

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.482 of 1993 (O&M)

Date of Order:11.09.2023

K.P.S.Gill ad another

.Appellants

Versus

Balwant Singh (since deceased) through LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, AAG, Punjab

Mr. Amrik Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. The dispute with regard to the correctness of the date of birth at the fag end of the service career at the behest of the employee has once again come up for adjudication.

2. The respondent, who is no longer alive, entered the service of Punjab Police in the year 1950. He disclosed his date of birth as 15.09.1930. On the basis of the aforesaid information, along with provisional matriculation certificate, he continued to serve. For the first time in the year 1986, he applied for correction which was not accepted by the department. Thereafter, he filed as many as two writ petitions. In the first writ petition i.e. Civil Writ Petition No.4598 of 1988, which was decided on 13.09.1988, with the following order:-

“After hearing the learned counsel for the parties, we find that the correction of date of birth should not have been declined on the ground of limitation referred to above but the same should have been considered on merit

and disposed of.”

3. However, the State of Punjab rejected his representation and retired him on 31.08.1989. Thereafter, he filed a fresh writ petition i.e. Civil Writ Petition No.8751 of 1988 in which he was relegated to the remedy of civil court. Thereafter, the respondent filed a suit. The suit was decreed on 16.08.1990, on the ground that as per matriculation certificate the date of birth of the respondent is 05.08.1931 and in fact, there was an error on the part of the respondent in his application.

4. Both the courts below brushed aside the objection of the State of Punjab to the effect that as per Annexure 'A' (Rule 2.5 and Note 3), the time for applying for the change of date of birth is within a period of two years from the date of coming into force of the rules or recruitment whichever is later. Thus, both the courts decreed the suit.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellants contends that the period prescribed in the service rules framed in exercise of powers under proviso to Article 309 of the Constitution of India, have wrongly been overlooked by the courts below while decreeing the suit. He relies upon the judgment passed by the Supreme Court in **Karnataka Rural Infrastructure Development Limited vs. T.P.Nataraja and others, (2021) 12 SCC 27.** He draws the attention of the court to paragraph 10 of the judgment which reads 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 latches 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. “

7. On the other hand, the learned counsel representing the respondent submits that there was a mistake on the part of the respondent as well as the department as the actual date of birth of the respondent is 05.08.1931 and not 15.09.1930 on the basis of which he continued to serve. He further submits that in view of the order passed by the Division Bench on 13.09.1988, the issue of limitation cannot be looked into.

8. The question of permitting the employee to seek the correction of date of birth at the fag end of his service career has already been condemned by the Hon'ble Supreme Court in a series of judgments which have been discussed in **Karnataka Rural Infrastructure Development Limited case (supra)**

9. The writ petition filed by the petitioner was disposed of by directing the State (employer) to re-examine the matter on merits, however, that order would not result in setting aside the service rules notified by the State Government which prescribes a reasonable period of limitation.

10. In this case, the respondent came to the court for the first time after a period of 38 years of his entry in service. He was due to retire on 31.08.1989, whereas he filed the suit on 19.04.1989 i.e. just four months before his date of superannuation. He filed the writ petition in the year 1988.

11. Keeping in view the aforesaid facts and discussion, the

judgments passed by the courts below are not sustainable. Hence, they are set aside, while accepting the appeal.

12. All the pending miscellaneous applications, if any, are also disposed of.

September 11, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO