



S.A.No.580 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.580 of 2012

V.K.Gurunathan

... Appellant

vs.

1.The Director of School Education
College Road, Chennai -6.

2.The Chief Commissioner of Income Tax
No.121, Mahatma Gandhi Road
Chennai – 600 034.

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 29.08.2008 in A.S.No.95 of 2006 passed by the Additional Sub Judge, Chengalpet, confirming the judgment and decree dated 27.06.2006 in O.S.No.1812 of 1997 passed by the District Munsif, Alandur,

For appellant : Dr.A.Thiaagarajan
Senior Counsel
for Mr.P.Haribabu

For R1 : Mr.M.Muthusamy



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For R2

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Government Advocate
: Mr.V.Vijay Shankar
Senior Central Government
Standing Counsel

J U D G M E N T

The unsuccessful plaintiff is before this Court in this Second Appeal. The Second Appeal is filed challenging the judgment and decree dated 29.08.2008 in A.S.No.95 of 2006 on the file of the Additional Sub Court, Chengalpet, confirming the judgment and decree dated 27.06.2006 in O.S.No.1812 of 1997 on the file of the District Munsif Court, Alandur.

2. For the sake of convenience, the parties will be referred to according to their ranking as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are that:

3. According to the plaintiff, he got an employment under the second defendant/Income Tax Office through direct recruitment on 20.04.1987 as Inspector. At the time of his joining in the year 1987, based on the earlier records, his date of birth was taken as 01.07.1953.



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4. It is the case of the plaintiff that, from his old family records and horoscopes, the plaintiff found that his date of birth is actually 09.03.1955 and also the plaintiff came across with a registered mortgage deed dated 19.10.1963, from which also, it could be inferred that his date of birth is 09.03.1955. As such, the plaintiff filed an application on 18.08.1990 before the second respondent to correct his date of birth as 09.03.1955 instead of 01.07.1953.

5. The second defendant, by his reply dated 24.12.1992, rejected his request and therefore, the plaintiff came up with the suit for declaration to declare that his correct date of birth is 09.03.1955 instead of 01.07.1953 and also for mandatory injunction.

6. The second defendant resisted the suit by filing a written statement contending that the suit is barred by delay and laches and by relying on Rule 56 of the General Provident Fund Rules, the second respondent contended that any application for alteration of the date of birth has to be filed within a period of 5 years; however, the present application filed by the plaintiff belatedly, after a period of 9 years and 4



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months, cannot be taken into consideration. The second defendant has also relied on the judgment of Hon'ble Supreme Court in the case of *Union of India vs. Harnam Singh in (Civil Appeal No.502 of 1993 decided on 09.02.1993)* wherein it is held that in respect of a Government servant, who was already in service before 1979 and who intended to correct the date of birth, shall seek correction within a period of 5 years. Hence, the second defendant sought for dismissal of this suit.

Evidence and documents:

7. During trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A15. On the side of the defendants, one Srinivasan, who was the office bearer of the second defendant, was examined as D.W.1 and marked Ex.B1.

Findings of the Trial Court:

8. After analysing the documents and evidence, the Trial Court dismissed the suit, as the application by the plaintiff had been filed belatedly and not within the period prescribed under the Rules. It was also found that the plaintiff had originally joined in service under the



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second defendant on 10.04.1981 as Upper Division Clerk and later joined as Inspector on 20.04.1987.

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9. Aggrieved by the same, the plaintiff filed appeal in A.S.No.95 of 2006. The Lower Appellate Court, after reappraising the evidence, dismissed the appeal. Aggrieved by the concurrent finding of fact, the plaintiff is before this Court in this Second Appeal.

10. This Court, by order dated 29.06.2012, only ordered notice regarding admission.

Submissions on both sides:

11. The learned Senior Counsel for the plaintiff/appellant contended that though actually the correct date of birth of the plaintiff is 09.03.1955, it has been wrongly entered as 01.07.1953. The plaintiff has joined service on 20.04.1987 and further, the said application has been filed on 18.08.1990, which is within a period of 5 years and the order of the second defendant rejecting his request is not correct.



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12. The learned Senior Counsel further contended that even though the plaintiff had attained the age of superannuation as early as 2013, still, he is entitled to address his grievances as if the date of birth is corrected and the plaintiff will be naturally entitled to consequential benefits.

13. The learned Senior Counsel further contended that the Courts below, have not taken into account the correct date of birth, thereby, have dismissed the suit, which is perverse and sought for indulgence of this Court in this Second Appeal.

14. Per contra, the learned counsel for the second defendant contended that the plaintiff has actually joined in service on 10.04.1981 under the second defendant as Upper Division Clerk and if at all, any application has to be filed for alteration of date of birth, it can be only within a period of 5 years. Whereas, the plaintiff has come up with the application only on 18.08.1990, which is beyond the period of 5 years *i.e.*, after the period of 9 years and 4 months from the date of joining of his service. As such, the second defendant has rejected the application as



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per the prevailing rules and the Courts below have correctly appraised the fact and arrived at a finding of fact.

15. The learned counsel for the second defendant/second respondent submitted that there is no substantial question of law involved in this Second Appeal for the consideration of this Court and sought for dismissal of this Second Appeal.

16. This Court has given its anxious consideration to the submissions made on both sides.

Analysis of the submissions:

17. Admittedly, from a perusal of the records, it can be seen that the plaintiff had originally joined service of the second defendant on 10.04.1981 as Upper Division Clerk and thereafter, by qualifying himself, he was also appointed as Inspector on 21.04.1987. When the plaintiff had joined the service under the second defendant on 10.04.1981, as rightly contended by the learned counsel for the respondents, any application for alteration of date of birth should have



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been filed within a period of 5 years and the period had expired on 10.04.1986.

18. Admittedly, the plaintiff has not filed any application for alteration of date of birth within the stipulated period. Further, from the records, it can be seen that the plaintiff has filed the application only on 18.08.1990 to the second defendant praying for alteration of date of birth. When the application filed by the plaintiff is after a period of 9 years 4 months from the date of joining from the service, the application filed by the plaintiff is not within the time stipulated under the Rules and also the dictum laid down by the Hon'ble Supreme Court.

19. As the second defendant is not having power to consider the application beyond the period of 5 years, the same was rejected on the ground of delay and laches.

20. It could also be seen that the plaintiff, who joined his service on 10.04.1981 as Upper Division Clerk, later, worked as Inspector, had also attained the age of superannuation as early as in 2013.



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21. The Courts below, by taking into account, the fact that the application filed by the plaintiff is not within the time stipulated and hence, concluded that it cannot be considered as per the Rules. Therefore, the concurrent finding of fact arrived at by the Courts below are based on the materials available on record and are not perverse.

22. This Court does not find any substantial question of law involved in this Second Appeal for consideration of this Court.

23. Accordingly, this Second Appeal stands dismissed.
However, there shall be no order as to costs.

26.02.2024.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

G.ARUL MURUGAN,J

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To

1. The Additional Sub Judge, Chengalpet,.
2. The District Munsif, Alandur.
3. The Section Officer, V.R.Section, High Court, Madras.

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