

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

R.S.A No. 1212 of 2014 (O&M)

Date of decision:- 21.07.2015

Munna Lal

..Appellant

Versus

The Patiala District Co-op Milk Producers Union Ltd.

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sunil Garg, Advocate
for the appellant

Mr. Rahul Sharma, Advocate
for the respondent.

RITU BAHRI J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-appellant (herein after to be referred as 'the appellant') was dismissed.

Brief facts of the case put forth by the appellant is that he was appointed as Diary Helper-cum-Cleaner vide appointment letter dated 28.11.1996 and he was on probation for six months and later on he was confirmed. At the time of issuing the appointment letter, the date of birth of the appellant was duly incorporated as 11.02.1964 in the record maintained by the respondent. The appellant was issued identity card by the respondent, which shows the date of birth of the

appellant as 11.02.1964. Even the *janam patri (horoscope)* of the appellant shows same date of birth, but some mischief has been done by the Supdt of the department whereby the gap of almost 17 years has been alleged therein, which is totally improbable. The appellant has also written a letter dated 15.11.2004 to rectify the date of birth of the appellant as 11.02.1964, but the respondent vide letter dated 01.02.2005 rejected the request of the appellant and asserted regarding one affidavit dated 17.04.2000 in which the appellant had disclosed his date of birth as 20.08.1947. In fact, the appellant never submitted any affidavit in the respondent-department. This affidavit is a result of fraud and misrepresentation played upon by the officials of the respondent-department only.

On notice, the respondent-department appeared and filed written statement and on merits, admitted the appointment of the appellant in the department as as Diary Helper-cum-Cleaner on 28.11.1996. It was submitted that the appellant had submitted an application for appointment to the General Manager, Milk Union, Patiala on 22.10.1982 in which the appellant had mentioned his age and date of birth as 35 years (20.08.1947). The respondent issued letter dated 10.04.2000 seeking his personal date i.e date of birth, birth certificate or any other proof along with other employees working under the respondent. The appellant has not proved any

documentary proof with regard to his date of birth along with application dated 22.10.1982.

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

- “1. Whether the date of birth of the plaintiff is 11.02.1964? OPP*
- 2. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 4. Whether the suit of the plaintiff is not maintainable? OPP*
- 5. Whether the suit of the plaintiff is time barred? OPD*
- 6. Whether the plaintiff is estopped by his act and conduct for filing the present suit? OPD*
- 7. Whether the civil Court has no jurisdiction to try and decide the present suit? OPD*
- 8. Relief.”*

The appellant has relied upon his horoscope (P-1), Identity Card (P-2), ESI Card (P-3) wherein the date of birth of the appellant was shown as 11.02.1964. He has further relief upon a certificate (Ex

P4) regarding the age of the appellant issued by Amar Hospital. On the other hand, respondent relief upon Ex D3 i.e the affidavit duly signed by the appellant wherein he admitted his date of birth as 20.08.1947. With regard to Ex D1 to D3, the department submitted that the same are being tallied or being filled on the information given by the employee himself. The same are not being tallied or being filled from the service book of the employee.

Both the Courts below dismissed the suit of the appellant on the ground that in the affidavit filed by the appellant himself, he gave his date of birth as 11.02.1964 and he was working with the respondent-department since 1982. Ex D4 is the provisional seniority list issued on 01.10.1991, Ex D5 is the provisional seniority list issued on 03.02.2004 and Ex D6 is the final seniority list issued on 25.03.2004 wherein the date of birth of the appellant is recorded as 11.02.1964, thus it cannot be believed that the appellant was not aware about his date of birth in his service record since the year 1991. The janampatri and the medical record cannot be held to be conclusive proof. Further the suit was filed on 23.04.2005 at a very belated stage. Further the affidavit Ex D3 was got attested by Executive Magistrate in which date of birth of the appellant has been mentioned as 20.08.1947.

Hon'ble the Supreme Court in a case of **State of U.P & another v. Shiv Narain Upadhyay 2005 (6) SCC 49** has been held

that 'date of birth' as recorded in the service book is final and an application made for correction of the date of birth on eve of retirement should not normally be entertained.

The suit of the appellant has rightly been dismissed by both the Courts below on the ground that correction of date of birth at a belated stage cannot be made just before the retirement as held by Hon'ble the Supreme Court in cases of ***State of Tamil Nadu vs. T.V. Venugopalan 1994(4) SCT 375 (SC)***, ***State of U.P and another vs. Shiv Narain Upadhyaya, 2005(3) SCT 665*** and ***State of Maharashtra and another vs. Gorakhnath Sitaram Kamble and others, 2011(2) SCT 195***.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

21.07.2015

G Arora

(**RITU BAHRI**)
JUDGE