

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 674 OF 2012
IN
NOTICE OF MOTION NO. 155 OF 2012
IN
S.C. SUIT NO. 1433 OF 2012

Mandaliya Khodidas Lakha

... . Appellant
Orig.Plaintiff

V/s.

Brihan Mumbai Mahanagarpalika

... . Respondent
Orig.Defendants

* * * * *

Mr. A.J. Rizvi, Advocate for the appellant.

Mr. S.K. Sonawane-Patil, Advocate for BMC-respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

30th JUNE, 2012.

P.C. :

1. This Appeal is preferred against the order dated 28th June, 2012 passed by the Bombay City Civil court dismissing the Notice of Motion taken out by the appellant for interim injunction to restrain the respondent-Mumbai Municipal Corporation from executing the notice of retirement of the appellant from service. Apart from the challenge to the notice of retirement in the suit, the

appellant also seeks a mandatory order directing the respondent to correct his date of birth in the service records from '23rd June, 1954' to '21st July, 1957'. It appears that Mumbai Municipal Corporation had in July, 1986 issued a circular giving an opportunity to its employees, whose birthdates had been incorrectly mentioned in their respective service records, to file applications for corrections in the service records. The appellant, had in response to the circular, filed an application. It is alleged that the respondent did not respond to the application in any manner. Later, however, since the year 1999, the records of the respondent i.e. the seniority list, the salary slip etc. have been showing the date of birth of the appellant as '21st July, 1957'. The respondent, based upon the date of birth of the appellant as 23rd June, 1954 has served the retirement notice and the appellant is due to retire on 1st July, 2012.

2. Admittedly, the appellant had entered into the service of the respondent on daily-wage basis as a 'spot boy' on 13th June, 1972. At that time, his date of birth entered into the record is of '23rd June, 1954'. If the date

of '21st July, 1957' is to be accepted as the correct date, he could not have entered the service on 13th June, 1972, he being a minor, aged 15 years. Therefore, the possibility that in order to secure employment, the appellant had given his date of birth as '23rd June, 1954 cannot be ruled out at this stage. As per the reply of the respondent to the Notice of Motion, the appellant had not submitted any document as proof of his age, at the time of his initial employment. In these circumstances, it is necessary for the appellant to establish by leading necessary evidence that he had given his correct date of birth at the time of his entry and the date of birth entered of '23rd June, 1954' was incorrect.

3. In any case, it cannot be said that irreparable loss, damage or injury will be caused to the appellant, which cannot be compensated in terms of money, if the interim relief as sought by the appellant is not granted to him. In the event, the appellant succeeds in the suit, he will be entitled to receive complete backwages. Therefore, the Appeal from order is dismissed in limine.

4. Considering the nature of the dispute, it is desirable

that the suit is disposed off expeditiously. The respondent- Mumbai Municipal Corporation is yet to file its written statement. Therefore, it is directed that the Bombay City Civil court, shall endeavour to dispose off the suit, within a period of one year today.

(SMT. R.P. SONDURBALDOTA, J)