

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Date of Decision: 27.04.2017

RSA No.516 of 2006 (O&M)

Bhupinder Singh

...Appellant

Versus

The Punjab State & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S. Dadwal, Advocate, for the appellant.

Mr. Ajaib Singh, Additional A.G., Punjab.

RAJIV NARAIN RAINA, J.**Civil Misc. No.17365-C of 2016**

The applicant - appellant has filed this application for disposing of the main appeal in view of the judgment passed by the Division Bench of this Court in CWP No.13722 of 2007 titled "Resham Singh V/s Union of India and another" (Annexure A-1) and/or direction to fix the main appeal to some actual date of hearing.

The non-applicant/respondent represented by the learned law officer would have no objection if the main case is taken up for final hearing.

Thus, the application is allowed and the main case is taken up for disposal on merits today itself.

RSA No.516 of 2006

The instant second appeal is directed against the judgment and decree dated 28.10.2005 passed by the District Judge, Hoshiarpur setting aside the judgment and decree dated 29.11.2003 passed by Additional Civil

Judge (Senior Division), Garhshankar, whereby the suit of the appellant/plaintiff was decreed.

The facts of the case are that the appellant/plaintiff filed Civil Suit No.84 of 2001 instituted on 28.03.2001 for declaration to the effect that an ex parte order passed on the executive side dated 15.02.2000 bearing No.720 vide Memo No.10(13)2/98-MA-I by respondent No.3 – Superintendent, Grade-I, Revenue Branch-I, Punjab is illegal, void, *ab-initio*, inoperative, arbitrary and against the rights of the appellant/plaintiff and further prayer for mandatory injunction directing the respondents to insert the date of birth of appellant as 23.01.1961 and to treat the same as the actual date of birth of the appellant instead of 10.07.1959, the true date, for all intent and purposes.

The appellant at the relevant time was serving as Tehsildar-cum-Assistant Collector, Ist Grade at Garhshankar, District Hoshiarpur. His date of birth was recorded as 10.07.1959 in the school record and same continued to be recorded as the same.

The appellant on coming to know of his actual date of birth was 23.01.1961, immediately moved a request in writing to the competent authority as well as to the other respondents to get the aforesaid date corrected from 10.07.1959 to 23.01.1961 because the said date was his actual date of birth and the appellant being a responsible Officer wanted bona fide to get the needful done in this regard without any further delay and in order to avoid any future complications, the request of the appellant to rectify the mistake was not accepted vide letter dated 15.02.2000. Thus, the said letter regarding the rejection of the request of the appellant was challenged by the appellant on various legal grounds. The appellant

aggrieved against the aforesaid ex-parte order served legal notice under section 80 CPC to the respondents, which did not elicit desired results and hence, the suit was filed.

The notice of the suit was given to the respondents and they filed joint written statement, in which, they admitted that the appellant is serving under respondent No.1, but they pleaded that as per matriculation examination certificate issued by the Punjab School Education Board and entry made in the Service Book of the appellant, the date of birth of the appellant was 10.07.1959.

The appellant joined the Revenue Department in 1990. He represented for the first time on 20.03.1997 for change of date of birth at a belated stage. The genuineness of the alleged new date of birth is disputed and respondents further asserted that the request made by the appellant on 20.03.1997 and 18.09.1997 were duly considered and rejected by the competent authority in the light of Government instructions issued from time to time and notification dated 21.06.1994 vide which, an amendment was made in Rule 2.5 of Punjab Civil Services Rules, Volume-I, Part-I and administrative instructions contained in Annex-A, Chapter-II of the Rules. The decision of the competent authority was also communicated to the appellant vide memo No.10(13)/2/98-RE-1(1)720 dated 15.02.2000. Even the service of legal notice upon the respondents was denied by them. The appellant filed rejoinder to the written statement and reiterated the contents of the plaint. Thus, from the pleadings of the parties, the following issues were framed by the trial Court:

- (i) Whether, order dated 15.02.2000 No.720 passed by defendant No.3 is illegal, null and void? OPP

- (ii) Whether, the plaintiff is entitled to declaration prayed for? OPP
- (iii) Whether, the plaintiff is entitled to mandatory injunction, prayed for? OPP
- (iv) Whether, suit of the plaintiff is bad for non-service of legal notice under Section 80 of CPC? OPD
- (v) Whether the suit of plaintiff is barred by limitation? OPD
- (vi) Relief.

The appellant/plaintiff himself appeared in the witness box as PW-1 and also examined PW-2 Davinder Singh, PW-3 Satnam Singh, PW-4 Harmesh Lal and PW-5 Harnek Singh in support of his claim. The appellant also produced and proved documents Ex.PA, Certificate of Secondary School Examination of Harnek Singh; Ex.PB copy of Ration Card; Ex.P2 Birth Certificate; Ex.P3 copy of Notice under Section 80 CPC and Ex.P4 Copy of letter dated 15.02.2000. Exs.P5 to P-7 are Postal Receipts.

