

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(271)

CM-2714-C-2022 in/and
RSA-2065-2011
Date of Decision : 19.04.2023

State of Punjab and others

...Appellants

Versus

Prem Nath

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab
for the appellants.

Mr. M.K. Dogra, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-2714-C-2022

Present application has been filed for impleading legal representatives of respondent-Prem Nath, who unfortunately died on 01.07.2012, during the pendency of the appeal.

Notice of the application to learned counsel for the non-applicant/appellants.

Mr. Gurvinder Singh, learned Assistant Advocate General, Punjab, accepts notice on behalf of the non-applicant/appellants. He raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Legal heir of respondent-Prem Nath, the details of whom are given in para 3 of the application, is allowed to be impleaded in the present regular second appeal

and the amended memo of parties attached with the present application is taken on record.

CM stands allowed.

On the oral request of learned counsel for the parties, the present regular second appeal is taken up for hearing today.

RSA-2065-2011

The present regular second appeal has been filed by the appellants-defendants challenging the judgment and decree of the lower appellate court dated 29.09.2010 by which, the judgment and decree of the trial court dated 21.03.2006 has been set-aside and the suit filed by the respondent-plaintiff (since deceased) has been allowed.

Certain facts may be noticed for the correct appreciation of the issue in hand.

The respondent-plaintiff was appointed as a Beldar on 05.03.1981 on work charge basis and his services were regularized as a Beldar on 13.03.1996. As per the respondent-plaintiff, suddenly in the year 1997, he was asked not to perform the duties on the ground that he had already attained the age of superannuation keeping in view the fact that the date of birth of the respondent-plaintiff was 04.08.1936 and not 04.08.1946 by placing reliance upon the fact that the son of the respondent-plaintiff is also in employment having the age of 37 years in the year 1990 meaning thereby that the son was born in the year 1953.

Raising objection to the act on the part of the appellants-department to treat his date of birth as 04.08.1936, the respondent-plaintiff agitated that his actual date of birth is 04.08.1946 and not 04.08.1936 hence,

the order dated 20.06.1997 by which, the respondent-plaintiff was retired on the ground that he had already attained the age of superannuation, is bad.

As the appellants-defendants did not accept the plea of the respondent-plaintiff that his date of birth is 04.08.1946 instead of 04.08.1936, having no other option, respondent-plaintiff filed a civil suit challenging the order dated 20.06.1997 by which, he was retired from service.

Keeping in view the evidence, which came on record such as that the date of birth of the respondent-plaintiff in the service book was having interpolation with regard to the year of birth as the same was changed from 1936 to 1946, the trial court held that as per the Voter ID Card, the date of birth of the respondent-plaintiff was 04.08.1936 hence, the action of the appellants-defendants in retiring him in the year 1997 having attained the age of superannuation, cannot be found to be arbitrary and illegal and the suit filed by the respondent-plaintiff was dismissed vide order dated 21.03.2006.

Feeling aggrieved against the said judgment and decree of the trial court, the respondent-plaintiff filed an appeal before the lower appellate court, which came to be decided on 29.09.2010. The lower appellate court held that once the date of birth was mentioned as 04.08.1946 in various service record including the GPF record as well as Identity Card issued to the respondent-plaintiff, the same cannot be disputed outright hence, the respondent-plaintiff could not have been retired on the basis of a change date of birth to 04.08.1936 instead of 04.08.1946. The judgment and decree of the trial court dated 21.03.2006 was set-aside and the suit

filed by the respondent-plaintiff was allowed, hence, the present regular second appeal.

Learned counsel for the appellants-defendants argues that the trial court has based the judgment on evidence, which came on record and by relying upon various factors to hold that in the service record, the interpolated date of birth of the respondent-plaintiff is to be treated as 04.08.1936 and not 04.08.1946, whereas the said findings have been overturned by the lower appellate court without any valid justification. Learned counsel for the appellants-defendants submits that merely on the basis of the interpolated date of birth mentioned in the record as 04.08.1946, Identity Card was issued to the respondent-plaintiff, hence, the same will not mean that his actual date of birth is 04.08.1946 so as to ignore the findings of the trial court, which are based upon various documents, which are issued by the different government agencies.

Learned counsel for the respondent-plaintiff submits that once the service record depict the date of birth of respondent-plaintiff as 04.08.1946, there was no occasion with the department to arrive at a different date of birth so as to retire him, hence, the judgment of the lower appellate court dated 29.09.2010 is perfectly valid and legal and is liable to be maintained.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question, which arises for determination in the present case is whether, the interpolated date of birth in the service record was 04.08.1936 or the same was 04.08.1946. Certain facts, which have already

come on record and have been conceded are that in the Voter ID Card, the date of birth of the respondent-plaintiff is matching with 04.08.1936. Not only this, the son of the respondent-plaintiff was 37 years of age in the year 1990 and was employed, meaning thereby that the son of the respondent-plaintiff was born in the year 1953. In case, the son of the respondent-plaintiff was born in the year 1953, it cannot be said that the date of birth of the respondent-plaintiff was 04.08.1946 as there would only be a difference of seven years between the age of son and the father. These facts have been totally ignored by the lower appellate court while reversing the finding recorded by the trial court. The findings of the trial court were based upon the Voter ID Card issued by the different department as well as the age of the son recorded by the employer where he was employed. Hence, the evidence qua date of birth recorded by Government agencies carries more weight as compared to the ID Card issued to the respondent-plaintiff by the department concerned, which was also based upon interpolated date of birth hence, the findings recorded by the lower appellate court so as to allow the suit of the respondent-plaintiff and to overturn the findings of the trial court are perverse and have been passed without appreciating the evidence in a correct perspective.

Keeping in view the above, the judgment and decree of the lower appellate court dated 29.09.2010 is set-aside and that of the trial court dated 21.03.2006 is restored and the suit filed by the respondent-plaintiff is dismissed.

It may be noticed that the retiral benefits admissible to the respondent-plaintiff will be decided by the department concerned by taking

his date of birth as 04.08.1936. In case, the respondent-plaintiff has worked beyond the age of 58 years, no payment already made to him for the said discharge of duties will be recovered and the pensionary benefits whatsoever, if admissible, the respondent-plaintiff is entitled for, will be computed and released in favour of the respondent-plaintiff in accordance with the rules governing the said aspect keeping in view the date of birth as 04.08.1936.

The present regular second appeal is allowed in above terms and the judgment and decree of the lower appellate court dated 29.09.2010 is set-aside and that of trial court is restored. Decree sheet be prepared accordingly.

April 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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