

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2333 of 1992

Date of Decision: 12.09.2023

The State of Punjab and Others

... Appellant(s)

Versus

Gurdev Singh Giani

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the appellant(s).

None for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is challenged by the defendants (State of Punjab) for the grant of a decree of declaration that he is entitled to correctness in the date of birth in the service record from 20.08.1930 to 20.08.1932. The suit was filed on 27.04.1988. As per the record, he was due to retire on 31.08.1988. Both the Courts below have decreed the suit. The respondent, despite service of notice, did not enter appearance. On 11.12.1992, the

operation of the decree was stayed.

3. The learned counsel representing the appellants submits that the suit filed by the plaintiff was not maintainable at the fag end of his service, particularly when as per Rule 2.5 of the Punjab Civil Services Rules, the period for applying for change of the date of birth is maintainable only within a period of two years from the date from which the Rules or the recruitment have come into force, whichever is later. While relying upon the judgment passed in ***Karnataka Rural Infrastructure Development Limited vs. T.P.Nataraja and others, (2021) 12 SCC 27***, he contends that both the Courts below have erred in decreeing the suit.

4. This Court has considered the submissions. In fact, both the Courts below have overlooked the fact that Annexure-A to Rule 2.5 and Rule 3 is part of the of the Service Rules, notified by the State Government, under proviso to Article 309 of the Constitution of India. Hence, both the Courts below have erred while observing that these are only the administrative instructions. The Supreme Court has already held that the Courts should not overlook the period prescribed for the employees to file an application for the correction of their date of birth. The relevant discussion is in para 10 of the judgment rendered in ***Karnataka Rural Infrastructure Development Limited's case (supra)***, which is extracted 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.”

5. In this case, the appellant is stated to have submitted the representation for the first time when he was nearly 50 years old.
6. Keeping in view the aforesaid facts, the present appeal is allowed. The judgments passed by both the Courts below are set aside being unsustainable. The suit filed by the plaintiff shall stand dismissed.

(Anil Kshetarpal)
Judge

September 12, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No