



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 17, 2022

+ RFA 212/2021, CM No. 13023/2021

DELHI CANTONMENT BOARD

.... Appellant

Through: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms. Tarveen Singh Nanda, Ms. Aditi Gupta, and Mr. Siddhartha Shukla, Advs.

versus

RAM SHARAN & ORS.

..... Respondents

Through: Mr. Soumitra Chatterjee and Ms. Sriparna Chatterjee, Advs. for R-1 Mr. Dilbag Singh, Sr. CGC for R-2 and R-3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present appeal has been filed by the appellant / defendant No.1 with the following prayers:

“i. Set aside the impugned Judgement and Decree dated February 27, 2021, passed by Learned ADJ-02 & WAQF Tribunal in CS NO. 391/2017 titled as “Ram Sharan v. Delhi Cantonment Board & Ors.;

ii. Summon the trial court records;

iii. Any other/further order(s) instruction(s) and direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also kindly be passed in favor of the Appellant and against the Respondent No.1.”

2. The brief factual background of the case in the present appeal is that respondent No.1 / plaintiff joined the service with the appellant / defendant No.1 on October 20, 1989, as Junior Engineer. According to



respondent No.1 / plaintiff his date of birth i.e., October 02, 1962, has been recorded in all the documents of his office including the Application Form, Educational Certificates, Attestation form i.e., Form of Personal details, Service Book, Pay Fixation Certificate, Medical Card, etc. The appellant / defendant No.1 in the years 2003 and 2010 published the seniority list for some of its employees / office bearers and invited objections concerning the same if any. In respect of respondent No.1 / plaintiff, as stated by the appellant / defendant No.1, the date of birth reflected in the said seniority list was October 02, 1960. In addition, according to the appellant / defendant No.1, respondent No.1 / plaintiff in the year 2012 inspected its Service Book and did not object to any of its details. It is a case where respondent No.1 / plaintiff for the first time on July 31, 2013, submitted a letter to the appellant / defendant No.1 alleging erroneous entry of the date of birth of respondent No.1 / plaintiff in the Service Book as October 02, 1960, instead of October 02, 1962. Thereafter, the appellant / defendant No.1 after conducting the necessary procedure responded to respondent No.1 / plaintiff stating the appointing authority's inability to correct the alleged error of the date of birth. Moreover, respondent No.1 / plaintiff on April 27, 2015, requested a copy of its Service Book under the Right to Information Act, 2005. Subsequently, on May 29, 2015, the appellant / defendant No.1 supplied a copy of the Service Book and personal document available with the appellant / defendant No.1.

3. It is a case wherein the respondent No.1 / plaintiff before the Trial Court in the CS No. 391/2017 prayed for a decree of declaration for declaring his correct date of birth in service record as October 02, 1962, and further prayed to pass a decree of mandatory injunction against the defendants and their officers, employees, successors, and



representatives, etc., to rectify and correct date of birth in the service record as October 02, 1962. The respondent No.1 / plaintiff before the Trial Court had also prayed for a decree of damages against defendants by directing the appellant / defendant No.1 to pay ₹3 Lacs as compensation on account of mental agony and harassment caused to him due to gross negligence and casual approach in dealing with such a sensitive issue by the defendants (including appellant) along with costs of the suit.

4. Mr. Sandeep Bajaj, learned counsel appearing on behalf of the appellant / defendant No.1 has filed written submissions and argued that respondent No.1 / plaintiff failed to prove his pleaded case of tampering of the Service Book (which was the sole premise for filing the Civil Suit). Subsequently, respondent No.1 / plaintiff pleaded that:

a. Due to tampering of the records (sometime in 2012/2013 when the process of scanning of records of the appellant / defendant No.1 was ongoing), his date of birth was altered from October 02, 1962, to October 02, 1960, in the Service Book, by certain disgruntled officers, etc.

b. Respondent No.1 / plaintiff learned about the tampering in 2013 through the receipt of his payslip for July 2013 (leading to the filing of the representation dated July 31, 2013, and its rejection on November 03, 2014).

c. Respondent No.1 / plaintiff took some time to obtain the scanned copy of the first page of the Service Book. In the said scan, the date of birth was October 02, 1962, and there was some overwriting.

d. Respondent No.1 / plaintiff filed the said Civil Suit on March 24, 2017, seeking a decree of declaration qua his date of



birth and consequential decree of mandatory injunction seeking rectification of records in addition to other consequential relief.

5. It is contended by Mr. Bajaj that the Trial Court mislead the inquiry into the question that if the Matriculation Certificate was submitted (which contained the date of birth as October 02, 1962) with the appellant / defendant No.1, then why did the concerned officer failed to enter the correct date of birth. It is stated by Mr. Bajaj that this was neither the pleaded case of respondent No.1 / plaintiff nor any evidence was led to this effect and no formal issue was framed in respect of the same. Consequently, Mr. Bajaj stated that it is the settled principle of law that a litigant is only entitled to the relief based on the pleadings and no evidence can also be led beyond the case that has been pleaded by the party. In this regard, Mr. Bajaj placed his reliance upon the law laid down in the case titled ***Bachhaj Nahar v. Nilima Mandal and Another, (2008) 17 SCC 491.***

6. Mr. Bajaj argued that the relief sought by respondent No.1 / plaintiff and as decreed, are barred by the Law of Limitation (Article 58 of the schedule of the Limitation Act, 1963) and impermissible to grant as per the Fundamental Rule 56 (*hereinafter, 'F.R. 56'*) of the Department of Personnel and Training (*hereinafter, 'DoPT'*), Government of India (*hereinafter, 'GOI'*). Article 58 of the Limitation Act, 1963 states as follows:

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
58. To obtain any other declaration	Three Years	When the right to sue first accrues



7. In addition, Mr. Bajaj relied upon the law laid down in the case titled ***Khatari Hotels Private Limited and Another v. Union of India and Another, (2011) 9 SCC 126***, and stated that the period of limitation will begin to run from the date when the right to sue first accrues.

8. According to Mr. Bajaj, the term of service of the employee of the appellant / defendant No.1 is governed by the Fundamental Rules. That Note 6 of F.R. 56 of the DoPT, GOI provides for the limitation period for carrying out the rectification of the Service Book and further restricts the permissibility of such a procedure only as per the procedure prescribed therein and no other way. The relevant portion of the F.R. 56 is reproduced as under:

“Note 6 – The date on which a Government servant attains the age of fifty-eight years or sixty years, in the case, may be shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note, an alteration of date of birth of a Government servant can be made with the sanction of the Ministry of Department of Central Government or the Comptroller and Auditor General in regards to the person serving in Indian Audit and account department or administrator of a Union Territory under which the Government servant is serving if:

a) A request in this regard is made within five years of his entry into Government service;

b) It is clearly established that a genuine bonafide mistake has occurred; and



c) The date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service Commission examination in which he had appeared, or for an entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.”

9. Mr. Bajaj stated that the Trial Court misconstrued the provision defined in F.R. 56 and held that the same is not applicable in the present case. He further stated that the Trial Court erred to consider the fact that the appellant / defendant No.1 was estopped from allowing any rectification in the case as the same was made after five years. In this regard, Mr. Bajaj relied upon the law laid down in the judgment of the Supreme Court in the case titled ***Union of India v. Harnam Singh, (1993) 2 SCC 162.***

10. Moreover, reliance has also been placed by Mr. Bajaj in the judgment of the Supreme Court of India in the case titled ***U.P. Madhyamik Shiksha Parishad and Others. v. Raj Kumar Agnihotri, (2005) 11 SCC 465,*** wherein the Apex Court upheld that corrections in entries in government records based on which the government servant got the service cannot be allowed to be changed just a few years before retirement or at the fag-end of his service.

11. It is submitted by Mr. Bajaj that the Trial Court has erred by holding that the cause of action arose in the matter when the appellant / defendant No.1 dismissed the representation of respondent No.1 / plaintiff on November 03, 2014. It is further submitted that the Trial Court failed to consider Article 58 of Schedule I of the Limitation Act, 1963. In this regard, Mr. Bajaj relied upon the law laid down in the



judgment of the Supreme Court in the case titled ***Khatri Hotels Private Limited (supra)***.

