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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.194/2010

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21st September, 2011

DELHI TRANSPORT CORPORATION

..... Appellant

Through: Mr. J.S.Bhasin with Ms. Rashmi Priya,
Advs.

VERSUS

BASU DEV

..... Respondent

Through: Ms.Laxmi Prasad Maikhuri, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

CM No.19390/2010(for condonation of delay)

This is an application for condonation of delay of 65 days in filing the appeal. It has been held by the Supreme Court in the case of ***N. Balakrishnan Vs. M. Krishnamurthy, AIR 1998, Supreme Court 3222*** that once there is a delay in filing, some amount of negligence is always there, however the issue is whether there is such amount of negligence or want of inaction that the delay cannot be condoned. Since the delay is of only 65 days and as has been held by the Supreme Court in various judgments that certain extra leeway should be given where Government Departments are concerned, therefore, I do not find that the delay of 65

days is so huge that the same ought not to be condoned. The delay in filing the appeal is condoned. CM stands disposed of.

RSA No.194/2010

1. The challenge by means of this Regular Second Appeal is to the impugned judgment of the Appellate Court dated 6.5.2010, and by which judgment the Appellate Court set aside the judgment of the first Court/original Court dated 19.7.2008, and by which judgment dated 19.7.2008 the Trial Court had dismissed the suit for declaration filed by the respondent/plaintiff with respect to change of date of birth.

2. Before entertaining a second appeal, it is necessary that a substantial question of law be formulated. The substantial question of law which is formulated therefore is as under:-

“Whether the Appellate Court committed a perversity in holding that the alleged representation dated 4.8.1967 of the respondent/plaintiff was not a forged/fabricated document. Does not this perversity entitle this Court under Section 100 of Code of Civil Procedure, 1908 (CPC) to interfere with the impugned judgment dated 6.5.2010?”

3. The facts of the case are that the respondent joined the appellant which is presently Delhi Transport Corporation (DTC) in its avatar of Delhi Transportation Undertaking (DTU) on 18.7.1967. At the time of his appointment the respondent/plaintiff duly filled in his forms, including provident fund form, wherein he mentioned his date of birth as 11.4.1937. The respondent/plaintiff was also examined by medical board on 11.7.1967,

and report of which medical board was exhibited before the trial Court as Ex.PW1/4, in which the medical board confirmed the date of birth as 11.4.1937 and which report is also signed by the respondent. The respondent/plaintiff also filed an affidavit that his date of birth was 11.4.1937. The respondent/plaintiff thereafter served the appellant for a period of around 24 years and then suddenly woke up in the year 1991 to claim that his date of birth is wrongly mentioned in the service record. It was stated that the correct date of birth of the respondent/plaintiff was 13.3.1942 and not 11.4.1937. As per the service rules as applicable, no change of date was permissible unless the employee applies within a period of five years of joining. Therefore, the respondent/plaintiff had to apply within five years of 18.7.1967 if he wanted to change his date of birth from 11.4.1937 to 13.3.1942 inasmuch as it is not disputed by the respondent/plaintiff that he himself had mentioned the date of birth at the time of joining as 11.4.1937 in various documents besides the fact of signing the report of the medical board stating the said date of birth. In support of the fact that a representation was made within five years for correction of the date of birth, the respondent/plaintiff relied upon a letter/representation dated 4.8.1967 given to the appellant. This document dated 4.8.1967 has however been found by the first Court to be a forged and fabricated document, and since the first Court has made pithy and telling observations qua the said document in para 15 of its judgment, I can do no better than reproduce the same as under:-

“15.The case of the plaintiff was that he had made a representation to the department on 4.8.1967. The said

representation was a request to change the date of birth from 11.4.1937 to 13.3.1942 which is the correct date of birth as per the school leaving certificate. The plaintiff had supplied the copy of the school leaving certificate also to the department on 4.8.1967 itself. He has filed the copy of the same showing the receipt by the department/defendant. Same is Ex.PW1/A. However, in my opinion, Ex.PW1/A is on the fact of it a forged document. It is a manufactured document to nullify the contention of the defendant that since no representation was made by the plaintiff within 5 years of appointment hence, as per F.R.56 note 6, he was not entitled to nay charge or correction in the entry of date of birth. The reasons for my above said observation are that firstly, Ex.PW1/A is referred to the Traffic Superintendent DTC I.P.Depot, New Delhi however, the stamp of receiving is in the name of Delhi Transport Undertaking. In 1967, the appointment of the plaintiff, was made by the Delhi Transport Undertaking and the DTC(Delhi Transport Corporation) was not in existence at that time. It is beyond imagination that how could the plaintiff come to know that in future Delhi Transport Undertaking shall be called as Delhi Transport Corporation. Secondly, there is cutting on the tip of the said document. On close scrutiny, it is revealed that the cutting has been done to destroy/alter the date mentioned on the said document. The date appears to be 16.8.1991. In my opinion, if a letter is dated 16.8.1991 how can it be received by the department on 4.8.1967. This further finds support from the fact that in his cross examination, the plaintiff/PW1 stated that he came to know for the first time that his date of birth is wrongly mentioned in the service record on 16.8.1991 that is the same date which appears on the top of Ex.PW1/A (hereinafter marked as mark C by the court on 19.7.2008). DW1 had also stated in his cross examination that the representation was made by the plaintiff in the year 1991 and action was taken on the same. The action as taken by the department is in the form of a report i.e. DWq/P1. Thirdly, the document itself appears to be so old however, the signatures as well as the stamp appears to be absolutely fresh and new. Therefore, I have no hesitation in coming to the conclusion that Ex.PW1/A is a forged/manufactured document. It was never received by the department on 4.8.1967. The said forgery has been merely to avoid the implications of the mandatory provision of F.R. rules i.e. rule 56 note 6.”(underlining added).

