

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 4399 of 2013 (O&M)

Date of decision: September 3, 2015

Santosh Kumari

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. DS Rawat, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The plaintiff sought for a change of date of birth in the service record, which was originally entered as 20.8.1958 at the time when she joined service as S.S. Mistress, as 18.7.1960 through the suit. The plaintiff was relying on a change of date of birth entered in the matriculation record brought through a suit filed subsequent to her entry into the service against the matriculation board and an altered matriculation certificate on the basis of a decree obtained against matriculation board on 10.6.2004 sought to be realized for getting the change done. The suit was decreed and the lower appellate court reversed the decision. For so doing, the lower Appellate Court held that the suit was barred by delay and laches. The counsel's contention is that there was not even a plea of delay and laches in defence by the defendants.

2. There is ample authority to the position that a mandatory relief

of alteration of date of birth in service record cannot be brought more than a period of three years from the date of entry into service or from the date when the knowledge of a wrong entry had been known to the plaintiff. If any alteration could be made to the benefit of an employee and in this case it should have been a suit for alteration of date of birth within three years when she entered the service on 26.4.1990 or if she had known that the date was wrongly given and hence she filed the civil suit against the matriculation board on 20.7.1990, that date shall be the date of knowledge for commencement of the period of limitation. In Raghubir Singh Versus State of Haryana and others 2013 (1) SLR 367, the Court had an occasion to deal with the extent of interference that is possible in such similar causes involving change of date of birth. The Court referred to the decision in Punjab and Haryana High Court Versus Meghraj Garg (2010) 6 SCC 482 and held that a change sought after 10 years of service was to be taken as stricken with laches. In State of Punjab and others Versus S.C. Chadha 2004 (3) SCC 394, the Supreme Court cautioned against entertaining delayed request for change of date of birth. It must be remembered that the issue really is not what was the correct date of birth. The issue is whether a change could be made in official record that will impact an employer in several ways in organizing the human sources.

3. The contention that the government did not take a plea in defence cannot avail to the benefit of the plaintiff in view of the fact that the bar of limitation will be examined by a court whether or not a defence was taken by virtue of the express provision under Section 3 of the Limitation Act that casts a duty on the Court to apply the principle of limitation irrespective of a defence having been brought in court or not. The suit was

barred by limitation and if the court was holding that the suit was barred by delay and laches, it was stating the correct principle of law and applying the same.

4. The learned counsel appearing on behalf of the appellant states that the appellant was not taking any advantage at the time of her employment by giving a wrong date of birth. I would hold this to be not tenable, for, a person who was seeking for change of date of birth by seeking the age to be lowered by two years was literally bargaining for the age of superannuation to be shifted by another two years for her benefit. The advantage which the plaintiff claims by virtue of the suit is so obvious that it cannot be permitted. A Division Bench of this court in Ambika Kaul Versus Central Board of Secondary Education and others 2015 (3) SCT 350 has also settled the controversy that a change of date of birth cannot be permitted after joining service for the principle in operation would be an estoppel; that a person who gives a representation about the date when he or she was a person of full age of understanding and an adult cannot be permitted to resile from such a statement and make an alteration to the detriment of the opposite party. The detriment that is bound to be caused to the opposite party here is liability that they have to incur by allowing by plaintiff to continue in service and pay the salary for two more additional years.

5. The issue regarding change of date of birth are repeatedly confronted by the courts where a person enters service would still be keeping the issue for altering the age till the twilight years of superannuation for obvious reason of material benefit only. Lessons are not always learnt inspite of judicial pronouncements which are categorical on

this issue. Access to justice which is a constitutional goal ought to make possible for a person to come to court, if there is a genuine grievance, but suits like this sully the very purpose for which the concept is spoken as a necessary goal. Crores of litigations pending in courts are not all genuine with rightful expressions of violation of rights. Many look for lottery. The plaintiff is one such person and her suit was rightly dismissed. She deserves no sympathy and the second appeal is dismissed with the contempt that it deserves.

September 3, 2015
prem

(K.KANNAN)
JUDGE