



S.A.No.878 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.02.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.878 of 2013 &
M.P.No.1 of 2013

Tamil Nadu Agricultural University,
Rep. by its Registrar,
Coimbatore - 641 003.

... Appellant

-Versus-

1.A.Sarojini

2.The District Collector,
Coimbatore District,
Coimbatore.

3.The Joint Director of School Education,
Office of the Joint Director of School Education,
Raja Street,
Coimbatore - 1.

... Respondents

Appeal filed under Section 100 of C.P.C. against the decree and judgment in A.S.No.85 of 2012 dated 11.10.2012 passed by the learned I Additional Subordinate Judge, Coimbatore in reversing the decree and judgment passed by the learned II Additional District Munsif Court, Coimbatore in O.S.No.529 of 2007 dated 22.06.2012.



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S.A.No.878 of 2013

*For Appellant : Mr.Vijaya Mehanath,
Standing Counsel*

For Respondent 1 : Mr.V.Sivakumar

*For Respondents : Mr.B.Tamilnidhi,
2 & 3 Additional Government Pleader*

JUDGMENT

This second appeal arises out of the judgment and decree of the court of I Additional Subordinate Judge at Coimbatore in A.S.No.85 of 2012 dated 11.10.2012 in partly reversing the judgment and decree of the court of II Additional District Munsif at Coimbatore in O.S.No.529 of 2007 dated 22.06.2012.

2. For the sake of convenience, the parties will be referred as their ranks in the suit.

3. Before dealing with the merits of the case, I would fail in my duty if I do not recollect that the plaintiff is a widow belonging to schedule caste community (Pallar Community). She comes from the bottom-most rank of society and had been appointed to Group D service, which is the lowest cadre in the appellant university. Apart from that, she was a person in service on



S.A.No.878 of 2013

consolidated pay for several years before she was appointed on 05.06.1996.

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4. O.S.No.529 of 2007 was originally filed for the relief of declaration that the date of birth of the plaintiff is 18.01.1953 and not 01.07.1947 and for consequential direction to the first defendant to alter the date of birth of the plaintiff in the service record under the custody of the first defendant as 18.01.1953 instead of 01.07.1947.

5. The plaintiff had been appointed on a consolidated pay in the service of University on 15.03.1991. At that time, invoking regulation 8 of the Tamil Nadu Agricultural University the date of birth of the plaintiff was determined as 01.07.1947. This was not based on any record, but only on the basis of the assessment of the medical doctor, who examined the plaintiff for giving fitness certificate.

6. The plaintiff was regularised into service on 31.10.1996 with effect from 05.06.1996. It is the case of the plaintiff that on entering into service, she gave a representation on 11.09.1997 seeking for correction of her date of birth from 01.07.1947 to 18.01.1953. According to her, she had given the said application accompanied by the school record to substantiate her date of birth as 18.01.1953. It is her further case that the said application had been misplaced



S.A.No.878 of 2013

and therefore, she gave another letter on the request of the defendants on 17.09.2001.

7. The case of the defendants is that the said application had been given after the period of five years and therefore, it is not sustainable.

8. Pending the suit, the plaintiff retired from service and therefore, she amended the plaint by virtue of an order passed in I.A.No.205 of 2011 dated 12.04.2011. As per the said application, another prayer was included namely to declare the retirement notice No.HDFM/ESA/Tmt.R.S/PSUM/Retirement Notice/2007 dated 19.1.2007 issued by the first defendant as null and void and does not binding the plaintiff.

9. On the basis of these pleadings, the matter went for trial and the trial court framed the following issues:

- “1. பிறந்த தேதி குறித்து வாதி கோரியுள்ள விளம்பு பரிகாரம் பெறத்தக்கவரா?
2. வாதி கோரியுள்ள செயலுறுத்துக்கட்டளை பரிகாரம் பெறத்தக்கவரா?
3. இதர பரிகாரம் என்ன?”

10. On the side of the plaintiff, she examined herself as PW1 and the person, who gave certificate from the school as PW2. She marked Ex.A1 to



S.A.No.878 of 2013

Ex.A6. On the side of the defendants, the law officer of the university was examined as DW1 and he marked Ex.B1 to Ex.B5.

11. On the basis of the pleadings and evidence, the learned trial judge granted a decree that the date of birth of the plaintiff should be corrected to 18.01.1953, but dismissed the suit insofar as the original relief No.2 and the amended relief No.3 are concerned.

12. Against the first portion of the prayer granted, the appellant did not file an appeal. Feeling aggrieved over the denied portion, the plaintiff preferred A.S.No.85 of 2012 on the file of the learned Subordinate Judge, Coimbatore. The learned Subordinate Judge in and by way of a Judgment dated 11.10.2012 allowed the first appeal. Aggrieved by the same, the present second appeal has been presented.

13. On 14.08.2013, the second appeal was admitted on the following substantial questions of law:

“1. Whether the burden of proof lies on the plaintiff, who alleges having given an application in 11.9.1997 to the first defendant for alteration of date of birth from 01.07.1947 to 18.01.1953, or, on the first defendant, who denies having



S.A.No.878 of 2013

received the said application?

