

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

307

RSA-488-1999 (O&M)

Date of decision: 08.12.2023

Devta Singh

....Plaintiff-Appellant

Versus

M/s Asea Brown Boweri Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. A.P. Bhandari, Advocate, for the appellant.

Mr. Nirmal Sharma, Advocate for

Mr. Akhilesh Vyas, Advocate, for the respondent.

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the concurrent findings of fact returned by the Courts below in favour of the defendant-respondent in a suit filed by the plaintiff-appellant for declaration with consequential relief of mandatory injunction.

2. Background facts of the case in a nutshell are that the plaintiff-appellant instituted the suit on 11.01.1996, seeking correction of his date of birth, which was recorded as 12.12.1938 instead of 15.02.1944 in the service record and consequently for extension of service as he was due to retire on 11.02.1996. The claim was substantiated by submitting a few age proofs and was rejected earlier for being too belated.

3. The suit was contested by the defendant on the ground of being not maintainable and filed at the fag end of service. In addition, it was stated that the

date of birth as mentioned by the plaintiff at the time of his appointment was printed on the monthly wages slips issued to him and no relief could be granted just before his retirement since he was fashionably late.

4. The trial Court after framing the issues and hearing the arguments dismissed the suit by holding that the right to retire on attaining the age of 58 years was not a right under common law but a special law. Further that, service conditions of the plaintiff were governed by the Industrial Employment (Standing Orders) Act, 1946 and thus, the civil Court had no jurisdiction to entertain the claim as the same was to be filed before the appropriate forum i.e. Labour Court.

5. Aggrieved against the above, the plaintiff filed an appeal before the lower Appellate Court, which came to be dismissed while the findings of the trial Court were affirmed by observing that the date of birth was recorded way back on 12.12.1963 but was being challenged too late in the career after having remained in service for about 3 decades. Thus, the Court held the claim to be belated even for the tribunal to adjudicate upon.

6. Learned counsel would contend that the Courts below have wrongly dismissed the suit as the plaintiff had produced enough evidence to substantiate the fact that he was born on 15.02.1944 and not the date written on the salary slips. Hence, he should not have been retired on 11.02.1996, which was based on the date recorded in the service book. Further, with respect to the issue of jurisdiction, he submits that the suit filed in civil Court cannot be said to be not maintainable. He relies upon the judgment of Hon'ble the Supreme Court in **Rajasthan SRTC vs. Krishna Kant**, 1994 Supp (1) SCC 268.

7. On the other hand, learned counsel for the respondent submitted that

five issues were framed, however, the preliminary one being as to whether the civil Court has jurisdiction to entertain the matter and the trial Court rightly concluded that the suit was not maintainable. While affirming the said judgment, the lower Appellate Court additionally held that the claim was made belatedly.

8. Heard and perused.

9. The relief sought, being too late in the day, for change of date of birth from 12.12.1938 to 15.12.1944 by filing a suit a month prior to his date of retirement on attaining the age of superannuation. The plaintiff, at the time of joining, mentioned the former date in his application and thus, no date other than that could have been recorded in the service book. Accordingly, the same was also written on every monthly wage slip issued to him, but still the plaintiff never raised any plea to correct the same.

10. The service conditions of the appellant were governed by Industrial Employment (Standing Orders) Act, 1946 however, as regards the matter of date of birth, same is within the purview of civil Court, which finds weightage from **Tulshi Choudhary vs. SAIL**, 2022 SCC OnLine SC 1844, wherein the High Court dismissed the suit for correction of date of birth by observing that it should be filed before the Labour Court, but Hon'ble the Supreme Court set aside the same by holding that, "In our opinion, the present case is not covered by principles (3) and (4) as the issue involved relates only to the correction of the date of birth. Jurisdiction of the civil court is not ousted, as this is not a case relating to enforcement of a right or an obligation under the Industrial Disputes Act, 1947." Thus, the findings of the Courts below on the issue of jurisdiction cannot be maintained.

11. Though the arguments advanced by the learned counsel for the appellant that the civil Court has jurisdiction to entertain the suit are being accepted, still, the case does not hold much water on merits. The long delay of a period of 32 years in filing the present suit to get the date of birth corrected, has not been justified by presenting any cogent reason. In a similarly circumstanced case, where the application for change in date of birth was filed 25 years after induction into service, it was held by Hon'ble the Supreme Court in **State of M.P. vs. Premlal Shrivastava**, (2011) 9 SCC 664, that, "Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay." Further in **Karnataka Rural Infrastructure Development Ltd. vs. T.P. Nataraja**, (2021) 12 SCC 27, it was held that:

"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."

12. The delay in initiation of legal proceedings is akin to a self-goal, consequences whereof, are almost certain. In light of the above discussion and

judicial pronouncements, the findings of the Courts below, insofar as they relate to there being no jurisdiction of the civil Court to try the matter as involved herein are, to that effect reversed. However, the judgment dated 03.08.1998 of the appellate Court regarding the delay in raising the claim, is hereby upheld.

13. As a fallout of the above, the present appeal is disposed of.

08.12.2023

Ankur

(AMAN CHAUDHARY)
JUDGE

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