

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

RSA No.4664 of 2015 (O&M)

Date of Decision: December 21, 2015

Mahesh

.... Appellant

vs.

**The Secretary, State of Punjab, Department of Water
Supply and Sanittion (R.W.S.), Punjab and others**

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Varinder Kumar Shukla, Advocate for the appellant.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

CM-11239-C-2015

There is delay of 36 days in refiling the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 36 days in refiling the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

RSA-4664-2015

Impugned in the present regular second appeal is the judgment and decree dated 19.11.2014 passed by learned Addl. District Judge, Moga, affirming the judgment and decree dated 16.05.2003 passed by learned Addl. Civil Judge (Sr. Divn.), Moga,

vide which the suit of the plaintiff for declaration and mandatory injunction was dismissed.

The plaintiff has sought declaration to the effect that his correct date of birth is 10.05.1973 and not 10.05.1963 as recorded in the service record. It was claimed that he got compassionate appointment in the year 1997. The plaintiff produced his date of birth certificate, wherein his date of birth is mentioned as 10.05.1973 but the Civil Surgeon, Moga, on 11.12.1997, at the time of medical examination of the plaintiff, wrongly mentioned it as 10.05.1963. That mistake did not come to the knowledge of the plaintiff. The present suit was filed after 10 years i.e. in 2007 to seek such declaration.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

A perusal of judgment of lower court shows that the plaintiff had relied upon document Ex.P2 to seek correction of his date of birth. Ex.P2 is merely a family register maintained by the Panchayat Secretary, Gram Panchayat, Jalalpur, District Aajamgarh. The lower court made the following observations regarding the evidentiary value of the said register and non-production of the material evidence:

“Plaintiff is virtually seeking correction of date of birth on the basis of this record Ex.P2. This witness Durga Parshad when cross-examined has categorically admitted that register produced by him is not attested by any officer nor it has any page marking nor

documents Ex.P1 and Ex.P2 are scribed or signed by him. He further could not tell by whom these documents were signed. So copy of one Family Register Ex.P2 shows the date of birth of Mahesh as 10.5.1973. This very document shows that this date has been mentioned under the head "date if known or approximate date of birth". So, the heading under which date of birth has been mentioned in itself shows that this copy of family register Ex.P2 virtually is not authentic report qua the date of birth of Mahesh. The best piece of evidence available with plaintiff was to examine his mother or any elderly family members to prove his date of birth but none has come forward. Plaintiff has failed to examine his brothers and sisters though they are admittedly alive. The birth certificate of plaintiff has also not been brought to prove that he was born on 10.5.1973 and not on 10.5.1963."

It goes to show that register Ex.P2 is not a reliable piece of evidence for making correction of the date of birth. The plaintiff did not apply for the correction of date of birth within the time allowed under the Rules. Further, even after 10 years, he did not produce best evidence in the form of his date of birth certificate or statements of his mother, father, brother and sister along with their birth certificates or the statement of any close relation, who could know the exact date of birth of the plaintiff. Merely by producing Ex.P2, the date of birth cannot be corrected and the declaration and mandatory

injunction was rightly declined by both the courts below. Thus, I do not find any merit in the present regular second appeal, the same is dismissed, accordingly.

December 21, 2015
sarita

(KULDIP SINGH)
JUDGE