The respondents rebutted the above evidence by examining Balwinder Singh as DW-1 and also proved Ex.DA copy of Annexure D-1; Ex.DB copy of letter dated 02.03.1998; Ex.DC copy of Annexure D-3, Matriculation Certificate of appellant/Plaintiff; Ex.DD copy of birth entry; Ex.DE & DF copies of Service Book of appellant/plaintiff; Ex.DG copy of letter dated 08.12.1997; Ex.DH copy of another letter dated 18.09.1997 and Ex.DJ copy of letter of Financial Commissioner Revenue.

The trial Court came to the conclusion that the actual date of birth of appellant/plaintiff is 23.01.1961 and not 10.07.1959 as recorded in the Service Book and the birth entry in the Register of Chowkidar Ex.P2 as well as in the Register of Registrar, Births & Death Ex.DE relating to the appellant. Thus, the suit of the appellant/plaintiff was decreed as prayed for with no order as to costs.

The respondents/defendants filed an appeal against the aforesaid judgment and decree dated 29.11.2003 and the Lower Appellate Court re-appraised the oral as well as documentary evidence. The Lower Appellate Court accepted the appeal and reversed the findings on the main issues by holding the appellant/plaintiff not entitled to declaration and for mandatory injunction. The order dated 15.02.2000 passed by the respondent No.3 was held to be legal and not null and void.

This is how the appellant/plaintiff has come before this Court in appeal along with application under Order 41 Rule 27 CPC read with Section 151 CPC for bringing on record documents Annex A-1 and A-2 as additional evidence. One application dated 30.12.1991 was submitted by the appellant before the Divisional Commissioner, Jalandhar for correction of his date of birth in service book from 10.07.1959 to 23.01.1961 accompanied by an affidavit dated 09.10.1991 in support of the same. The said application was received by the office of Commissioner on 25.02.1992 vide receipt No.350A. The notice of the application bearing C.M. No.1042-C of 2006 for additional evidence was given to the non-applicant/respondent, who did not chose to controvert the facts contained therein by not filing any response to the same. Thus, the application is allowed, as uncontested.

The substantial question of law, which emerges from the aforesaid facts and circumstances of the case, is:

“Whether there was any impediment in law in ordering the correction of the date of birth of the appellant, who filed the application for correction within two years of joining service along with the requisite documents in view of fulfillment of the

prescription in Rule 2.5 of the Punjab Civil Service (1st Amendment) Rules, Volume-I, Part-1, 1994?”

The facts as noticed above are not in dispute. However, for the purpose of scanning and scrutinizing the finding of Lower Appellate Court, the material on record as well as the statements of the parties, have also been examined. The evidence on record clearly suggests that the Register of Chowkidar Ex.P2 and the certificate issued by Registrar, Births and Death Ex.DE reveals that the same was relatable to the appellant. To substantiate this, the appellant had summoned PW2 Davinder Singh, Clerk, Office of Civil Surgeon, Kapurthala. Apart from the official witness, other witnesses were also examined to prove that the said certificate related to the present appellant. The trial court has relied upon these documents and has come to the conclusion that Ex.DE relates to the plaintiff/appellant and thus, his actual date of birth is 23.01.1961 and not 10.07.1959. The trial court has gone further by holding that as per the Punjab Civil Services (1st Amendment) Rules, Volume-I, Part-1, 1994, which provides for change of date of birth, to be requested within two years from coming into force of those rules as well as entry into service by the employees, as the rules stipulate that no request for change of date of birth shall be entertained after the expiry of the said period of two years. This gave a fresh opportunity to employees to apply for change of birth which the appellant availed.

The appellant joined service on 02.08.1990 and on 30.12.1991, moved an application before the Divisional Commissioner, Jalandhar for correction of his date of birth in his Service Book from 10.07.1959 to 23.01.1961, which was well within the time of two years and an affidavit dated 09.10.1991 was also submitted in support thereof, which was duly

received by the office of Commissioner on 25.02.1992 vide receipt No.350A. The representation dated 30.12.1991 was got attested from the Superintendent of Commissioner, Jalandhar Division, Jalandhar. The Court has opined that for the purpose of ordering the correction by the Civil Court, the embargo of two years cannot be put-forth and for that purpose he has relied upon the judgments in Jeevan Dass Vs. State of Haryana & another, 1989 RSJ 250 and State of Haryana Vs. Kehar, 1989 RSJ 614. In *Jeevan Dass* case, this Court held that failure to seek alteration within period of two years, Government servant has remedy to approach Civil Court for necessary relief. In *Kehar's* case, it has also been held while dealing with and considering the provisions of the Punjab Civil Services Rules, Volume II read with Rule 3.2 and the Punjab Financial Rules, Rule 7.3 dealing with change of date of birth that Government servant is entitled to show that entry made in service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. Government employee is competent to apply for rectification of date of birth.

