

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 440 of 2014 (O&M)

Date of decision : May 26, 2015

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Murti Devi

.....Appellant

Versus

Executive Engineer (Xen) Operation Division

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sandeep K. Sharma, Advocate for the appellant.
Mr. P.S Poonia, Advocate for the respondent.

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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?*

RITU BAHRI, J

The appellant-plaintiff (hereinafter referred to as 'the plaintiff') has come up in this regular second appeal against the judgment dated 11.10.2013 passed by the District Judge, Bhiwani whereby the appeal against the judgment and decree dated 10.10.2011 passed by the Civil Judge (Junior Division) Charkhi Dadri was accepted and the judgment of the trial court was set aside. Vide the judgment of the trial Court, suit of the plaintiff for declaration to the effect that her date of birth in her service book is liable to be corrected from 1.7.1949 to 1.7.1951 was decreed and the order dated 31.3.2009 passed by the respondent-defendant (hereinafter

referred to as 'the defendant') ordering the superannuation of the plaintiff in the year 2009 was set aside and it was ordered that the plaintiff shall be deemed to have superannuated considering her date of birth to be 1.7.1951.

Heard counsel for the parties. The facts not in dispute are that the plaintiff was a peon in the office of Dakshin Haryana Bijli Vitran Nigam, Charkhi Dadri. She was appointed after the death of her husband as an Exgratia appointment. At the time of her appointment, she had no birth certificate. A medical examination was conducted by the Department and she was declared to be 35 years of age way back in the year 1986. As per the above said age, her date of birth would fall in the year 1951, however, while preparing her service book instead of mentioning her year of birth as 1951, it was mentioned as 1949. As per the above said mistake, the plaintiff was superannuated in the year 2009. The plaintiff was entitled to work till 30.6.2011 as her actual date of birth as per the medical examination would fall on 1.7.1951.

The trial Court decreed the suit of the plaintiff and set aside the order dated 31.3.2009 and held that the plaintiff shall be deemed to have superannuated considering her date of birth to be 1.7.1951 with all consequential benefits.

The lower appellate Court on appeal filed by the defendant accepted the same and set aside the judgment of the trial Court and dismissed the suit of the plaintiff. As per the service book Ex. PW-1/B, the plaintiff had herself recorded her date of birth as

1.7.1949 and by way of overwriting it was made as 1.9.1949 and as per the entry made by the plaintiff she was to retire on 30.6.2009 after attaining the age of 60 years and the retirement notice Ex. D2 vide office order no. 349 dated 31.3.2009 was given to the plaintiff and thereafter a representation was moved by the plaintiff on 6.4.2009 Ex. D3. The plaintiff had recorded her date of birth under signature/thumb impression in her service book Ex. PW 1/B (Ex. D1) and this entry was never challenged by her. Thus the plaintiff was stopped to challenge this entry regarding date of birth recorded in the service book at the time of superannuation on 30.6.2009. She had received all the retiral benefits and after receiving the retiral benefits the suit for correction of date of birth in service record at the fag end of retirement was not sustainable. Lakhi Ram DW-1 brought the original service book of the plaintiff and deposed that date of birth of the plaintiff has been recorded as 1.7.1949 and the plaintiff never raised any objection on this entry during her entire service record. DW-2, Ombir, Executive Engineer of the Nigam in her sworn affidavit Ex. DW2/A has also supported the pleas taken in the written statement. He further deposed that from the very beginning the date of birth of Murti Devi has been mentioned as 1.7.1949. The findings of the trial Court on issue no. 1 & 2 were reversed by the appellate Court and the suit of the plaintiff was dismissed.

Counsel for the appellant has referred to medical certificate Ex. PW1/C dated 16.1.1986 issued by Deputy Chief Medical Officer, Narnaul at the time of her appointment. As per this

certificate, her age was recorded as 35 years when she had joined the service. This medical certificate was made the basis for enabling her to join the service. However, the plaintiff being an illiterate lady was not aware of the wrong entry of date of birth that was made in her service book as 1.7.1949 as is evident from Ex. D1, service book of the plaintiff. Since the plaintiff was an illiterate lady, the entry in the service book could not have been made by her which was in English language. It was merely thumb marked by her. A perusal of the copy of medical certificate PW1/C issued on 16.1.1986 shows that the plaintiff was 35 years of age. She had joined the office after the death of her husband under the ex-gratia grant in the year 1986. Hence for all intents and purposes as per the medical certificate Ex. PW 1/C, the plaintiff had to be treated as 35 years of age on 16.1.1986. The defendants had not disputed the document Ex. PW1/C i.e the medical certificate. Moreover, as per the amended written statement filed by the defendant, it was admitted that she was got medically examined by the department on 16.1.1986 and her age was mentioned to be 35 years. In view of this, her date of birth should have been recorded as the year 1951 instead of the year 1949. The entry in the service book was not made by the plaintiff in her own handwriting. She had merely thumb marked the entry as is evident in Ex. PW1/B. Notice of retirement was given on 31.3.2009 Ex. D2. The plaintiff immediately made a representation Ex. D3 but objection raised by the plaintiff was not accepted by the department as per letter Ex. D4 and the same was rejected without application of

mind. The trial Court had rightly decreed the suit of the plaintiff that she had right to serve till the year 2011 taking her age as 35 years at the time of entry into service in the year 1986. But she was wrongly superannuated on 30.3.2009. It is a case where the plaintiff had sought correction of her date of birth recorded in the service book as per the medical examination certificate Ex. PW1/C which was not being disputed by the Department itself in their amended written statement filed before the trial Court. Hence the observation of the Supreme Court in the case of ***State of Tamil Nadu vs. T.V Venugopalan, JT 1994(5) 337 (S.C)*** that correction in date of birth at the fag end of the retirement is not sustainable would not be applicable in the case of the plaintiff. In this case, substantial question of law which arises for consideration would be:

- (i) Whether an entry of date of birth recorded in her service book can be corrected on the basis of medical certificate Ex. PW1/C or not.

In view of the detailed discussion of the facts and after going through the records of the case, it has been observed that the plaintiff being an illiterate lady was not having a birth certificate at the time of entry into service and as per medical examination conducted at the time of her ex-gratia appointment, her age was recorded to be as 35 years in the medical certificate Ex. PW1/C in the year 1986. The wrong entry of date of birth i.e 1.7.1949 was made in the service book in English Language which was thumb marked by her which led

to her superannuation on 30.3.2009. The Department without application of mind had rejected her representation dated 6.4.2009 Ex. D3 against notice 31.3.2009 Ex. D2.

The judgment of the lower appellate Court deserves to be set aside and the suit is decreed. Since the plaintiff was superannuated in the year 2009, the respondent will calculate the arrears of salary taking her date of birth as 1.7.1951 in view of the medical certificate Ex. PW 1/C and pay the arrears of salary along with 9% interest within a period of 4 months to her. A compliance report be sent to this Court within a period of three months.

In view of all that has been discussed above, present regular second appeal is allowed.

May 26, 2015
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(**RITU BAHRI**)
JUDGE