12. Mr. Bajaj further contended that the Trial Court erred to record that during cross-examination on December 02, 2019, respondent No.1 / plaintiff stated that he was well aware of the records when the Service Book was being prepared. That apart, Mr. Bajaj stated that there were many documents on the Trial Court's record, that were prior to July 2013, which contained the date of birth of respondent No.1 / plaintiff as October 02, 1960. The documents that were countersigned and inspected by respondent No.1 / plaintiff are mentioned as under:

- a) The first page of the Service Book containing the date of birth was also countersigned by respondent No.1 / plaintiff.
- b) The Service Book was inspected by respondent No.1 / plaintiff in 2012.
- c) The Pay Books were also signed on multiple occasions in 1992 by respondent No.1 / plaintiff, there also the entry of the date of birth was mentioned as October 02, 1960.

13. Consequently, Mr. Bajaj contended that the Trial Court ought to have construed that respondent No.1 / plaintiff was aware of the contents of the documents signed by him. Accordingly, the Trial Court failed to observe that the knowledge of respondent No.1 / plaintiff was much before July 2013 and the said Civil Suit was based on falsities. In this regard, Mr. Bajaj placed his reliance on the judgments in ***Susanta Kumar Malakar @ Susanta Malakar v. The State of West Bengal & Others, 2017 SCC OnLine Cal 11834***, and ***Akshay Mehta & Ors. v. Smt. Usha Dutta & Ors., 2017 SCC Online Del 12371***.



14. It is a matter of record that the Trial Court after the completion of pleadings of both the parties in the CS No. 391/2017 on February 11, 2019, framed the following issues:

“i. Whether the plaintiff is entitled to a declaration to the effect that his date of birth is October 02, 1962, and not October 02, 1960? OPP

ii. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendants to rectify his date of birth as October 02, 1962, instead of October 02, 1960? OPP

iii. Whether the plaintiff is entitled to damages to the tune of Rs. 3 lacs as prayed for? OPP

iv. Whether the plaintiff is entitled to interest on the above amount, if yes then at what rate and for what period? OPP

v. Whether the suit of the plaintiff is barred by law of limitation? OPD

vi. Relief”

15. The Trial Court in the CS No. 391/2017 while deciding the issue of limitation held that the appellant / defendant No.1 has failed to discharge its onus upon the point of limitation, therefore the issue regarding whether the suit of respondent No.1 / plaintiff is barred by law of limitation is decided against the appellant / defendant No.1 and in favour of respondent No.1 / plaintiff. The Trial Court recorded that as per F.R. 56 it was the duty of the authority concerned to make correct entries of date of birth of employee as per matriculation certificate provided at the time of joining of service but the said authority has failed to record the said entries in respect of date of birth of respondent No.1 / plaintiff, therefore, limitation period mentioned in F.R. 56 that is for five years will not apply. In addition, the Trial Court



recorded that it is the case of the respondent No.1 / plaintiff that he became aware of the alleged date of birth when he received the computerized pay-slip showing the alleged date of birth as October 02, 1960. He immediately made representation seeking correction in the date of birth as October 02, 1962, as per his matriculation certificate filed at the time of joining of service. The said representation of respondent No.1 / plaintiff was rejected by the appellant / defendant No.1 on November 03, 2014. Further, the Trial Court recorded that the present suit was filed on April 05, 2017, which is well within three years period of limitation as per Article 58 of the Limitation Act, 1963, from the said date of rejection of representation. In this regard, the Trial Court placed its reliance upon law laid down in cases titled *Khatari Hotels Private Limited (supra)* and *Union of India and Others v. West Coast Paper Mills Ltd. and Another (III)*, (2004) 2 SCC 747. Furthermore, the Trial Court recorded that it is the admitted case of the appellant / defendant No.1 that it rejected the representation of the respondent No.1 / plaintiff dated July 31, 2013, on November 03, 2014, which gave the first right to the respondent No.1 / plaintiff to sue the appellant / defendant No.1.

16. It is a matter of record that the Trial Court vide its order dated February 27, 2021, while deciding the issue related to the disputed date of birth of the respondent No.1 / plaintiff stated that no explanation has been given by the appellant / defendant No.1 or its witnesses regarding:

- i) Why the date of birth of the plaintiff as October 02, 1962, was not mentioned by an official of defendant no.1 in the service record despite having the matriculation certificate of the plaintiff showing the same date of birth.



ii) Why defendant no.1 had continuously issued several documents like, pay fixation performa dated July 11, 2008, Permanent Pass/Identity Card bearing no. 136 dated April 12, 2010, and details of Family Card to the plaintiff showing the same date of birth as October 02, 1960.

The Trial Court recorded that in the absence of any answer to the said questions and evidence led by the respondent No.1 / plaintiff is of such a nature which led to the irresistible conclusion that the date of birth of the respondent No.1 / plaintiff is October 02, 1962, and the same is conclusive and irrefutable proof. That apart, the Trial Court held that erroneous recording of the date of birth of the respondent No.1 / plaintiff by the appellant / defendant No.1 due to inadvertence oversight or clerical error, should not curtail the service of respondent No.1 / plaintiff.

17. The Trial Court in the impugned judgment further recorded that, it is a settled proposition of law that an employee seeking the correction of his date of birth, must show, the incorrect recording of date of birth was made due to negligence of some other person or that the same was an obvious clerical error failing which the relief should not be granted to him. It is also the settled proposition of law that the *bonafide* error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but by mistake or oversight, a different date has been recorded and for this reason alone reliance has been placed upon the judgment of the Supreme Court of India in the case titled ***State of Madhya Pradesh and Others v. Premlal Shrivastava, (2011) 9 SCC 664***. Accordingly, the Trial Court recorded that the correct date of



birth of respondent No.1 / plaintiff is only October 02, 1962. In addition, the Trial Court further recorded that respondent No.1 / plaintiff is also entitled to a decree of declaration whereby it is declared that the date of birth of respondent No.1 / plaintiff is October 02, 1962. Moreover, respondent No.1 / plaintiff is also entitled to a decree of mandatory injunction whereby it is directed to the appellant / defendant No.1 to correct the date of birth of respondent No.1 / plaintiff from October 02, 1960, to October 02, 1962, in his Service Book.

18. The Trial Court in the CS No. 391/2017, while deciding the issue related to the damages and interest rate held that it is admitted fact that respondent No.1 / plaintiff furnished matriculation certificate and other documents to the appellant / defendant No.1 at the time of joining of service and the said matriculation certificate, recorded the date of birth of respondent No.1 / plaintiff as October 02, 1962. The appellant / defendant No.1 did not record the correct entry regarding the date of birth of respondent No.1 / plaintiff as October 02, 1962, despite having the said matriculation certificate of respondent No.1 / plaintiff. In view of the said wrong entry of date of birth of respondent No.1 / plaintiff, respondent No.1 / plaintiff was forced to approach this Court for correction of date of birth. During the proceedings of the case, parties also went up to the Supreme Court. There is no doubt that respondent No.1 / plaintiff has been put to undue harassment by the said wrong entry of date of birth of respondent No.1 / plaintiff. Accordingly, the Trial Court held that respondent No.1 / plaintiff is entitled to damages to the tune of ₹1,00,000/- (Rupees One Lac Only) along with interest @9% per annum from the date of rejection of representation to respondent No.1 / plaintiff i.e., November 03, 2014, till the date of filing of the present suit. Furthermore, respondent No.1 / plaintiff is



also entitled to pendente-lite and future interest @9% and 6% per annum respectively on the said damages of ₹1,00,000/- along with coats of the suit.

19. The Trial Court based on the reasoning in the impugned judgment granted the following reliefs:

“i. Plaintiff is entitled to the decree of declaration whereby it is declared that the date of birth of the plaintiff is October 02, 1962.

ii. Plaintiff is also entitled to the decree of mandatory injunction whereby it is directed to defendant no. 1 to correct the date of birth of plaintiff from October 02, 1960, to October 02, 1962.

iii. Plaintiff is also entitled to the damages for the tune of Rs. 1,00,000/- along with interest @9% per annum from the date of rejection of representation of plaintiff i.e., November 03, 2014, till the filing of the suit.

iv. Plaintiff is also entitled to pendente-lite and future interest @9% & 6% per annum respectively on the said damages of Rs. 1,00,000/- along with the cost of the suit.”

