as 19.11.1952 vide registration No. 721 dated 21.11.1952. Once the Court is satisfied about the genuineness of certificate Ex. P.1, the same shall prevail upon any other evidence which may be to the contrary. The date of birth of the appellant at the time of his admission in the school was claimed to have been got recorded by his grandfather, who was an illiterate person. Very often we have seen that the date of birth in the school records is entered, not on the basis

of the official record but on the basis of statement made by a near relative of the child. Being illiterate, the grandfather of the plaintiff was not able to state the exact age and whatever age was stated by him, and, that too, by approximation, the school authorities appeared to have incorporated the same in the record.

It is then submitted that Punjab Government issued notification on 22.6.1994 vide which it enabled any employee to apply for correction of his age within two year of the said notification. However, this notification was withdrawn on 9.2.1996. In case, the plaintiff had any cause of action, he could have applied for correction of his date of birth before the department in accordance with the notification dated 22.6.1994. The statutory period granted for getting the date of birth corrected had already expired when the plaintiff filed the present suit. It is the case of the plaintiff-respondent that he was told about his correct date of birth by his mother sometime before the filing of the suit. The suit was filed by him on 7.4.1998. As per the testimony of Smt. Tilak Rani, mother of the plaintiff, who was examined as PW2, she stated in her affidavit Ex. P.13 that she was married on 20.4.1951 at Jalandhar and she had four children. Out of them, plaintiff-respondent was the eldest, who was born on 19.11.1952. In March, 1997 she told the plaintiff that his date of birth was 19.11.1952 and not 17.7.1950. Under these circumstances, the plaintiff-respondent was not able to apply for

correction of the record regarding date of birth within two years of the notification dated 22.6.1994. Moreover, even if the plaintiff had failed to apply for correction of his date of birth within two years of the aforesaid notification, that did not debar him to avail of remedy to get the date of birth corrected under civil law because administrative law did not bar jurisdiction of civil Court. In *State of Punjab and Another Vs. Megh Raj Garg* 2003(2) SCT 561, it was held that vide notification dated 22.6.1994, one chance was given to all the employees to seek alteration of date of birth by providing fresh period of two years. However, if the employee failed to get his date of birth altered under service rules, his remedy to get the same altered under civil law was not barred.

On the basis of the evidence led by the parties, learned lower Courts were justified in holding that the correct date of birth of the plaintiff-respondent was 19.11.1952 and not 17.7.1950. Accordingly, the relief claimed for by the plaintiff-respondent was rightly granted to him. No case is made out for any interference in the concurrent finding of facts arrived at by the learned lower Courts. The substantial questions of law, as formulated by learned counsel for the appellants do not arise for consideration. The appeal is without any merit and, therefore, dismissed. No costs.

May 30, 2008
Satish

(T.P.S. MANN)
JUDGE

Whether to be referred to the Reporters : YES / NO