



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2022

CORAM:

THE HON'BLE MRS.JUSTICE R.THARANI

S.A(MD)No.520 of 2015

Nalayiram

...Appellant/Respondent/Plaintiff

Vs.

1.Ganesan

...Respondent/2nd Respondent/
Defendant

2.The Proprietor,
M.S.V.Beedi Company,
108, Mettu Street,
Kulathoor Road,
Thirunelvei Town,
Thirunelveli District.

...Respondent/2nd Respondent/
Defendant

3.The Commissioner,
Employees Provident Fund Office,
N.G.O.B.Colony,
Thirunelveli,
Thirunelveli District.

...Respondent/Appellant/
3rd Defendant

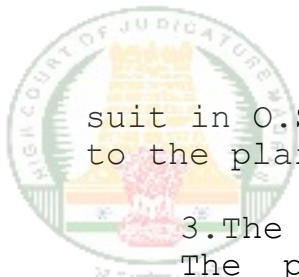
PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 30.01.2010 passed in A.S.No.6/2009 on the file of the Subordinate Judge, Ambasamudram, reversing the decree and judgment dated 07.09.2007 passed in O.S.No.193/2006 on the file of the Principal District Munsif, Ambasamudram.

For Appellants : M/s.S.Devasena
For R1 and R2 : Mr.S.Karthik
For R3 : Mr.K.Muralisankar

JUDGMENT

This appeal is filed against the judgment and decree dated 30.01.2010 passed in A.S.No.6/2009 on the file of the Subordinate Judge, Ambasamudram, reversing the decree and judgment dated 07.09.2007 passed in O.S.No.193/2006 on the file of the Principal District Munsif, Ambasamudram.

2.The appellant is the plaintiff. The respondents are the defendants in the original suit. The appellant herein has filed a



suit in O.S.No.193 of 2006 for mandatory injunction to grant pension to the plaintiff.

3.The brief substance of the plain is follows:

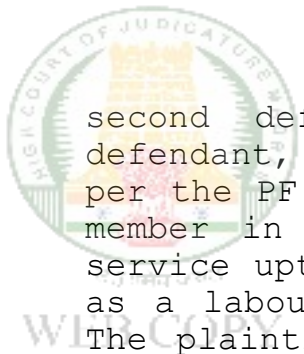
The plaintiff was working as a labourer under the first defendant, who is a manufacturer of Beedi. Third respondent is the Employees Provident Fund Office. Even prior to 16.11.1995 ie., from 01.12.1994, the plaintiff was working as a labourer under the defendants 1 and 2. In such circumstances, in 10 pass books, the plaintiff was working for a period of 10 years and since she was entitled for pension, she was stopped from service on 31.12.2004,. The plaintiff filed an application for pension and the said petition was forwarded by the defendants 1 and 2 to the third defendant. The said application was returned stating that at the time of joining the service, the age of the plaintiff was 60 years and hence, she was not entitled to receive pension and other retirement benefits. Since the plaintiff was entitled to receive pension on 08.11.2005 she gave a petition through legal aid. In reply, the plaintiff was directed to produce the relevant documents regarding the age and date of birth. On 12.01.2006 the plaintiff sent an advocate notice along with a copy of the birth certificate. The second defendant returned the petition on 03.03.2006 with some false observations. The plaintiff is an old and uneducated lady and pension cannot be rejected due to the mistakes of the Contractor, who gave a false date of birth in the records.

4.A brief substance of the written statement of the first defendant adopted by the second defendant is as follows:

The first defendant was running a Beedi Company in Prammadesam, wherein, the plaintiff joined on 01.10.1994 and she left the work on her own accord on 31.12.2004. At the time of joining the service, the plaintiff has mentioned her date of birth as 18th, but she failed to intimate the month and year of her birth. After she left the service, it was found out that the date of her birth was 01.12.1994. After that, the plaintiff has produced a birth certificate mentioning her date of birth as 13.03.1947 and the said certificate was obtained on 17.06.2005. The defendant is not having any objection for altering the date of birth and she has to prove the same before the provident fund authorities.

