

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.756 OF 2013

in

L.C. SUIT NO.422 OF 2012

Mr. Manual s/o Daniel Joseph Appellant
(Ori. Plaintiff)

vs.

M/s Hindustan Petroleum (HP) & Anr. Respondents
(Ori. Defendants)

Mr. Anand Mishra h/for Mr. A.M. Saraogi, Advocate for the
Appellant.

Mr. Minoo Siodia alongwith Raksha Thakkar i/by Rustamji &
Ginwala, Advocate for Respondent no.1.
Ms. M.R. Bhoir, Advocate for Respondent no.2

Coram : Smt. R.P. SondurBaldota, J.

Date : 21st March, 2016

P.C.

1 This First Appeal is by the original plaintiff, whose
suit for direction to respondent no.1 for correction of his date of
birth in it's record and for a direction to respondent no.2 to
issue birth-certificate with the correct date of birth is dismissed.
Respondent no.1 is the employer of the appellant and
respondent no.2 is Mumbai Municipal Corporation.

2 Admittedly the appellant was not born within the jurisdiction of Mumbai Municipal Corporation. He was born at Niphad, Dist. Nasik. Hence the relief in the suit for direction to respondent no.2 to issue birth-certificate with the correct date of birth direction was clearly misconceived. Consequently the challenge to rejection of that prayer is without merit.

3 As regards respondent no.1, the appellant had joined the services of respondent no.1 in the year 1977. He had submitted the application for employment by filling up the details therein in his own hand. Column 14 of the application is for date of birth, wherein he has written the "Date of Birth" as 24th July, 1952 and column 15 is for 'Age', wherein he has mentioned his age as 25 years, which corresponds with the date of birth stated in the application. The appellant was due for retirement on 31st July, 2012 nearly a year prior to that i.e. on 25th July, 2011 he filed an application for correction of his date of birth in the service record claiming that his correct date of birth is of 24th July 1955.

4 Respondent no.1 contested the suit alleging that the same is not a bona-fide dispute. According to it, the suit is nothing but an attempt on the part of the appellant to get his service period extended. It is also contended that the suit suffers from undue delay and laches on the part of the appellant.

5 Respondent no.1 had issued circular dtd.23rd January, 1991 to it's employees that the date of the birth of the employee entered into the records of the Corporation is the sole evidence of his age in relation to all matters pertaining to his service including his date of retirement. Any correction therein could be applied for within a period of five years from the date of joining the service. In view of the circular, the application for correction could have been filed by the appellant only until the year 1982. He filed the suit herein in the year 2012 i.e. with the delay and latches of 30 years. This delay is unexplained.

6 During trial, the appellant produced several subsequent documents like PAN card, LIC policy etc. wherein he has given his date of birth as 24th July, 1955. Those documents could be of no assistance to the appellant as the information therein has been supplied by the appellant himself. The information on the record of respondent no.1 was also given by the appellant himself. In that the reliance placed is on the S.S.C. certificate of the appellant. That S.S.C. certificate has not been produced before the court. The only other contemporaneous document produced is the school leaving certificate. The document produced is a "True Copy". It does not bear date. The blank of the "Serial No." is not filled in. It does not indicate the name and signature of the person who prepared though there is specific place marked in the certificate for the purpose. The signature of the class-teacher is missing. Similarly the signature

and stamp of the headmaster is seen to have been made not at the proper place but at the place of the date. This certificate therefore cannot be believed and has been rightly rejected by the Bombay City Civil Court. In the circumstances, I find no infirmity whatsoever in the impugned judgment and decree. Hence, the First Appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)