20. Written submissions have also been filed by the learned counsel Mr. Soumitra Chatterjee appearing on behalf of respondent No.1 / plaintiff who has argued that respondent No.1 / plaintiff was born on October 02, 1962, and passed his matriculation in the year 1978. Thereafter, he obtained his passport on January 02, 1979, as per which his date of birth is October 02, 1962. It is also submitted that respondent No.1 / plaintiff joined the services of the appellant / defendant No.1 on October 20, 1989, as Junior Engineer based on his Matriculation Certificate dated September 15, 1978, wherein his date of birth is mentioned as October 02, 1962, which was also mentioned in



his application form, attestation form, pay fixation certificate, medical card, identity card, etc.

21. Mr. Chartterjee submitted that in course of the Trial, respondent No.1 / plaintiff in order to show his correct date of birth as October 02, 1962, relied upon the following documents:

- a) Matriculation Certificate dated September 15, 1978.
- b) Copy of Attestation form dated January 10, 1990, mentioning the details of joining the services of the appellant / defendant No.1.
- c) Copy of the Pay Fixation Certificate dated July 11, 2008, issued by the appellant / defendant No.1.
- d) Copy of Form Number 3 / Health Card dated September 26, 2013.
- e) Copy of the Salary Slip for July 2013 which is admitted by the appellant / defendant No.1.
- f) Copy of the representation dated July 31, 2013, requesting the appellant / defendant No.1 to rectify his date of birth from October 10, 1960, which has also been admitted by the appellant / defendant No.1.
- g) Copy of the reply dated November 03, 2014, rejecting the respondent No.1 / plaintiff's request for carrying out the rectification of his date of birth from October 02, 1960, to October 02, 1962, which is admitted by the appellant / defendant No.1.



- h) Copy of the first page of the tampered Service Book showing the date of birth of respondent No.1 / plaintiff as October 02, 1960, which is admitted by the appellant / defendant No.1.
- i) Copy of Criminal Complaint to the SHO dated July 26, 2016.
- j) Copy of the Criminal Complaint dated August 06, 2016, filed before the Appellate Court of the CMM, Patiala House Courts which is also admitted by the appellant / defendant No.1.
- k) Copy of the legal notice dated January 13, 2017, sent to the appellant / defendant No.1 for carrying out the rectification of date of birth of respondent No.1 / plaintiff from October 02, 1960, to October 02, 1962, which is also admitted by the appellant / defendant No.1.
- l) Copy of the application dated March 09, 2017, for carrying out the rectification of the date of birth of respondent No.1 / plaintiff from October 02, 1960, to October 02, 1962, which is also admitted by the appellant / defendant No.1.
- m) Compact Disc containing the scanned copy of the first page of the Service Book showing the respondent No.1 / plaintiff date of birth as October 02, 1962.
- n) Copy of the passport bearing number N-599985 dated January 02, 1979, as per which the date of birth of respondent No.1 / plaintiff is October 02, 1962, which is in the record of the appellant / defendant No.1 since February 2009.



22. Mr. Chatterjee also submitted that in July 2013, when respondent No.1 / plaintiff received his payslip, he noticed that his date of birth was wrongly mentioned therein as October 02, 1960, whereas it should have been October 02, 1962. It is further contended by Mr. Chatterjee that under a *bonafide* impression of a clerical mistake on the part of the appellant / defendant No.1, respondent No.1 / plaintiff immediately filed an application with it on July 31, 2013, for carrying out the necessary correction which got rejected by the appellant / defendant No.1 after a gap of 460 days on November 03, 2014. It is the contention of Mr. Chatterjee that respondent No.1 / plaintiff has been put to undue harassment by the appellant / defendant No.1 and it is evident from its conduct that it took 460 days to decide the representation which they rejected at the end. Further, the appellant / defendant No.1 kept on delaying the trial by not filing the written statement for more than 16 months and then not providing a copy of the Service Book to respondent No.1 / plaintiff.

23. Mr. Chatterjee submitted that respondent No.1 / plaintiff also came to know that sometime between 2012 and July 2013, his date of birth was mischievously changed by someone in the office of the appellant / defendant No.1 as October 02, 1960, from October 02, 1962, and a Police Complaint was also made in this regard in which no action was taken by the Police.

24. Mr. Chatterjee stated that it is a matter of record that the Trial Court on two occasions vide its order dated September 11, 2018, and then again on February 27, 2021, has clarified that the Civil Suit of the respondent No.1 / plaintiff was well within the limitation period and the same issue has also been adjudicated by the Supreme Court of India in the cases titled ***West Coast Paper Mills Ltd. (supra)***, and ***Shakti Bhog***



Food Industries Ltd. v. Central Bank of India and Another, 2020 SCC OnLine SC 482.

25. Mr. Chatterjee stated that it is the ground of the appellant / defendant No.1 that the Service Book was cross-checked by respondent No.1 / plaintiff wherein his date of birth was mentioned as October 02, 1960, and the same was countersigned by him and the respondent No.1 / plaintiff never raised any objection to the same. However, it is the stand of Mr. Chatterjee that the appellant / defendant No.1 in its written submission has admitted that there is a manipulation in the date of birth of respondent No.1 / plaintiff and there could have been a possibility of such manipulation at the time of scanning of the Service Book of the respondent No.1 / plaintiff. It is further submitted that the witness D1 W-2 in his cross-examination before the Trial Court has admitted that the Service Book of an employee of the appellant / defendant No.1 is prepared by its employee based on the documents available on the record.

26. Mr. Chatterjee stated that as per the list of November 2001 which was shared by the appellant / defendant No.1 with the LIC of India for its employees' group insurance, wherein the date of birth of respondent No.1 / plaintiff was shown as October 02, 1960. However, as per the list of January 2014, the date of birth of respondent No.1 / plaintiff was shown October 02, 1962. Moreover, it was submitted by Mr. Chatterjee that on both the occasions in the years 2001 and 2014 the details were filled up by the appellant / defendant No.1 and respondent No.1 / plaintiff did not have any occasion to examine his date of birth which was being shared by the appellant / defendant No.1 with LIC of India and the same has also been confirmed by the witness D1 W-2 on February 02, 2021.



27. Mr. Chatterjee submitted that both the seniority list of the years 2003 and 2010 were never circulated among the employees of the appellant / defendant No.1. Further, it was submitted that the witness D1 W-2 and D1 W-4 in their cross-examination before the Trial Court in the CS No.391/2017 on February 02, 2021, deposed that the seniority list of 2003 was updated and he was not sure as to when the same was pasted on the notice board of the appellant / defendant No.1. Furthermore, Mr. Chatterjee stated that the seniority list of 2010 also met the same fate and this list of 2010 was a draft seniority list which was never finalized and circulated by the appellant / defendant No.1 amongst its employees.

28. Mr. Chatterjee also submitted that upon a careful perusal of the F.R. 56 of DoPT, GOI, it is apparent that it deals with a provision when an employee seeks correction of date of birth, incorrectly recorded due to negligence or clerical error and for this reason alone he relied upon the law laid down by the Supreme Court in the case of **Premal Shrivastava (supra)**.

29. Mr. Chatterjee stated that from the perusal of the plaint of respondent No.1 / plaintiff and the evidence led by him before the Trial Court, it would be evident that it has been his case from the very beginning that there is a manipulation in the date of birth in his Service Book which has also been admitted by the appellant/ defendant No.1 in its written statement. That under such circumstances, when both the parties to the *lis* agree that there is a manipulation in the date of birth, then F.R. 56 of DoPT, GOI will not come into play. Therefore, according to Mr. Chatterjee in the light of the law laid down by the Supreme Court of India in the case titled **Ishar Singh v. National Fertilizers and Another, AIR 1991 SC 1546**, and the law laid down by



the Andhra Pradesh High Court in the matter of *Nalam Bharathi v. The Secretary, Board of Secondary Education, Hyderabad and Others, AIR 2006 AP 137*, Trial Court was competent to declare and grant a decree in favor of the respondent No.1 / plaintiff.