4. In addition to above conclusions of the first Court which hold the representation dated 4.8.1967, Ex.PW1/A, to be a forged and fabricated

document, I may only add that if really this representation was given on 4.8.1967 then there was no reason for the respondent/plaintiff not to have regularly pursued the same and to have taken up the issue only in the year 1991.

5. A reference to the judgment of the Appellate Court shows that the categorical conclusions as given by the Trial Court have almost been glossed over. I used this term because almost in a routine manner the important findings of forgery and fabrication of the Trial Court have been dealt with by the Appellate Court in the following language:-

“The learned trial court also did not consider Ex.PW1/A on the grounds mentioned in the judgment. The learned trial court has opined that 1967, there was no DTC and the department was known as Delhi Transport Undertaking. The counsel had relied upon Swami’s Fundamental Rules regarding the service in which DTC’s mentioned as in existence before year 1971. The defendant has not taken this stand in their WS that there was no DTC in 1967 and no evidence has been produced by the defendant to this effect. Thus this finding of learned trial court is not made out from the record. Regarding the cutting on the document also, the explanation is not acceptable. The defendant had not disproved this document and it has not been proved on the record that the seal does not belong to the defendant. There is no cross examination from the plaintiff on this point.”

6. The aforesaid few lines of the Appellate Court really lacks in conviction. Nothing has been placed on record as to why the respondent/plaintiff would address the appellant in its avatar of Delhi Transport Corporation (DTC) in the year 1967 when admittedly in the year 1967 there was no DTC and the appellant was Delhi Transportation Undertaking (DTU). The trial Court has rightly held that the respondent/plaintiff would not have imagined in the year 1967 that the appellant would subsequently become DTC. Also even assuming the

appellant would subsequently become DTC, but it was not DTC in the year 1967, cannot mean that a letter in the year 1967 will be addressed to the appellant as DTC. There is no doubt therefore that this letter dated 4.8.1967 was a forged and fabricated document.

7. Learned counsel for the respondent/plaintiff sought to argue that when the letter was written to the DTC it meant that the letter was addressed to Delhi Transportation Committee, however, admittedly on a query being put to the counsel for the respondent/plaintiff, nothing whatsoever has been filed on record to show that there was any Delhi Transportation Committee much less as a competent authority, to whom the respondent/plaintiff would have addressed a letter with respect to his request for change of date of birth. The reasoning of the Appellate Court that there is a mention of DTC before the year 1971 in the fundamental rules is a flawed reasoning because “before the year 1971” is an ambivalent conclusion inasmuch as the issue was whether on 4.8.1967 was the appellant called as the DTC. Obviously, appellant was not called DTC on 4.8.1967. The Appellate Court has also brushed aside the important finding of the Trial Court showing that the cutting of the document was to remove the date which was of the year 1991 and to show as if it was of the year 1967. The Appellate Court has again perversely observed that the appellant had to disprove this document. This rationale of the Appellate Court is quite clearly unacceptable because onus of proof lies on a person who relies on the document and it is never otherwise for the opposite party to, in fact, show that such a document did not exist. Also, merely because there may

not have been cross-examination on this limited aspect, cannot be conclusive in facts such as the present where all the aspects have to be seen together so as to arrive at a conclusion.

8. In my opinion, the Appellate Court has committed a gross perversity in setting aside the finding of the Trial Court given in para 15 of the judgment of the Trial Court which proved beyond doubt that the document Ex.PW1/A allegedly dated 4.8.1967 was a forged and fabricated document and the substantial question of law framed is answered accordingly.

9. In view of the above, the appeal is accepted. The impugned judgment of the Appellate Court dated 6.5.2010 is set aside and the judgment of the first Court dated 19.7.2008 is affirmed, and thereby, the suit of the respondent/plaintiff will stand dismissed, leaving the parties to bear their own costs.

SEPTEMBER 21, 2011
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VALMIKI J. MEHTA, J.