



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2022

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.491 of 2010

P.Janakiraman

... Appellant/Appellant/Plaintiff
Vs.

1.Saraswathi

2.The Government of Tamilnadu,
Through its High School Education Director,
Chennai.

3.The Dindigul Co-operative Primary
Agricultural Development Bank,
Through its President
/ Special Officer.

... Respondents/Respondents/Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.47 of 2006 dated 06.10.2009 on the file of the Subordinate Judge, Palani, confirming the judgment and decree passed in O.S.No.192 of 2001 dated 23.03.2006 on the file of the District Munsif Court, Palani.

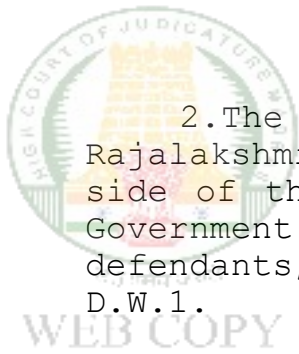
For Appellant : Mr.S.Natesh Rajaa

For Respondents : Mr.R.Ragavendran,
Government Advocate for R2

Mr.S.Seenivasagam for R3.

JUDGEMENT

The plaintiff in O.S.No.192 of 2001 on the file of the District Munsif Court, Palani is the appellant in this second appeal. The appellant filed the said suit seeking declaration that his date of birth is 22.08.1952 and not 16.06.1950. Since wrong date of birth had been entered in his service record, he wanted the same to be corrected. The plaintiff had also impleaded his employer as the third defendant in the suit. The third defendant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.



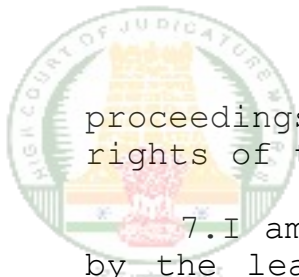
2.The plaintiff examined himself as P.W.1 and one Nagammal @ Rajalakshmi was examined as P.W.2. Exs.A1 to A10 were marked on the side of the plaintiff. Though the employer remained exparte, the Government had contested the proceedings. On the side of the defendants, Ex.B1 was marked and one Ramanujam was examined as D.W.1.

3.After consideration of the evidence on record, the trial Court by judgment and decree dated 23.03.2006 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.47 of 2006 before the Sub Court, Palani. By the impugned judgment and decree dated 06.10.2009, the decision of the trial Court was confirmed and the appeal suit was dismissed. Challenging the same, this second appeal came to be filed.

4.Though the second appeal was filed way back in the year 2010, it had not been admitted till date and only notice was ordered. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formulate the substantial question of law and admit the appeal and take it up for disposal later.

5.Per contra, the learned Government Advocate appearing for the second respondent and the learned standing counsel appearing for the third respondent submitted that no substantial question of law arises for consideration and they called for dismissal of the second appeal.

6.I carefully considered the rival contentions and went through the evidence on record. The learned counsel appearing for the appellant relying upon the decision of the Hon'ble Larger Bench reported in **[2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal)]** submitted that since a cooperative society is not a state instrumentality within the meaning of Article 12 of the Constitution of India, the Courts below erred in applying the statutory provision applicable to a government servant. He also submitted that the death and birth register maintained by the statutory authorities raises a presumption of correctness and that entries made therein are admissible in evidence in terms of Section 35 of the Indian Evidence Act. He relied on the decision reported in **[2009 7 SCC 283 (CIDCO Vs. Vasudha Gorakhnath Mandevikar)]** for this proposition. He would point out that Ex.A1 clearly indicates that his actual date of birth is 22.08.1952 and the date of birth given as 16.06.1950 is clearly erroneous. When the appellant could produce the birth certificate, then that has to be accepted and it would prevail over any erroneous entry. His main contention is that the appellant can be expected to seek correction only after he became aware of his correct date of birth. The moment he became aware of the same, he filed the suit. He also would contend that doctrine of laches can be applicable only in writ



proceedings and they have no role to play in deciding the civil rights of the parties in regular suit proceedings.

7.I am not in a position to agree with the contentions advanced by the learned counsel appearing for the appellant. This is for more than one reason. The appellant joined service as a cooperative society employee way back in the year 1970 itself. The suit came to be filed only in the year 2001. In other words, 31 years after the appellant joined service, he sought correction of his date of birth. I have no doubt whatsoever in my mind that the appellant was born only 22.08.1952 and that his date of birth is not 16.06.1950. But then, the question is not what is the appellant's correct date of birth. The true question is whether the appellant has right to seek correction of his date of birth as given by him in the service record. The entry made in the service record is based on the particulars furnished by the appellant himself. As rightly contended by the learned Government Advocate as well as the learned standing counsel, if the plea of the appellant is accepted, that would definitely confer an unfair advantage to him. By giving an earlier date of birth, he was able to enter the school early. This will have chain of consequences. He will enter service early. After entering service, if his date of birth is corrected into a later date, then he will retire from service later. Thus, it will be a case of entering early and retiring later than the appointed date. Such state of affairs cannot be permitted. The principle of estoppel will have to be applicable.

8.There is another difficulty for the appellant. Unlike a government servant, the appellant is not able to draw my attention to any service rule, which enables him to seek correction in the matter of date of birth. Only if there is any specific rule, which enables the employee to seek correction, he can move the Court concerned or even the employer concerned to make necessary changes in consonance with the particulars set out in the employee's birth certificate. No such rule has been produced.

9.More than anything else as rightly pointed by the learned Government Advocate, as per Subsidiary Rule of the SSLC Scheme, request for alteration of date of birth cannot be considered after the pupil has completed his school course. That is why, the Courts below declined to grant the relief sought for by the appellant. No substantial question of law arises for consideration and the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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To:

1.The Sub Court,
Palani.

2.The District Munsif Court,
Palani.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-9004[F] dated 28/02/2022)

JUDGMENT MADE IN
S.A. (MD) No.491 of 2010
25.02.2022

PKP/15.03.2022/4P/6C