

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.338 of 2013

1. The Secretary,
Tamil Nadu Government Finance Department,
Secretariat Building,
Chennai 600 009.
2. The Director of Co-operative Audit,
No.5, Kamaraj Salai,
(Slum Clearance Board Building Complex),
Chennai 600 005.
3. The Assistant Director of Co-operative Audit,
Chennai North,
807, Anna Salai, 5th Floor,
P.T.Chengalvarayan Trust Building,
Chennai 600 002.
4. The Sub-Registrar,
O/o.Sub Registrar,
Mangalampettai,
Virudhuchalam Taluk,
Cuddalore District - 600 104. ... Appellants/Defendants

V.K.A.Ramalingam

... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 17.08.2012 passed in A.S.No.435 of 2011 by the III Additional City Civil Court (III Additional Judge), Chennai, insofar as reversing the judgment and decree dated 24.03.2011 made in O.S.No.418 of 2010 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.T.Jayaramaraj,
Government Advocate

For Respondent : Mr.G.Thangavel

J U D G M E N T

Challenging the judgment and decree dated 17.08.2012 passed in A.S.No.435 of 2011 by the III Additional City Civil Court (III Additional Judge), Chennai, insofar as reversing the judgment and decree dated 24.03.2011 made in O.S.No.418 of 2010 on the file of the VII Assistant Judge, City Civil Court, Chennai, the defendants are before this Court by way of the present Second Appeal.

2. It is the case of the plaintiff that he entered into Government service as Junior Inspector of Co-operative Societies at the office of the District Co-operative Audit, Villupuram on 28.02.1982 and subsequently promoted as Senior Inspector of Co-operative Societies and posted at the office of the Deputy Registrar (Housing) at the office of Cuddalore. As the plaintiff came to know about his correct date of birth, i.e. 18.04.1953 only by virtue of the issuance of Birth Certificate from the concerned Registrar Office on 24.10.1985, he immediately made a representation to the Deputy Registrar (Housing) to alter his date of birth in his office records. The Deputy Registrar referred the matter to the Joint Registrar, South Arcot District, so as to make necessary alteration of the plaintiff's correct date of birth based on the proceedings No.Na.Ka.3308/1986 A, dated 08.05.1986. On 16.05.1996, the Joint Registrar of Co-operative Societies, South Arcot, Cuddalore issued proceedings vide Aa.Thi.Mu.No.11886 Pa dis, with a direction to the plaintiff to furnish details required for the correct date of birth, in order to ascertain the fact and to analyze the alteration of date of birth in the office records.

3. Pursuant thereto, the plaintiff submitted a proper application to the 2nd defendant on 30.12.2009 along with his original Birth Certificate issued by the 4th defendant as also the Birth Certificates of his sisters obtained from the concerned Sub-Registrar Office, to establish his correct date of birth as 18.04.1953. It is the case of the plaintiff that as per his correct date of birth, he has to retire only on 30.04.2011. Since no orders were passed on his representation, the plaintiff was likely to retire on 31.01.2010, based on the entry of his date of birth in the SSLC book as 07.01.1952. Hence, having no other alternative, the plaintiff filed a suit in O.S.No.418 of 2010.

4. Denying the plaint averments, the defendants filed a Written Statement before the Trial Court, stating that the plaintiff's date of birth is entered as 07.01.1952 as per the details given by his parents at the time of admission into School, as reflected in the S.S.L.C. Book. According to the

defendants, alteration of date of birth cannot be considered after the student has completed his Schooling and S.S.L.C. course marks are entered and the Certificate is closed. It is their case that the suit is barred by limitation and is bad for non-joinder of necessary parties, viz. the parents of the plaintiff.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, dismissed the suit against the plaintiff. Aggrieved by the same, the plaintiff went on appeal in A.S.No.435 of 2011 before the III Additional City Civil Court, Chennai and the First Appellate Court, by a judgment dated 17.08.2012, allowed the appeal, thereby declaring the date of birth of the respondent/plaintiff as 18.04.1953 with a direction to the respondents 2 and 3 therein to alter the date of birth of the plaintiff in his Service Register as 18.04.1953, within one month from the date of the judgment. Challenging the same, the official respondents have come up with the present Appeal.

6. Learned counsel for the appellants contended that the First Appellate Court failed to note that when the respondent/plaintiff came to know that his date of birth is wrongly entered in his Service Register, i.e. on 24.10.1985 itself, he ought to have filed the suit immediately; whereas, he has filed the suit only in the year 2010, which shows his malafide intention. According to the learned counsel, the First Appellate Court, without adopting the correct yardstick, has simply passed an omnibus order and the same is liable to be set aside.

