

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

S.A.NO.662 OF 2017

JUDGMENT

The appellant is the plaintiff. He filed suit in S.R.No.4565 of 2008 on the file of Principal Junior Civil Judge, Narsapur for declaring his of birth as 3.10.1974 and consequently for a mandatory injunction directing the 1st defendant – Director, Prohibition and Excise, Hyderabad, to rectify his date of birth by entering the correct date of birth i.e., 3.10.1974 in his service register. Office has taken an objection to follow the procedure under A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 issued under G.O.Ms.No.165. Fin & Plg. Dept., dated 21-4-1984. As the objection was not complied with, the trial court declined to number, and rejected the suit. Aggrieved thereby, the plaintiff filed appeal in A.S.No.75 of 2012 on the file of Additional District Judge, Narsapur. The lower appellate court confirmed the judgment and decree of the trial court. Thus the unsuccessful plaintiff before the courts below is the appellant herein.

The learned counsel for the appellant contended that the courts below erred in rejecting the plaint. The learned counsel contended that unless there is a specific bar under the statute, the court below cannot refuse to entertain the suit for declaration of correction of date of birth. The learned counsel placed reliance on the judgments in ***K.MADHAVA SASTRY vs. DIRECTOR, POST GRDUAEE CENTRE, ANANTHAPUR***¹ and ***HIGH COURT OF A.P. vs. N.SANYASI RAO***².

¹ AIR 1982 AP 176

² Civil Appeal No.6964 of 2004

In exercise of proviso to Article 309 of the Constitution of India, the Governor has issued the Andhra Pradesh Public Employment (Recording and Alternation of Date of Birth) Rules, 1984 under G.O.Ms.No.165 dated 21.4.1984 (for short 'the Rules'). Rule 2-A of the said rules reads as under:

“2-A “Civil Courts” Decree not to be taken into consideration:--

In any proceedings before the Government or any Court, Tribunal or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records or the contents in the Judgment leading to such decree, or the effect of its implementation shall not be taken into consideration in derogation to these rules and it is hereby declared that these rules shall have effect notwithstanding anything in any Judgment decree or order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party to such proceedings.

From the above provision it is clear that decree of a civil court shall not be taken into consideration in derogation of the Rules with regard to alteration of date of birth. Under the Rules, procedure is prescribed. The trial court rejected the suit, to follow the said procedure. The plaintiff, who claims to be a Government employee, is bound by the Rules. Therefore, even if a suit is entertained and decreed, it is of no avail, as it cannot be enforced.

The judgment of this court referred to above is prior to passing of G.O.Ms.No.165 dated 21.4.1984 and similar in view of the Rules, the other judgment relied on by the counsel for the appellant, is also not applicable.

Normally, the suit will be rejected after number and hearing the counsel for the plaintiff on the preliminary objection. In the present case

even before numbering, the suit was rejected. As already noted above, since no purpose would be served, the office has rightly raised objection and the trial court rejected the suit for non-compliance of objections and the lower appellate court, re-appreciating the issue, confirmed the same.

I do not find any question of law, much less substantial, for interference of this court under Section 100 CPC. The appeal is accordingly dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:15—02—2018

AVS