After taking into consideration the aforementioned position of law as well as the evidence, which has been led by the parties, I am of the view that the trial Court has rightly decreed the suit on legal evidence, whereas, the Appellate Court while upsetting the judgment has ignored the position of law and further the unimpeachable material evidence which was produced on record. The Lower Appellate Court has erred in opining that if the department has rejected the claim then there is nothing wrong in it and the Lower Court has made wholly unwarranted discussion in the impugned judgment.

During the course of arguments, the application for additional evidence has also been pressed by the counsel for the appellant. I have gone through the application and find that the additional evidence needs to be brought on record being just, necessary and substantially sub-serving a just disposal of the present appeal. Even the record shows that no reply to the Civil Misc. No.1042-C of 2006 has been filed, therefore, the averment contained therein are deemed to have been admitted, especially when Annex A-1 produced on record clearly shows that even the Diary No. has been issued by the office of the Commissioner, Jalandhar Division, Jalandhar, who was the competent authority under whom the appellant had been serving. Therefore, the said application is allowed and the document attached with the application is taken on record.

As per the position obtaining from the record, the appellant has applied for the correction of the entry in the date of birth in the service book from 10.07.1959 to 23.01.1961 and for that purpose he has relied upon the Birth Entry Ex.P2 from the Chowkidar Register and Ex.DE from the Register of Births and Death which match. For the purpose of holding that when there is conflict in two certificates, i.e., a birth certificate issued by Registrar, Birth and Death and a Matriculation Certificate, the date of birth indicated in the Certificate issued by the Registrar must prevail as it enjoys primacy. To support this, learned counsel has placed reliance upon the judgments in *Jeevan Dass* and *Kehar* cases (*supra*) as well as the Division Bench in Resham Singh Vs. Union of India, reported as 2008(1) R.C.R (Civil) 131, which squarely covers the present appeal in favour of the appellant. The Division Bench has taken the following view in *Resham Singh's* case:

“It was, thus, held that where there is a conflict, between the date of birth, recorded by the competent authority under the Births and Deaths Registration Act and the school leaving certificate, primacy was to be accorded to the birth certificate issued by the authority under the Registration of Births and Deaths. It was also held that unless upon verification, the certificate issued by the Registrar of Births and Death, appears to be doubtful or suspicious or the Passport authority is not satisfied as to its genuineness, then alone would the Passport authority be justified in declining to effect a correction in the date of birth and directing an application to seek adjudication, as to his date of birth before a Civil Court.

The aforementioned judgments, with which we are in respectful agreement, have correctly and succinctly delineated the powers and the jurisdiction of a Passport authority, considering an application for alternation of date of birth, based upon two contradictory documents i.e. a birth certificate issued by the Registrar of Births and Deaths and a certificate issued by an education authority.

A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for

the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of Births and Deaths.

The respondents appear to have misunderstood the legal nature of a birth certificate, issued by the Registrar of Births and Deaths and have equated it with a matriculation certificate. While considering two conflicting certificates i.e. a birth certificate issued by the Registrar of Births and Deaths and a matriculation certificate, the date of birth indicated in the birth certificate issued by the Registrar must prevail.”

As a reminder to the law, it can be well be said be as an accepted proposition of law in the Specific Relief Act that a right to legal character in a suit for a declaratory decree that when a person is born he acquires legal entity but not the legal status. A suit for declaration of the correct date of birth even though accompanied by a further relief for rectification of the School records, is not maintainable in view of Section 34 of the Specific Relief Act, 1963, an appropriate remedy has been provided by Section 34 thereof and a person is at liberty to take recourse to such an action and secure his remedy. He cannot, in law, be permitted to bypass the

aforementioned provisions and approach the Court directly that too with a suit for declaration to alter his date of birth. But the principle would not apply when the State itself gives a right to apply midstream by law to its employees after appointment, as in this case, then they have a right to apply on unimpeachable evidence presented to the Court and receive proper orders on their representation filed within the time allowed by Government as permitted by the employing State. Section 34 of the Specific Relief Act minus the proviso (not relevant to the case) reads as under:

“34. Discretion of court as to declaration of status or right - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so...”

In the instant case, the appellant had joined service on 02.08.1990 and had approached the department in the first instance for rectification of his date of birth in the service record well in time and for that purpose he produced the relevant admissible documents, but those were not properly considered which are otherwise admissible in law being based on public documents. In the suit he sought more than mere declaration of title though he claimed no title to property but a direction to change his date of birth, a right to legal character.

In my considered view and in the facts and circumstances of case, the trial Court judgment has been wrongly set aside by the Lower Appellate Court as against the world, thus, the findings of the judgment in

appeal are held to suffer from error and contrary to the record of the register and the same needs to be set aside and accordingly the judgment and decree of the Lower Appellate Court is set aside and the judgment and decree of the trial court is restored. The effect of this order with respect to service conditions under the State is for the Government to examine in accordance with law. Such an order shall be passed within two months of the communication of the order and the appellant duly informed of the outcome. If it is adverse, the appellant will be at liberty to take recourse to law.

27.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>