7. To substantiate his stand, learned counsel for the appellant has relied on the following:

(i) a Supreme Court decision in the case of Raghunath Das vs. Union of India and another reported in AIR 1969 SC 674 (1)

"6. Section 80 of the Civil Procedure Code requires, among other things, that the notice must state the name, description and place of residence of the plaintiff. It is true that the notice purports to emanate from M/s Raghunath Dass Mulkhraj. It is also true that in the body of the notice in several places the expression 'we' is used. Further the plaintiff had purported to sign for M/s Raghunath Dass Mulkhraj. But at the same time he signed the notice as the proprietor of the concern "Raghunath Dass Mulkhraj". That is a clear indication of the fact that "Raghunath Dass Mulkhraj" is a proprietary concern and the

plaintiff is its proprietor. Whatever doubts that might have been possibly created in the mind of the recipient of that notice, after going through the body of the notice as to the identity of the would be plaintiff, the same would have been resolved after going through the notice as a whole. In the plaint, the plaintiff definitely stated that he was carrying on his business under the name and style of "Raghunath Dass Mulkhraj" meaning thereby that the concern known as "Raghunath Das Mulkhraj" is a proprietary concern and the name given to it is only a trade name. He had also stated in the plaint that he had given a notice under Section 80 of the Civil Procedure Code. In the written statement filed on behalf of the Dominion of India, the validity of the notice issued was not challenged. Regarding the notice in question the only averment in the written statement is that found in para 8 therein and the same reads:

"That the suit is barred by Section 80 of the CPC as no notice under that section appears to have been served on this administration."

(ii) yet another Supreme Court decision in the case of Coal India Ltd. and another vs. Ardhendu Bikas Bhattacharjee and others reported in (2005) 12 SCC 201

"7. Counsel for the respondent contended that the aforesaid rule prescribing a time-limit for changing the date of birth came into force only in the year 1992 for the first time and therefore, not applicable to the respondent. Assuming it to be so, it cannot be disputed that while entering service the respondent declared his date of birth as 31-12-1938 based on the matriculation certificate furnished by him.

8. Thereafter, in the year 1995 he applied to the Company to change the date of birth on the basis of duplicate matriculation certificate obtained by him. It is well settled that an employee will not be permitted to apply for change of date of birth at the fag end of

his service career. In the instant case we do not know on what basis after 38 years the Secondary Education Board in Bangladesh corrected the matriculation certificate. This is essentially a question of fact, and in any case the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth. We are of the view that the High Court was in error in allowing the writ petition filed by the respondent and directing Coal India Limited, the appellant herein, to change the date of birth of the respondent from 31-12-1938 to 26-1-1943. We, accordingly, set aside the impugned order of the High Court of Calcutta.

9. It is, however, stated that during this period the respondent has worked as an employee of the appellant Company and has superannuated from service on attaining the requisite age on the basis of the duplicate matriculation certificate. He has been paid his salary and allowances in accordance with the Rules. It would be harsh to direct the respondent to refund the pay and allowances paid to him during this period, particularly when he has actually worked pursuant to orders of the Court. However, we direct that for service benefits including post-retirement benefits, the service rendered by the respondent shall be reckoned on the basis of the certificate originally submitted by him disclosing his date of birth as 31-12-1938. His date of retirement shall be determined on the basis of the aforesaid date of birth. For the additional service rendered by the respondent, after such retirement, apart from pay and allowances already paid to him, no other service benefit shall be given to him."

(iii) a decision of this Court in the case of A.Rajagopalan vs. Registrar, University of Madras, Chennai reported in (2009) 2 MLJ 1000

"12. On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is

more authentic evidence under Section 32 clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 clause (5).

13. As observed by this Court in Umesh Chandra vs. State of Rajasthan ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case, the entries in the school register were made ante litem motam."

8. In reply, learned counsel for the respondent submitted that in terms of Regulation 79, the respondent/plaintiff is entitled to make an application seeking alteration of date of birth within five years from the date of his entry into service and accordingly, the respondent/plaintiff has made a representation to his superior authorities. Since his representation was not considered till his retirement, he was constrained to file a suit seeking declaration of his correct date of birth in the year 2010, which cannot be termed as bad in the eye of law. Accordingly to the learned counsel, the First Appellate Court has rightly held in favour of the respondent/plaintiff.

9. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

10. Substantial questions of law that arise for consideration in this appeal are:

"(i) Whether the First Appellate Court is right in holding that the suit is not barred by limitation?

(ii) Whether the First Appellate Court is right in holding that the respondent/plaintiff has issued notice under Section 80 C.P.C. ?

11. It is seen that the plaintiff entered into Government service on 28.02.1982 and made an application seeking alteration of date of birth on 24.10.1985, i.e. within five years from the date of entry into service. Thereafter, there are several correspondences between the plaintiff and his employer. Since no steps were taken by the plaintiff's employer to alter his date of birth as 18.04.1953, the plaintiff had to superannuate from service on 31.01.2010, based on the date of birth given in his S.S.L.C. Book as 07.01.1952. However, the plaintiff filed a suit for declaration seeking alteration of his date of birth as 18.04.1953.