30. Having heard the learned counsel for the parties and perused the record, the question which arises for consideration is whether the Trial Court is justified in decreeing the suit filed by the respondent No.1 / plaintiff granting relief in his favour by declaring his date of birth as October 02, 1962.

31. At the outset, I may state that the Trial Court vide its order dated August 11, 2020, had passed an order wherein the Trial Court recorded that the *“plaintiff has failed to show the three ingredients of temporary injunction, therefore, he is not entitled for the temporary injunction.”* The said order was challenged by respondent No.1 / plaintiff before this Court. This Court vide order dated October 22, 2020, directed that the respondent No.1 / plaintiff shall be continued in service till the next date of hearing, before the Trial Court i.e., November 20, 2020. On the said date i.e., November 20, 2020, the Trial Court after hearing the submissions of the parties directed that respondent No.1 / plaintiff will be allowed to continue in service till December 2020. The appellant / defendant No.1 aggrieved by the directions passed by this Court vide order dated October 22, 2020, filed Civil Appeal No. 4048/2020 which was decided by the Supreme Court on December 15, 2020, in terms of the following directions:

“We direct the Trial Court to expedite the process and conclude the proceedings as early as possible and preferably by the end of February, 2021. Both sides agree that they shall not take any adjournment and shall cooperate in disposal of the suit at the earliest.”



We shall not be taken to have expressed any opinion on the merits of the matter which will be gone into in accordance with law.”

32. On April 07, 2021, when the present appeal was listed, this Court noted the submission of Mr. Bajaj that respondent No.1 / plaintiff has been reinstated in service and is working in the appellant board. Having noted the above aspect, coming to the merits of the case, the broad submissions of Mr. Bajaj challenging the impugned judgment decree of the Trial Court are the following:

- i. Respondent No.1 / plaintiff has failed to prove his pleaded case of tampering of Service Book which resulted in altering of his date of birth from October 02, 1962, to October 02, 1960.
- ii. No formal issue was framed in respect of the same.
- iii. Respondent No.1 / plaintiff failing to prove the above case, the Trial Court could not have decreed the suit and granted the reliefs to respondent No.1 / plaintiff.
- iv. It is settled law that a litigant is only entitled to relief based on the pleadings and no evidence can be led beyond that.
- v. The relief sought by respondent No.1 / plaintiff was barred by limitation and could not have been granted in view of F.R. 56 which restricts the request for change of date of birth after five years from the date of appointment.
- vi. The Trial Court construed F.R. 56 to make it inapplicable to the present case as the change of date of birth was admittedly done after five years.
- vii. There were many documents on record of the Trial Court which shows that the date of birth of respondent No.1 / plaintiff is October



02, 1960, and as such the Trial Court could not have granted the relief to respondent No.1 / plaintiff.

viii. Respondent No.1 / plaintiff having signed the Service Book which depicted the date of birth as October 02, 1960, it is clear that respondent No.1 / plaintiff had the knowledge that his date of birth is October 02, 1960, which aspect has not been challenged by him till 2013 and as such the suit was barred by time.

33. Insofar as, the plea of Mr. Bajaj that respondent No.1 / plaintiff has failed to prove his pleaded case of tampering of Service Book resulting in the change of date of birth i.e., October 02, 1960, is concerned, no doubt respondent No.1 / plaintiff has in paragraph 8 of the plaint has stated as under but no issue in that regard was framed by the Trial Court: -

*“8. That without prejudice to the above submission, as per the own admission of the Respondent No.1, he learned about the erroneous entry in the Service Book when he received his pay slip in July 2013. Hence, the Said Civil Suit which was filed much later on 05.04.2017 being beyond the prescribed period of three (3) years [reliance is placed on Article 58 of the Schedule appended on the Limitation Act, 1963 (hereinafter referred to as “**Limitation Act**”)]; is ex-facie barred by limitation. On this aspect as well, the Learned Trial Court erred and held that the cause of action would commence from the date when the representation was rejected by the Appellant.”*

34. Even otherwise, it is not the only case of respondent No.1 / plaintiff seeking a declaration that his date of birth is October 02, 1962. He did rely upon the application form, educational certificates, attestation form i.e., form giving personal details, Service Book, pay fixation certificate, medical card, and passport to contend that his date of birth is October 02, 1962. I may state here that Mr. Bajaj during his



submissions did concede that the date of birth of respondent No.1 / plaintiff is, in fact, October 02, 1962, as per the certificate issued by the CBSE on September 15, 1978. Even the Trial Court finding in this regard in paragraph 11.8 is also based on the certificate issued by the CBSE (Ex.PW4/1) submitted by the respondent No.1 / plaintiff at the time of his appointment in the year 1989. This submission of the certificate is much before the issuance of the seniority list in the year 2003, on which reliance has been placed by the appellant / defendant No.1. Even the pay fixation certificate performa is dated July 11, 2008 (Ex.PW2/2) which is also before the year 2010 when another seniority list was issued on which reliance has been placed by the appellant / defendant No.1.

35. Suffice to state that the Trial Court did not accept the version of the appellant / defendant No.1 stating that the seniority list issued in the year 2003 and 2010 respectively, wherein, the date of birth of the respondent No.1 / plaintiff was shown as October 02, 1960, by holding that the respondent No.1 / plaintiff was not in the knowledge of the said seniority lists and hence, could not have challenged the depiction of his date of birth as October 02, 1960.

36. The seniority list issued in the years 2003 and 2010 respectively have been dealt with by the Trial Court in paragraphs 8 to 9.3 of the impugned order which I reproduced as under: -

“8. The second contention of counsel for defendant no.1 on the point of limitation is that defendant no. 1 is having several official documents showing the fact that plaintiff was well aware about his date of birth as 02.10.1960. Counsel for defendant no.1 in support of the said arguments submitted that defendant no.1 had also published seniority list in the year 2003 and 2010 (Ex.D1W2/3) & (Ex.D1W2/4) respectively, which also recorded the date of birth of



plaintiff as '02.10.1960'. but no objections were received from the plaintiff on either occasion, whether in 2003 and 2010. It is further submitted that aforesaid facts indicate that it would be deemed in law that plaintiff had notice of the fact that his date of birth in service records was 02.10.1960 in the year 2003 and 2010. Moreover, the same seniority list was also published/ displayed at the notice board of the defendant no.1.

8.1 On the contra, counsel for the plaintiff has vehemently opposed the said arguments stating that he had summoned official witness of defendant no.1 namely Sh. Sunil Kumar, Assistant Superintendent, who admitted the fact that seniority list is not given to any individual but it is pasted on the notice board of office of defendant no.1. It is further submitted that there is no evidence on record suggesting that said seniority list were published. It is further submitted that first time plaintiff became aware of the said seniority lists when the same were filed by defendant no.1 along with the written statement. Counsel for plaintiff has also drawn attention of the court on document Ex.D1W2/4 i.e. draft of seniority list dated 12.03.2010 and submitted that the said draft of seniority list was never circulated to the plaintiff's branch i.e. A.E. (Civil). Counsel for plaintiff in support of said arguments has also drawn the attention of the court on the contents of said draft seniority list and submitted that as per the contents of said document, the said seniority list was to be circulated to all 12 branch heads of defendant no.1 including the head branch of plaintiff i.e. AE(Civil). It is further submitted that since it was neither circulated to all 12 branch heads except Office Superintendent (mentioned at serial no.1), nor the said information was brought in the notice of the plaintiff, therefore, there is no receiving of seniority list by all the Branch Heads of defendant no.1. It is further submitted that there is no material on record suggesting that the said draft of seniority list was pasted on the notice board. Counsel for plaintiff in support of the said arguments has drawn attention of the court on photo of notice board i.e. Ex.D1W2/PX-2 showing the fact that several notices have been displayed/ pasted but same were pasted upon each other, therefore, it cannot be inferred that proper notice was displayed at the notice board. It is further



submitted by counsel for plaintiff that D1W-4 Ms. Niradesh Kumari, Office Superintendent also admitted during her cross examination that there is no receiving of draft seniority list dated 12.03.2010 by the branch of the plaintiff i.e. AE(Civil) however, she voluntarily stated that the said receiving is available in the office record, but the said alleged receiving has not been filed on the judicial record so far. It is further submitted that in view of the aforesaid facts and circumstances, it can be inferred that no seniority list was published or received by the plaintiff.

