

HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 235 of 2015

Smt. Ramkuwar Sarva, Aged About 58 Years, widow of Shri Arjunsingh Sarva, retired A.M.N., Gramin Swasthya Sanyojika, UP Swasthya Kendra, Ruabandha Bhilainagar, Tahsil and District Durg, Chhattisgarh

---- Appellant/ Plaintiff

Versus

1. Chief Medical and Health Officer, Durg, Tahsil and District Durg (C.G.)
2. Sanyukta Sanchalak(Nursing) Sanchalnalaya, Health Services, C.G. Raipur

---- Respondents

For Appellant	:-	Mr. Udho Ram Koshaley, Advocate
For Respondent/ State	:-	Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board By

11/02/2016

1. Heard on I.A. No. 01, which is an application for condonation of delay.
2. On due consideration, as sufficient cause has been shown in not filing the appeal within stipulated period, the I.A. No. 01 is allowed and the delay in filing of the appeal is hereby condoned.
3. The instant Second Appeal is preferred against the judgment and decree dated 22.11.2014, passed by 2nd Additional District Judge, Durg, District Durg, passed in Civil Appeal No. 28-A/2013 whereby the judgment and decree dated 18.01.2010 passed by 7th Civil Judge Class-II, Durg District Durg passed in Civil Suit No. 8-A/2009 was affirmed.
4. Brief facts of this case, is that a suit was filed by the Appellant/ plaintiff, alleging that the Appellant was working as a Health Coordinator in Primary

Health Center, Berla District Durg from 03-02-1967. In the year 2002-03, she came to know that in the service book her date of birth has been shows as 24.08.1946 but actual it should have been 24.08.1948. Thereafter, in the year 2003-04 an application was given to correct her date of birth which was dismissed, therefore, cause of action arose. The appellant/plaintiff on 30.08.2006 before a day of retirement had filed a civil suit for declaration and permanent injunction. The said civil suit was dismissed, against which an appeal was filed which too was dismissed. Hence, the instant Second Appeal.

5. Counsel for the appellant would submit that actual date of birth of the appellant is 24.08.1948 according to mark sheet and the other documents, however, by inadvertent in the service book, her date of birth was recorded as 24.08.1946, which came to her notice and thereafter, she immediately moved an application for correction of her date of birth which was not considered by the authorities, resulting which lead to retirement of the appellant from service. Thereafter, a civil suit was filed for permanent injunction and declaration. Both the Courts below have failed to appreciate the documents as produced by the appellant and dismissed the suit.

6. Arguments heard and perused the documents produced by the appellant/plaintiff as also by the defendant as also the transfer certificate and mark sheet. Though the date is recorded as 24.08.1948 in the exhibit P/1, P/2 and P/3, whereas in the service book, i.e. exhibit D/1, the date of birth of the appellant was recorded as 25.08.1946. The civil suit was filed on 30.08.2008, a day before retirement. In such civil suit an injunction was also prayed for not to retire from the service. Perusal of the civil suit would show that only declaration and injunction was prayed for and no ancillary benefit was claimed. The injunction was refused, consequently, the appellant was

retired from her service on 31.08.2008. In the statement of the appellant, it is admitted at para No. 12 of the cross examination that she has signed her service book wherein her date of birth is recorded as 25.08.1946 but it has been stated that said recording of date of birth is wrong. The appellant was appointed in service on 03.02.1967 and at the fag end of service the day before the retirement civil suit was filed wherein also the ancillary benefit was not claimed and only the declaration and injunction was claimed.

7. Perusal of the Exhibit D/1 would show that no overwriting or correction was made in such service book, which shows that the date of birth is 25.08.1946 and is also signed by the appellant. Considering the appeal and reading of service book in the opinion of this Court, both the Courts below have correctly appreciated the fact and no substantial question of law arises for consideration.

8. Accordingly, the second appeal is dismissed at the motion stage itself.

9. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge