

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 3800 of 2011 (O&M)
Date of decision : 30.07.2015

Raghubir Saran @ Raghubir Singh

...Appellant

versus

Director General cum Commissioner Sec. Edu. & ors.

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kewal Singh, Advocate
for the appellant

Mr. Mukesh Kaushik, DAG, Haryana

RITU BAHRI, J.

Plaintiff-appellant (herein after to referred as 'the appellant') has come up in Regular Second Appeal against the judgment and decree dated 01.06.2010 whereby the judgment and decree passed by the learned trial Court dated 31.08.2009 was set aside.

Appellant joined his service as Social Study Master under the respondent No. 1 and 2-department citing his date of birth as 01.02.1965 based on matriculation certificate. On 02.01.2007, he served a legal notice upon respondent No. 3 with request to correct his date of birth in the matriculation certificate pleading that on 15.11.2006, he obtained birth

certificate from the Registrar (births and deaths), Yamuna Nagar as per which his date of birth was 08.05.1967. When no action was taken by the department, the appellant filed the suit.

On notice, respondent No. 3 did not appear despite service and he was proceeded ex parte.

Respondent Nos. 1 and 2 filed their written statement pleading that the date of birth of the appellant as mentioned in the official record is based on matriculation certificate, which the appellant had submitted as proof of his age at time of applying a job. Serving of any notice was denied. It was pleaded that the process for change of date of birth does not come under their preview.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for declaration to the effect that 8.5.1967 is the correct date of birth as per birth certificate issued by the Health department and further for directing the defendants to make the necessary changes?

OPP

2. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD

3. Whether the suit of the plaintiff is time barred? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.”

To prove its case, appellant examined P.W.1 Zila Singh who deposed that he personally knows the appellant and he was born in village Khurdi and his date of birth is 08.05.1967. The appellant is his nephew. In his cross examination, he deposed that the appellant are five brothers in all.

P.W.2 Raghubir Saran deposed that as per record maintained by the Health department, his date of birth is 08.05.1967 and his parents are illiterate and due to their illiteracy, they got recorded his date of birth as 01.02.1965, which is wrong. He placed on record file Ex PW2/A, i.e the certificate issued by the Additional District Registrar (Births and Deaths) cum Health Officer, Yamuna Nagar and also Ex PW2/B i.e the attested copy of the matriculation certificate. In his cross examination, he deposed that he got admission in the school at the age of 6 and passed his matric examination in the year 1983 and joined the present job on 16.12.2004 and the suit was filed on 14.03.2007 and served a legal notice to respondent No. 3 through his counsel on

02.01.2007.

On the other hand, respondent Nos. 1 and 2 examined Ram Parkash Deputy D.E.O Yamuna Nagar who admitted the appointment of the appellant and deposed that according to Annexure A of Chapter 7 of the Punjab Financial Rules, Vol-I, Part I, the Government employee can apply for the correction of age as recorded within two years of his entry into Government service. In his cross examination, he submitted that the date of birth as per their record is 01.02.1965, which is as per matriculation certificate issued by the Education Board and the appellant has not placed on record the date of birth certificate issued by the Health department.

The trial Court decreed the suit of the appellant as the birth certificate issued by the the Registrar (births and deaths), Yamuna Nagar reflects an entry extracted from the Register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. Section 7 thereof requires a State Government to appoint a Registrar for each area comprising the area within the jurisdiction of a Municipality or Panchayat or local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a

Registrar of Births and Deaths for registration of births and deaths in his area or any part thereof in relation to which he exercises his jurisdiction. A register of Births and Deaths is thus a public record of Births and Deaths that occur within the area assigned to a Registrar and the register being a public record presumption of truth attaches thereto. It was thus held that when there appears to be a conflict between the entries in the birth certificate issued by the Registrar of Births and Deaths and entry of birth in the school certificate, the entry in the Birth certificates issued by the Registrar of Births and Deaths would prevail and except where the certificate is unreliable, suspicious or appears to be procured or manipulated, it should not be disbelieved.