8.2 Before appreciating the submissions of parties, it is relevant to note here that it is admitted fact by the official witness namely Sh. Sunil Kumar, Assistant Superintendent (D1W-2) that seniority list is not given to any individual but it is pasted on the notice board. In the light of said admissions, now I appreciate the contentions of the plaintiff regarding seniority list and its publication. I find that defendant No.1 has placed on record seniority list Ex.D1W2/3 and Ex.D1W2/4. Perusal of the first seniority list Ex.D1W2/3, I find that there is no date, month and year has been mentioned in the said seniority list which may show that it pertains to year 2003. Further, there is no record produced by the defendant no.1 suggesting that the said list was displayed at the notice board or same was sent to the branch of plaintiff i.e. AE (Civil).

8.3 Now coming on the second seniority list Ex.D1W2/4 of year 2010. In the said seniority list, following facts are mentioned :-

- (a) Draft seniority list of the following categories are hereby published for information and inviting objections, if any, within 30 days from the date of its publication.*
- (b) Seniority list has been pasted on the notice board of Cantonment Board Office, Delhi Cantt. for scrutiny of the concerned categories of the employees.*
- (c) It is also inferred from the draft seniority list that the said draft seniority list was to be circulated to the 12 Heads of Branches of defendant including plaintiff branch i.e. AE(Civil), which is mentioned at Serial no.4.*



8.4 Perusal of the said seniority list, it appears that the said seniority List was only sent to the Office Superintendent i.e. at Serial No.1 and same was duly received by the said Office of Superintendent. It also appears that the said seniority list was not forwarded to the remaining 11 branches of the defendant no.1 as there is no receiving of the said Branch Heads. The aforesaid fact has strengthen the plea of the plaintiff that the said information of seniority list of 2010 was not supplied to 11 Branch Heads, including, branch of plaintiff i.e. AE(Civil), therefore, it cannot be said that the plaintiff was aware about the alleged date of birth '02.10.1960' mentioned in the said seniority list.

8.5 Now coming on the aspect of displaying/ publication of seniority list. It is to be note here that during the course of evidence, counsel for plaintiff has shown a photo of notice board of defendant no.1 (D1W2/PX-2) to official witness of defendant no.1 i.e. D1W-2 (Assistant Superintendent) for showing position of notice board. The said witness admitted that the said notice board has been shown in the premises of defendant no.1. He also admitted that many times old notices were not removed from the said notice board and new notices were pasted upon the old notices. Perusal of said photograph of notice board, it is apparent that many notices have been put upon old notices, which also strengthen the plaintiff's plea that notices have not been displayed properly. In view of the aforesaid facts & circumstances, it cannot be said that plaintiff was aware about the said notices of seniority list in the year 2003 or 2010.

9. The third contention of counsel for defendant no.1 on the point of limitation is that plaintiff was well aware that his date of birth is '02.10.1960' as plaintiff used to receive his salary in cash against cash receipts (Ex.D1W4/4 to Ex.D1W4/8) which also show the date of birth of plaintiff as '02.10.1960'.

9.1 On the contra, counsel for plaintiff submitted that plaintiff used to receive the salary in cash from a window of a small room and it was very difficult for any person



including plaintiff to observe minute details mentioned in the said cash receipts at the time of receiving of salary in cash, particularly, when other persons were also in queue for receiving the salary. In the said circumstances many mistakes takes place when a person receives salary in cash like, putting signature at place of another person, the signature may be in opposite direction. Counsel for plaintiff in support of said argument has drawn the attention of the court on the evidence of official witness namely Ms. Shippy (PW-6) who brought the pay bills from September, 1991, November, 1991 and March, 1992 (Ex.PW6/1 to Ex.PW6/3). The said witness admitted that in one receipt i.e. bill of March, 1992, there is a discrepancy in the said cash receipt/ bill as one employee had put his signature inadvertently at plaintiff's place on the revenue stamp, therefore, the correction was made by official concerned with this effect that the signature of plaintiff is at point 'A' by putting sign of 'arrow'. Counsel for plaintiff in order to show further discrepancies made in the signature of plaintiff while receiving the salary from the said window of the office of defendant no.1, has drawn the attention of the court in the testimony of official witness of defendant no.1 i.e. Ms. Nirdesh Kumari (DIW-4), who admitted that two signatures of plaintiff shown on Ex.DIW4/5 and Ex.DIW4/8 are done from front/ right side whereas remaining three signatures of plaintiff shown on the document Ex.DIW4/4, Ex.DIW4/6 and Ex.DIW4/7, are from the opposite side. Counsel for plaintiff further submitted that in view of the aforesaid admissions of official witness of defendant no.1, it is apparent that it is very difficult for the plaintiff or any other employee to observe every minute details of the cash receipts while taking salary from a window. It is further submitted that in view of aforesaid facts & circumstances, the plaintiff could not have seen minute details of said cash receipts showing the alleged date of birth of plaintiff as '02.10.1960', therefore, it cannot be said that plaintiff was aware about the alleged date of birth at the time of receiving of salary in cash.

9.2 In rebuttal, counsel for defendant no.1 opposed the said argument of counsel for plaintiff stating that the salary was disbursed to the employees in the open room therefore,



it was not possible that the alleged mistakes may have taken place while receiving salary in cash.

9.3 After having gone through the submissions advanced by counsels for both the parties regarding cash receipts showing the alleged date of birth of plaintiff '02.10.1960', I find that plaintiff has shown from the testimony of PW-6 and DIW-4 that there are several discrepancies in the pay bill register, particularly in the signature of plaintiff which strengthen the plaintiff's view that it was very difficult for the plaintiff or any other employee to observe the minute details mentioned in the cash receipt/ register, particularly at the time of receiving the salary in cash from the Cashier."

37. I concur with the aforesaid conclusion of the Trial Court. It is not a case where the certificates issued by CBSE submitted by respondent No.1 / plaintiff for his appointment depict the date of birth of respondent No.1 / plaintiff as October 02, 1960. The initial document as recognised under the rules evidencing the date of birth of respondent No.1 / plaintiff itself depicts his date of birth as October 02, 1962, which position is also accepted by Mr. Bajaj as to be the date of birth of respondent No.1 / plaintiff. It is not a case where there is an issue / dispute as to which date of birth is the correct one. So, I do not see any perversity or illegality on the finding of the Trial Court on issues No.1 and 2.

38. Insofar as the submission of Mr. Bajaj that the suit was barred by limitation and also the relief granted by the Trial Court was impermissible, in view of F.R. 56 is concerned, the submission is unmerited. It was the case of respondent No.1 / plaintiff before the Trial Court that he made representation to the appellant / defendant No.1 for correction of the date of birth vide his representation dated July 31, 2013. The same was rejected by the appellant / defendant No.1 on



November 03, 2014, i.e., after more than one year and the suit was filed within three years of the rejection. The Trial Court rejected the plea of limitation by holding as under:

“10.2 After having gone through the submissions advanced by counsels for the parties and perusal of record, I find that it is the case of the plaintiff that he came to know first time about the alleged date of birth in the year 2013 when he received the computerized pay slip showing his date of birth as ‘02.10.1960’. He immediately made representation dated 31.07.2013 to the defendant no.1 for correction of his date of birth as ‘02.10.1962’. The said representation was rejected by defendant no.1 on 03.11.2014. As I have already discussed in abovesaid paras that defendant no.1 has failed to prove that plaintiff was aware about his date of birth as ‘02.10.1960’ at the time of publication of seniority list in the year 2003 and 2010 respectively or at the time of receiving of salary in cash. In view of the aforesaid facts & circumstances. I am of the considered view that cause of action in the present suit had accrued in favour of plaintiff on the date of rejection of representation i.e. on 03.11.2014 and the present suit was filed on 05.04.2017, which is well within the period of limitation as per Article 58 of the Limitation Act.”