12. The Trial Court, after hearing the parties, rejected the claim of the plaintiff on the ground that the plaintiff knocked the doors of the Court only after 23 years. The plaintiff was knocked out on the ground of limitation, as there was delay in approaching the Court and that he was not prudent to approach the Court within the stipulated time. Being aggrieved, the plaintiff filed an appeal in A.S.No.435 of 2011 and the First Appellate Court, by taking into account Rule 49 of Tamil Nadu Subordinate Service Rules and also the factum of Ex.A6, which is the original Birth Certificate of the plaintiff, came to the conclusion that the plaintiff is entitled to the relief sought by him in O.S.No.418 of 2010.

13. What is stated in the Rule is that the employee, in case of alteration of his date of birth, should approach his employer within five years from the date of entry into service. Though, according to the appellants, the respondent/plaintiff has filed the suit belatedly, on a perusal of the material documents, it is seen that the plaintiff has made a representation seeking alteration of date of birth within five years from the date of entry into service, thus, satisfying the mandatory requirement. In such view of the matter, it cannot be said that the plaintiff approached the Court at the fag end of his service, since he has made necessary application in respect of alteration of date of birth, within the stipulated period. Hence, this Court is of the view that the suit is not barred by limitation. The first substantial question of law is answered accordingly.

14. As far as the contention of the appellants that the

respondent/plaintiff has not complied with the mandatory provisions of Section 79 C.P.C., it is seen that under Section 79 C.P.C., the State must be made as a party and nowhere it is stated that the particular Department should be impleaded as a party respondent.

15. As to the contention of the appellants that Section 80 C.P.C. has not been fulfilled, i.e. there is no notice to the appellants and that the respondent/plaintiff has approached this Court within the waiting period of 12 months, this Court is of the view that the same is not correct, more particularly in the present case. The plaintiff is employed as a Government servant and he has properly represented to his employer seeking alteration of date of birth, which fact is known to the Government. Even otherwise, in the appeal, an application has been filed in I.A.No.694 of 2010 for waiver of 60 days' time and the said application has been allowed. That being the case, the contention of the appellants that the mandatory provisions of Section 80 has not been complied with, cannot be accepted. The second substantial question of law is answered accordingly.

16. In view of the above, this Court finds no reason to interfere with the judgment and decree of the First Appellate Court and accordingly, the same is confirmed. Thus, the substantial questions of law are answered in favour of the respondent/plaintiff.

17. This Court also observes that while granting the relief, the authority concerned shall take into consideration as to whether the respondent/plaintiff could have studied 10th standard/SSLC at the age required for that Standard/Class.

In fine, the Second Appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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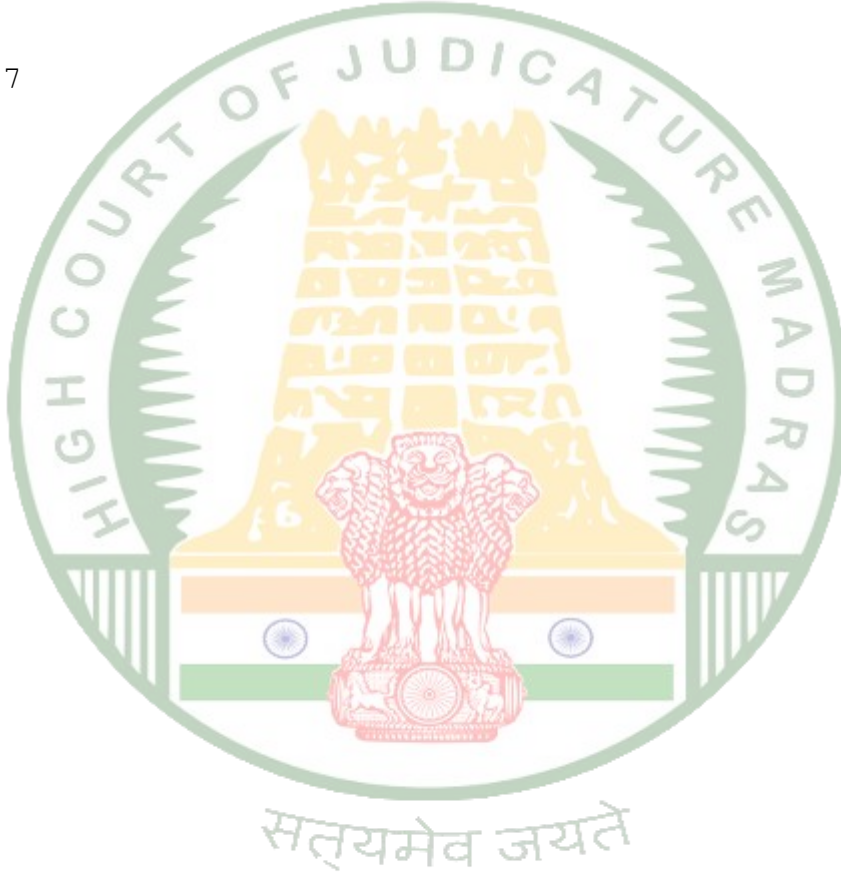
1. The III Additional City Civil Court (III Additional Judge),
Chennai.
2. The VII Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.18410

+1cc to the Special Government Pleader, S.R.No.18730

S.A.No.338 of 2013

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