5.A brief substance of the written statement filed by the third defendant is as follows:

It is true that the plaintiff worked as a labourer in Beedi Manufacturing Unit and she retired from service. It is wrong to state that the plaintiff joined service on 01.12.1994 and worked for 10 years and was stopped from service on 30.12.2004. The plaintiff was working only under the second defendant and the second defendant was maintaining the name, date of birth, date of joining the service and other particulars of the plaintiff. Provident Fund(PF) amount was collected only through the second defendant and the third



second defendant. As per the documents filed by the second defendant, the age of the plaintiff as on 01.12.1994 is 60 years. As per the PF Rules, the plaintiff, who crossed the age 58 cannot be a member in the EPF Scheme. The Plaintiff was allowed to continue service upto the age of 60. Since the plaintiff was allowed to work as a labourer, the premium was paid through the second defendant. The plaintiff is not entitled to claim pension, if PF amount was closed in the year 2005. The plaintiff is not entitled to change the date of birth as per Section 15 of the Indian Evidence Act, and the prayer of the plaint is barred by limitation.

6.The trial Court framed the following issues.

- (i)Whether the plaintiff is entitled for the relief of declaration and for mandatory injunction or not?
- (ii)What are the other reliefs?

7.On the side of the plaintiff, one witness was examined as P.W.1 and five documents were marked as Ex.P.1 to Ex.P.5. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and two documents were marked as Ex.D.1 and Ex.D.2.

8.The trial Court declared that the plaintiff is entitled for pension and decreed the suit, against which, the third defendant had filed an appeal in A.S.No.6 of 2009, before the Subordinate Court Ambasamuthiram, on the following grounds:-

"The date of birth stated by the plaintiff is not correct. The plaintiff suppressed the real facts in Ex.P.1 and Ex.P.2. At the time of joining the service, her age was 60 years. The plaintiff failed to alter the date of birth. After joining the service only, when the plaintiff applied for pension, she has altered the day of birth. Ex.P.1 birth certificate was registered as per the order of the Judicial Magistrate, dated 13.06.2005. There was no prayer to declare the date of birth as 13.03.1947. Therefore, the plaintiff is not entitled to claim pension.

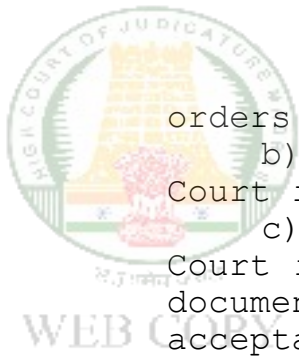
9.On the above grounds of appeal, the following issues are framed by the first Appellate Court.

- (i)Whether the plaintiff proved that her date of birth is 13.03.1947?
- (ii)Whether the plaintiff is entitled for declaration and for mandatory injunction?
- (iii)Whether the appeal is to be allowed?
- (iv)What are the other reliefs?

10.The first appellate Court allowed the appeal and set aside the judgment and decree of the trial Court. Against which, this second appeal has been filed.

11.When the Second Appeal was admitted by this Court on 09.09.2015, the following substantial questions of law have been framed.

<https://hcservices.ecourts.gov.in/HCServices> Whether the Birth Certificate obtained as per the



orders of the Judicial Magistrate is not a conclusive proof?

b)Whether the findings given by the lower Appellate Court in respect of Ex.P.1 is a legal notice or not?

c)Whether the findings given by the lower Appellate Court in respect of the non-production of any other oral and documentary evidence to prove the date of birth is acceptable in law?"

Issues a, b & c:-

12.The lower Appellate Court has failed to see that there is no evidence to disprove the date of birth of the appellant. From the date of employment, the appellant has made contributions towards PF to the third respondent and the employer has also contributed to the PF. The appellant is an uneducated Beedi Worker and the appellant was not referred to the Medical Board to fix her age.

13.On the side of the third respondent, it is stated that the appellant has produced the age certificate obtained from the Medical Officer and based on that certificate, her date of birth was approved by the competent authority as 01.07.1948 and the claim F/10D for pension benefit has been processed and pension was released in favour of the appellant under PPO No.124775 in 8/2017. The learned counsel for the third respondent has also produced a copy of the communication dated 21.08.2017 in this regard.

14.From the copy of the communication No.MDU/TNY/S.A(MD)No.520 of 2015/Legal/2017, dated 21.08.2017, it is seen that already pension was sanctioned to the appellant/plaintiff. The learned counsel appearing for the appellant also admitted that the appellant is now receiving pension.

15.Since the matter was already settled, the second appeal is allowed in accordance with the copy of the communication dated 21.08.2017 submitted by the third respondent. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Ambasamudram.

2.The Principal District Munsif,
Ambasamudram.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-11420[F] dated
11/03/2022)

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RD(08.04.2022) 5P 6C