39. I concur with the view taken by the Trial Court. This I say because the finding of the Trial Court was that before 2013, the respondent No.1 / plaintiff was not in the knowledge of his date of birth being shown as October 02, 1960. In the absence of any knowledge, there was no occasion for respondent No.1 / plaintiff to make a representation. It was the case of respondent No.1 / plaintiff that he had come to know about incorrect depiction of his date of birth as October 02, 1960, in July 2013, when he received the payslip in which his date of birth was incorrectly shown. He made a representation on July 31, 2013, which was rejected by the appellant / defendant No.1 on



November 03, 2014, and has filed the suit for declaration within three years in terms of Article 58 of the Limitation Act, 1963. This case of respondent No.1 / plaintiff has been accepted by the Trial Court by distinguishing the judgment in the case of ***Khatri Hotels Private Limited (supra)***. The relevant conclusion of the Trial Court is reproduced as under:

*“10.3. In the referred case, appellant was made aware in the year 1990 by way of previous litigation that suit property belongs to Gaon Sabha but no action was taken by the appellant, however, he filed a civil suit for declaration and permanent injunction in the year 2000 against DMC and DDA. Hon’ble Supreme Court held that first cause of action accrues in favour of appellant in the year 1990 when he was made aware about the status of property in question, but no action was taken by the appellant and further held that successive violation of right will not give rise to new cause of action. In the present case, it is the case of the plaintiff that he became aware of the alleged date of birth when he received the computerized pay-slip showing the alleged date of birth as ‘02.10.1960’. He immediately made representation seeking correction in the date of birth as ‘02.10.1962’ as per his matriculation certificate filed at the time of joining of service. The said representation of plaintiff was rejected by defendant No.1 on 03.11.2014. Present suit was filed on 06.04.2017, which is within three years from the said date of rejection of representation. The other citation referred by counsel for defendant No.1, i.e., ***Rajesh Kumar Mehmi (Supra)*** is also not applicable upon the facts and circumstances of the present case.”*

40. I see no illegality in said conclusion as the cause of action for respondent No.1 / plaintiff to approach the Court has arisen only on the receipt of the rejection letter dated November 03, 2014, and not before that. Hence, this plea of Mr. Bajaj is liable to be rejected.



41. That apart, I find the appellant / defendant No.1 has not justified as to how and on what basis the date of birth of respondent No.1 / plaintiff has been mentioned as October 02, 1960. In fact, F.R. 56 clearly stipulates the age of retirement of a Government servant is determined with reference to the date of birth declared by the Government servant at the time of appointment on production as far as possible documentary evidence such as high school certificate or extracts from the birth register. It is not the case of the appellant / defendant No.1 that the date of birth certificate submitted by respondent No.1 / plaintiff has not been accepted by the appellant / defendant No.1. The stand of the appellant / defendant No.1 is that the date of birth can be altered within five years of appointment but the said rule does not contemplate, if, an error occurs after five years how the same has to be dealt with. The appellant / defendant No.1 has relied upon the LIC, Group Insurance Policy of 1997 wherein the personal data of the employees including of the respondent No.1 / plaintiff was submitted which includes the date of birth; the seniority list issued in the year 2003 and 2010 respectively, and the salary payslips. All the documents are post 5 years of the appointment of the respondent No.1 / plaintiff and F.R. 56 also states any genuine *bonafide* mistake occurred in the record of the date of birth can be altered. It is precisely for this reason that the Trial Court held that F.R. 56 has no applicability in the present case. Much reliance has been placed by the appellant / defendant No.1 on the Service Book, where the date of birth of respondent No.1 / plaintiff is depicted as October 02, 1960, but at the same time, the copy of Service Book given to the respondent No.1 / plaintiff under the RTI Act, 2005 as also noted by the Trial Court in paragraph 3.5 of the impugned judgment as a submission of the counsel for the respondent No.1 / plaintiff, which



has now been produced by the appellant / defendant No.1 itself, as Annexure-7 depicts the same as October 02, 1962. It is not known why there is a discrepancy in the date of birth in the same document. The appellant / defendant No.1 has not explained the discrepancy. That apart, I find the pages of the Service Book filed by the appellant / defendant No.1 and the respondent No.1 / plaintiff depicts the date as to when the entry of the particulars have been made in the Service Book. Though the relevant page of the Service Book at the bottom clearly states that entries on this page should be renewed / re-attested at least every five years and the signatures in volumes 11 and 12 should be dated, the date of entries / renewal or re-attested has not been mentioned. The Supreme Court in ***Union of India v. C. Rama Swamy and Ors.***, MANU/SC/0492/1997, has held as under:

“.... a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded....”

42. The Trial Court has rightly accepted the date of birth as October 02, 1962, which is in conformity with the certificate issued by the CBSE, attestation form, and other documents relied upon by respondent No.1 / plaintiff in support of his case. The relevant paragraphs 11.7, 11.8, and 11.9 of the impugned judgment are required to be reproduced as under: -

“11.7 In order to appreciate the arguments of counsels for parties, it is relevant to refer the relevant part of testimony of witness (DIW2):

(i) Sh. Sunil Kumar, Assistant Superintendent of defendant no.1 (DIW-2), has admitted during the course of cross-



examination that he got the service record of plaintiff containing letter dated 20.10.1989 which is the joining report of plaintiff and same was received at the office of defendant no.1 vide diary no.7013 (Ex.D1 W2/PX-1). He further admitted that service record of plaintiff also contains the class 10th certificate of plaintiff issued by CBSE on 15.09.1978 vide s. no.DSSC/78/055847 wherein the date of birth of plaintiff is mentioned as '02.10.1962'. Copy of the same is already Ex.PW4/1.

11.8 Bare perusal of the said admission of Assistant Superintendent of defendant no.1, it is apparent that plaintiff furnished his matriculation certificate (EX.PW4/1) at the time of joining of his service. In the said matriculation certificate, the date of birth of plaintiff is mentioned as '02.10.1962'. In addition of the aforesaid documents, plaintiff also furnished attestation form (Ex.PW2/1) to the defendant no.1 after joining of service which also recorded the same date of birth of plaintiff as '02.10.1962', the same is also admitted by the official witness of defendant no.1 i.e. PW-2. Apart from the aforesaid facts, defendant no.1 also issued several documents to the plaintiff during the course of his service i.e. Pay fixation performa dated 11.07.2008 (Ex.PW2/2), Permanent Pass/ Identity Card bearing no.136 dated 12.04.2010 (Ex.DIW4/PX-1) and Details of Family Card (Ex.PW2/3) showing the same date of birth of plaintiff as 02.10.1962. Plaintiff has also brought on record the passport (Ex.PW5/l) issued by the passport authority to him on January 2, 1979, which is 10 years, prior to the joining of service of defendant no.1 and same also recorded the date of birth of plaintiff as '02.10.1962'. Moreover, copy of the same was also furnished by the plaintiff to the his office during the course of his employment, which is also not disputed by the defendant no.1. In the light of aforesaid facts & circumstances, now two questions are required to be posed as under :

(i) why the date of birth of plaintiff as 02.10.1962 was not mentioned by official of defendant no.1 in the service record despite having matriculation certificate of plaintiff showing the same date of birth.



(ii) why defendant no.1 had continuously issued several documents like, Pay fixation performa dated 11.07.2008 (Ex.PW2/2), Permanent Pass/ Identity Card bearing no.136 dated 12.04.2010 (Ex.D1W4/PX-1) and Details of Family Card (EX.PW2/3) to the plaintiff showing the same date of birth as 02.10.1962.

11.9 It is to be note here that no explanation has been given by defendant no.1 or its witnesses regarding the aforesaid questions. In the absence of any answer of the said questions and evidence led by plaintiff is of such a nature which leading to this irresistible conclusion that, date of birth of plaintiff is 02.10.1962 and same is conclusive and irrefutable proof. Further, I am of the considered view that erroneous recording of the date of birth of plaintiff by the, official of defendant no.1 due to inadvertence oversight or clerical error, should not curtail the service of plaintiff. Accordingly, I hold that correct date of birth of plaintiff is only 02.10.1962.”