The only objection of the respondents was that as per Annexure A of Chapter 7 of the Punjab Financial Rules, Vol-I, Part I, the Government employee can apply for the correction of age as recorded within two years of his entry into Government service. However, the cause of action arose to the appellant for the first time on 15.11.2006 when he obtained the birth certificate from the health department. There is a delay of approximately 17 to 18 days from the prescribed period of two years, which has been stipulated for making an application for correction of date of birth. The

time for moving an application for correction of date of birth expired on 15.12.2006 and the departments remained closed from 25th to 31st December, 2006 on account of winter vacations. Reference was made to the judgment of ***Karam Singh vs.State of Punjab and another 2006(2) RCR Civil 755 which in turn relied upon Jiwan Dass vs. State of Haryana and anr. 1989(2) I.L.R (P&H) 110 and Hari Parshad vs. State of Punjab (1985-1) 87 PLR 39.***

The trial Court held that the appellant had not committed any fraud or mis-representation to take undue advantage of his incorrect date of birth. He had not secured his employment on the basis of any fraud. The cause of action arose to the appellant on 15.11.2006 and if effective day is calculated it comes only to 9/10 days as for 7 to 8 days i.e from 25.12.2006 to 01.01.2007, the departments are closed due to winter vacations.

On appeal filed by the department, the Lower Appellate has allowed the appeal of the department and set aside the detailed judgment passed by the learned trial Court by relying upon the judgment of Hon'ble the Supreme Court in a case of ***State of U.P and another vs. Shiv Narain Upadhyaya 2005(6) SCC 49*** wherein it was held that the date of

birth of an employee as recorded in the service book is decisive and correction thereof can be sought only in accordance with the procedure prescribed and within the time fixed under rules or order or within reasonable time in absence of any rules or order.

The Lower Appellate Court held that the appellant had not complied with Annexure A of Chapter 7 of the Punjab Financial Rules, Vol-I, Part I, as the appellant in the plaint itself pleaded that he had given notice to respondent No. 3 only and that the notice to respondent No. 1 and 2 was issued separately. However, no copy of such notice has been placed on record. Merely from postal receipts, it cannot be inferred that notices to respondent Nos. 1 and 2 must have been issued. The question as to when did he obtain the copy of his birth certificate from Health department pales into insignificance.

Learned counsel for the appellant has placed on record Annexure A-1 to show that his father had two wives. His one wife was named Shanti Devi and other was Sona Devi. From Shanti Devi, he had one daughter Lila Wati and four sons namely Ranjit Singh, Surjit Singh, Mohinder Singh alias Megh Nath and Mohan Lal. From the second wife Sona Devi, he had one daughter namely Pyari Devi alias

Kalawati and two sons Baljit Ram and the present appellant. This annexure was placed on record to show that there is no manipulation inasmuch as the appellant was born within six months of his brother Mohan Lal, as the father of the appellant had performed second marriage, thus there was a gap of six months between the date of birth of the present appellant with Mohan Lal.

In Shiv Narain Upadhyaya's case (supra), the respondent was engaged as class IV employee on 02.01.1972 and in the service records, the date of birth was indicate to be 01.09.1930 and he was to superannuate on 30.09.1990 and by mistake he was allowed to continue till 31.01.1991 and thereafter, he was directed to refund the amount of salary for 03 months. This order was challenged by him in the writ petition and his stand was that as per school certificate records his date of birth was 01.09.1939 and he had been prematurely retired nine years earlier. At the time of entry into service, he had signed the service book where his date of birth was recorded as 01.09.1930. For the first time, he produced the document to show that his date of birth was 01.09.1939 in the year 1991 at the fag end of his career and his date of birth could not be recorded as 01.09.1939 contrary to that of what had been recorded in

the service book.

The ratio of the above judgment was that at the fag end of a career, the employee cannot seek correction of his date of birth. However, in the present case, the appellant had joined the services of the respondent-department on 16.12.2004 citing his date of birth as 01.12.1965 based on matriculation certificate thereafter, on 02.01.2007 he served a legal notice with request to correct his date of birth pleading that on 15.11.2006, he obtained birth certificate from the Registrar (births and deaths), Yamuna Nagar as per which his date of birth was 08.05.1967.

The ratio of the above said judgment does not apply to the facts of the present case and accordingly, the present appeal is allowed and and decree dated 01.06.2010 passed by the lower Appellate Court is hereby set aside and the matter is remanded back to the Appellate Court to decide the matter afresh on merits after giving due notice to the parties.

30.07.2015

G Arora

(RITU BAHRI)
JUDGE