43. So, the plea of Mr. Bajaj, on both the issues of, limitation and the prayer for change of date of birth could not have been allowed / granted in view of F.R. 56, cannot be accepted. Mr. Bajaj has relied upon the judgment in the case of **Harnam Singh (supra)** and **U.P. Madhyamik Shiksha Parishad (supra)**, on the proposition that the date of birth could not have been altered after five years and just a few years before retirement. Both the judgments have been dealt with by the Trial Court in the following manner in paragraphs 7.8 and 7.9 which I reproduced as under: -

“7.8 As far as cases referred by counsel for defendant no.1 are concerned, I find that the same are not applicable upon the facts & circumstances of the present case. In first citation i.e. **Harnam Singh case (Supra)**, a government employee (respondent) was appointed in Class IV post as a Peon on February 22, 1956 and date of birth as recorded in the first sheet of his service book was May 20, 1934. On passing the matriculation examination in May, 1956, the



said employee was appointed as LDC in 1957. The date of birth of said employee as recorded in the matriculation certificate was April 7, 1938. Moreover, he signed the service book at a number of places at different times and he saw the seniority list. Further, he filed representation for correction of his date of birth first time only on September, 1991, just a few months before his notified date of superannuation. In view of the said facts, the said employee was not permitted to correct the date of birth as '07.04.1938'. In the present case, it is admitted fact that plaintiff furnished matriculation certificate and other documents at the time of his joining of the service which also recorded the date of birth of the plaintiff as '02.10.1962'. It is also admitted fact that plaintiff had only inspected his service book first time in the year 2012. Further, plaintiff made a representation seeking for correction of his date of birth in the service record in the year 2013 i.e. before seven years of alleged superannuation in the year 2020. In the light of the aforesaid facts and circumstances, it is apparent that facts and circumstances of both the cases are distinguishable, therefore, the finding of referred case is not applicable in present case.

7.9 Now coming on the second referred case by counsel for defendant no.1 i.e. **U.P. Madhyamik Shiksha Parishad (Supra)**. In the said referred case, an employee was working as SDI in the education department. As per service book of said employee, his date of birth was 30.07.1941. He also produced High School Certificate at the time of joining of service, which also showing the same date of birth. After a gap of 35 years, the said employee sought correction in his date of birth on the plea that the original date of birth was wrongly entered in his High School Certificate and it is prayed that his date of birth be changed as '16.10.1945'. The said plea of the said employee was not accepted by the Hon'ble Supreme Court. In the present case, plaintiff has not sought a different date of birth from his matriculation certificate filed at the time of appointment of service of defendant no.1. Rather, he is claiming the same date of birth as mentioned in the matriculation certificate. In the light of the aforesaid facts & circumstances, it is also apparent that facts & circumstances of the referred case and present case



are distinguishable, therefore, finding of the said referred case, is not applicable upon the present case.”

44. I concur with the above conclusion of the Trial Court distinguishing the judgments so relied upon by Mr. Bajaj in the facts of this case. Insofar as the judgments in the case of **Susanta Kumar Malakar (supra)** and **Akshay Mehta (supra)** as relied upon by Mr. Bajaj in support of his submission that his claim is based on falsities and the same is liable to be rejected, have no applicability in the facts of this case rather, I find that the appellant / defendant No.1 has failed to explain the discrepancy in the date of birth of the respondent No.1 / plaintiff as October 02, 1960, in the Service Book despite the certificate issued by CBSE being on record. The plea of falsities cannot be imputed to the respondent No.1 / plaintiff. I have considered the latest judgment of the Supreme Court in the case of **Karnataka Rural Infrastructure Development Limited and Ors. v. T.P. Nataraja and Ors., MANU/SC/0680/2021**, wherein the Supreme Court in paragraph 10 has held as under:

“10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under:

(i) application for change of date of birth can only be as per the relevant provisions/Regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.”

The Supreme Court in the said case was dealing with the facts

wherein the respondent No.1 / original plaintiff was appointed with the



appellant corporation in the year 1984. In the service record, his date of birth was reflected as January 04, 1960, as per SSLC Marks Card. After a lapse of nearly 24 years, respondent No.1 therein, the original plaintiff requested for a change of date of birth from January 04, 1960, to January 24, 1961. Thereafter he filed a Suit for Declaration before the Additional City Civil and Sessions Judge at Bangalore to declare his date of birth as January 24, 1961. The suit was opposed by the appellant Corporation before the Trial Court relying upon Karnataka State Servants (Determination of Age) Act, 1974 and resolution dated May 17, 1991, passed by it adopting the Karnataka Civil Services Rules and Allied Laws. The said Rule provided that the request for change of date of birth in service record shall be made within a period of three years from the date of joining or within one year from the commencement of the Act of 1974. The suit was also opposed on the ground of delay and laches on the part of respondent No.1 / plaintiff in requesting the change of date of birth. The Trial Court dismissed the suit of respondent No.1 / plaintiff who preferred a Regular First Appeal being RFA No. 1674/2013 before the High Court and the High Court vide impugned judgment and order dated March 11, 2019, has allowed the appeal by observing that it was highly impossible that the respondent No.1 / plaintiff should have availed the remedy within three years from the date of joining of service and also observed that the resolution dated May 17, 1991, passed by the appellant Corporation adopting the Karnataka Civil Services Rules and Allied Laws was not brought to the notice of the respondent No.1 / plaintiff. In other words, the appeal was allowed in favour of respondent No.1 / plaintiff. The judgment is clearly distinguishable on facts inasmuch as in the case in hand, the case of the appellant / defendant No.1 is that as per the matriculation certificate



issued by the CBSE, the date of birth of the respondent No.1 / plaintiff is October 02, 1962, unlike the case before Supreme Court wherein SSLC certificate depicts the date of birth of the respondent No.1 / plaintiff therein as January 04, 1960, and not January 24, 1961, which change he was asking. In fact, the suit was filed by respondent No.1 / plaintiff after nearly 24 years. In the present case, the respondent No.1 / plaintiff has approached the Court immediately after the rejection of the request, which plea has been accepted by the Trial Court in his favour, which according to me was on justifiable reasons as is clear from my discussion above.

45. In so far as the compensation of ₹1,00,000/- (Rupees One Lac Only) granted by the Trial Court in favour of respondent No.1 / plaintiff is concerned the only submission by Mr. Bajaj is that no evidence was led by respondent No.1 / plaintiff to claim the said amount and the claim itself amounted to seeking premium for his own wrongs.

46. The Trial Court has awarded the compensation by coming to the following conclusion in the impugned judgment:

“12.1 Onus to prove these issues were fixed upon plaintiff. During the course of arguments, counsel for the plaintiff submitted that plaintiff has been put to undue harassment by defendant no.1 which is evident from its conduct. Initially, defendant No.1 took 460 days to decide the representation of plaintiff dated 31.07.2013 and then rejected it on 03.11.2014. Secondly, it also kept delaying the trial by not filing written statement for more than 16 months and not providing the copy of service book of plaintiff. It is further submitted that plaintiff has proved the fact that he had furnished the matriculation certificate Ex.PW1/4 to defendant no.1, at the time of joining of his service showing his date of birth as 02.10.1962 but despite that, officials of defendant No.1 either made wrong entry of date of birth of plaintiff or forged the same by mentioning the wrong date of birth as 02.10.1960. It is prayed that it is a fit case for



awarding damages to the tune of Rs.3,00,000/- along with interest.

12.2 On the contra, counsel for defendant no.1 has opposed the said arguments stating that the plaintiff joined the service of defendant no.1 on 20.10.1989 as a Junior Engineer and after a period of almost 28 years, present suit has been filed by the plaintiff. It is further submitted that plaintiff had occasion to see the service record and if he had any grievance regarding his date of birth, then he should have immediately approached to the authority concerned, but he had failed to do so, therefore, he is not entitled for any damages.

12.3 After having gone through the submissions advanced by counsels for parties and perusal of record, I have already observed in issue no.1, 2 & 5 that plaintiff had furnished matriculation certificate and other documents to the defendant no.1 at the time of joining of service and the said matriculation certificate Ex.PW1/4, recorded the date of birth of plaintiff as 02.10.1962. Officials of the defendant no.1 did not record the correct entry regarding date of birth of plaintiff as 02.10.1962 despite having the said matriculation certification of plaintiff. In view of the said wrong entry of date of birth of plaintiff, plaintiff was forced to approach to this Court for correction of date of birth. During the proceedings of case, parties also went upon the Hon'ble Supreme Court. In view of the aforesaid facts and circumstances, there is no doubt that plaintiff has been put to undue harassment by the said wrong entry of date of birth of plaintiff. Accordingly, plaintiff is entitled for damages to the tune of Rs.1,00,000/- (Rupees One Lac only) along with interest @9% per annum from date of rejection of representation of the plaintiff i.e. 03.11.2014, till the date of filing of present suit. Plaintiff is also entitled for pendent-lite and future interest @9% and 6% per annum respectively on the said damages of Rs.1,00,000/- along with costs of the suit. With these observations, issue no.3 & 4 are also decided in favour of the plaintiff and against the defendants."

47. From the above, it is noted that the basis for the Trial Court to grant damages is primarily for the reason that the respondent No.1 /



plaintiff was put to undue harassment by the appellant / defendant No.1, inasmuch as the appellant / defendant No.1 took 460 days to decide the representation of the respondent No.1 / plaintiff dated July 31, 2013, by rejecting it on November 03, 2014. It also kept on delaying the filing of the written statement for more than 16 months and not providing a copy of the Service Book to respondent No.1 / plaintiff. Despite respondent No.1 / plaintiff furnishing the date of birth certificate to the appellant / defendant No.1 at the time of joining showing as October 02, 1962, the officials of the appellant / defendant No.1 either made a wrong entry of the date of birth of the respondent No.1 / plaintiff or forged the same by mentioning the wrong date of birth as October 02, 1960. Suffice to state, there are justifiable reasons for the Trial Court to award damages to the respondent No.1 / plaintiff.

48. A Coordinate Bench of this Court in the case of **Anjum Nath v. British Airways**, MANU/DE/4242/2015, while awarding an amount of ₹1 Lac as compensation for mental agony, coercion and harassment was of the following view:

“49. The sequence of events may be relooked. The plaintiff had an unblemished career for more than 28 years. She joined services with the defendant on 20.05.1974 as Secretary to Assistant to Manager, Northern India in Delhi. She has gone through several promotions i.e. HR Coordinator; South Asia; HR Manager, Bangladesh; Sri Lanka and finally HR Manager, South Asia. There is no averment in the written statement of the services of the plaintiff not being in order. Suddenly, out of the blue on 08.07.2002, ignoring her 28 years of service she has been told to leave her service there and then. She has been harassed, coerced and pressured into giving her communication dated 08.07.2002 Ex. P- 14.

50. Thereafter the defendant has remained silent. The first communication that came from the defendant was on



04.10.2002 three months after having accepted the resignation of the plaintiff giving details of the severance settlement of the plaintiff. Some correspondence followed whereby the plaintiff sought the break-up on 12.10.2002. The defendant sent a reply on 07.11.2002 not accepting the contentions of the plaintiff. Finally, the defendant on 12.12.2002 sent remittance of Rs. 14,52,335/- (after income tax deduction) on account of severance compensation.

51. In my view, the defendant has acted in complete disregard of the emotions of an employee who has loyally served them for 28 years. A person who has served for 28 years would deserve some compassionate handling before being told to leave. That is the minimum respect an employer is expected to show to an employee who has served the company for so long. Simply telling her one fine day that she has to leave forthwith for no fault of the employee and coerce her to sign a communication showing that she was voluntarily leaving is bound to cause immense emotional trauma and humiliation. Thereafter, the defendant has been dilly dallying and has taken more than five months to send the severance package of their choice. The delay has no explanation.

52. Reference may be had to the judgment of the Supreme Court in *Mehmood Nayyar Azam v. State of Chhattisgarh and Others*, MANU/SC/0615/2012: (2012) 8 SCC 1 where the Supreme Court held as follows:--

"22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment". In *P. Ramanatha Aiyar's Law Lexicon*, 2nd Edn., the term "harass" has been defined, thus:--

Harass. "injure" and "injury" are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word "harass" excluding the latter from being comprehended within the word "injure" or "injury". The synonyms of "harass" are: To weary, tire, perplex, distress, tease, vex, molest, trouble, disturb. They all have



relation to mental annoyance, and a troubling of the spirit."

The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment."

53. A clear case of harassment of plaintiff is made out in the facts of this case.

54. It may be relevant to mention here the observations of the Supreme Court in Indian Railway Constructions Co. Ltd. v. Ajay Kumar, MANU/SC/0166/2003: AIR 2003 SC 1843. While dealing with duties of an employer and an employee, the court observed as follows:

"26. We find substance in the plea of learned counsel for the appellant that an employee even if he claims to be a member of the employee's union has to act with sense of discipline and decorum. Presentation of demands relating to employees cannot be exhibited by muscle power. It must be borne in mind that every employee is a part of a functioning system, which may collapse if its functioning is affected improperly. For smooth functioning, every employer depends upon a disciplined employees' force. In the name of presenting demands they cannot hold the employer to ransom. At the same time the employer has a duty to take into and as far as practicable, obviate the genuine grievances of the employees. The working atmosphere should be cordial, as that would be in the best interest of the establishment. Unless an atmosphere of cordiality exists there is likelihood of inefficient working and that would not be in the interest of the establishment and would be rather destructive of common interest of both employer and employees."



In my opinion, the defendant has failed to deal with the genuine grievance of the plaintiff and to establish a cordial atmosphere in the place of work.

55. Normally, in view of a breach of contract compensation for humiliation and harassment would not be awarded. However, in my opinion, this would be an exceptional case. A reference in this regard may be had to a judgment of this High Court in the case of Akhilesh Kumar Verma vs. Maruti Udyog Ltd. & Ors., MANU/DE/3812/2011 : 2011 IX AD (Delhi) 90 . That suit was filed by a plaintiff who was employed as an Executive. He sought apart from other reliefs, amounts towards harassment, mental agony and defamation. This court held as follows:--

"18. ...The proposition of law, which emerges from these judgments, is that even if the dismissal of an employee from service is illegal, he is not entitled to whole of the back-wages as a matter of right, and the Court needs to award a suitable compensation after considering all the facts and circumstances of the case before it.

19. Taking into consideration all the facts and circumstances of the case including the fact that the Plaintiff has been practicing as an Advocate of this Court seems to be doing well as is evident from the income disclosed in his affidavit, I am of the view that the ends of justice would be met if the Plaintiff is awarded an all inclusive compensation amounting to Rs. 15,00,000/- on account of his wrongful dismissal from service. He will not be entitled to any pendent lite and future interest on this amount."

In that background this court awarded an overall compensation of Rs. 15 lacs.

56. The plaintiff has claimed Rs. 5.00 lacs on account of mental agony, humiliation, deliberate default and delay on the part of the defendant in settling the plaintiff's account as per EVR Scheme.



57. Delay in settling the account of the plaintiff as per calculations of the defendant is apparent as stated above. I award a sum of Rs. 1.00 lac to the plaintiff on account of the said delay in settling the account of the plaintiff as per calculations of the defendant.

Further, I award a token sum of Rs. 1.00 lac on account of mental agony, coercion and harassment that the plaintiff was subjected to by the defendant.

58. A decree is passed in favour of the plaintiff and against the defendant for a sum of Rs. 2.00 lacs (Two Lacs only). The plaintiff will also be entitled to simple interest @ 12% p.a. on the said amount from the date of filing of the suit till recovery. The plaintiff shall also be entitled to costs. ”

49. The Trial Court has highlighted the facts which weighed with it for awarding damages. Keeping in view the position of law as laid down by this Court, it is clear that the case of harassment of respondent No.1 / plaintiff is made out. Hence, the challenge, insofar as the grant of damages by the Trial Court in favour of the respondent No.1 / plaintiff cannot be faulted.

50. No other submission has been made by the counsel for the appellant / defendant No.1.

51. I do not see any merit in the appeal, the same is dismissed. No costs.

52. In view of my above conclusion, the amount of ₹1 Lac deposited by the appellant / defendant No.1 in this Court in terms of order dated April 07, 2021, read with the order dated June 01, 2021, shall be released in favour of the respondent No.1 / plaintiff with accrued interest.



CM. No. 13023/2021 (for stay)

In view of my above conclusion in the appeal, this application is dismissed.

V. KAMESWAR RAO, J

JANUARY 17, 2022/ds/aky