2. Whether the five year period contemplated under Section 49(b) of the State and Subordinate Service Rules for alteration of date of birth is to be calculated from the date of appointment i.e., 15.03.1991, the date, the plaintiff joined duty after signing the service register, or, from the date when the service of the plaintiff was regularized as a casual labourer on consolidated pay i.e., 05.06.1996?”

14. I heard Mr.Vijaya Mehanath for the appellant, Mr.V.Sivakumar, for the plaintiff/respondent 1 and Mr.B.Tamilnidhi, learned Additional Government Pleader for the respondents 2 and 3.

15. The argument of Mr.Vijaya Mehanath is that in terms of section 49(b) of the Tamil Nadu State and Subordinate Service Rules for alteration of date of birth, it is the date of appointment which matters and not the date of regularisation.

16. I have my own doubts as to whether Section 49(b) of the Tamil Nadu State and Subordinate Service Rules would apply to the appellant institution. This is because, being an University in itself, it has its own Regulation and Act. The appellant had admitted in the written statement that it had been established



S.A.No.878 of 2013

as an 'University' under a special legislation, Tamil Nadu Agricultural University Act, 1971 (Act VIII of 1971). Regulation which relates to date of birth is found under Regulation 8. Therefore, insofar as the University is concerned, Regulation 8 is applicable and not Section 49(b) of the Tamil Nadu State and Subordinate Service Rules.

17. When a specific provision had been made, I cannot apply a general provision. Therefore, I have to refer to the Act VIII of 1971 and Regulation made thereunder to decide this case, but not the Tamil Nadu State and Subordinate Service Rules as was sought to be argued by Vijay Mehanath.

18. It is not in dispute that the first respondent was appointed on consolidated pay on 15.03.1991. However, this does not make her an employee of the institution. This is clear by reference to Section 2(5) of the Regulation of the University. As per Section 2(5), which is found under Chapter I of the Regulation, it is made clear that for the purpose of Tamil Nadu Act VIII of 1971, an 'employee' means a whole time appointee in any post of the University.

19. It is too fundamental to restate that a person who is appointed on



S.A.No.878 of 2013

consolidated pay, cannot be treated as a whole time employee of the institution.

Therefore, for the purpose of interpretation of Section 8(2)(b), a person on consolidated pay cannot be treated as a person, who has entered the service.

20. The admitted fact is that the appellant had regularised the first respondent in service on 31.10.1996. However, this was given retrospective effect from 05.06.1996. The first respondent had five years time, as per the Regulation 8(2)(b) to give an application for correction of date of birth. It is admitted that she gave an application on 17.09.2001. If she had entered the service as per proceedings dated 31.10.1996, the period of limitation should commence from that date. Therefore, the first respondent had time till 30.10.2001 to give an application for correction of date of birth, and she had given a petition on 17.09.2001 and therefore, her petition cannot be rejected as it is barred by time.

21. Mr.Vijaya Mehanath would argue that the application given for correction had been rejected under Ex.A6.

22. I have gone through Ex.A6.

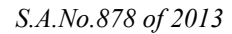


S.A.No.878 of 2013

23. A perusal of Ex.A6 discloses that the said order had been passed only by the Registrar of University and communicated to the Head of the Department. As per Section 8(2)(a), the order has to be passed by the Registrar with the approval of Vice Chancellor. The order under Ex.A6 does not disclose any consultative process between the Registrar and the Vice Chancellor prior to this rejection. Hence, the order is contrary to the Regulations and hence, invalid.

24. I am unable to accept the contention of Mr.V.Sivakumar that the order was passed by the Administrative Officer as it is clear from Ex.A6 that it was passed by the Registrar but communicated by the Administrative Officer. I will not hold Ex.A6 against the first respondent on a simple ground that it had not been passed in accordance with the Regulation. If the law requires a particular aspect to be done in a particular way, it shall be done in that way and no other way.

25. I arrived at a conclusion that the first respondent had joined the service only on 05.06.1996, based on the fact that the University itself had granted her a selection grade not from 15.03.1991. It is admitted by both sides that the selection grade is granted on completion of 10 years of service under



27. Even if I were to accept that the law officer is a person who has custody of service register, I am unable to accept the said document because, the provident fund account number given as blank, the name has not been filled up and the service register does not have the photograph. Apart from that, it is contrary to Regulation 2(8). The reason as to why the original of the service register has not been produced before this Court, has not been stated by the appellant.



S.A.No.878 of 2013

28. Apart from that, the service register had been produced on 14.02.2012, but it has absolutely no entries from the period that the appellant was in service from 05.06.1996 till her date of retirement. In other words, the record produced before the court is a truncated record and cannot be relied upon. Apart from that, it is a photostat copy, which is secondary evidence and the reason for not producing the original i.e. the primary evidence before the trial court, has not been stated by the learned counsel for the appellant.

29. I am unable to accept the contention of Mr.V.Sivakumar that the loss of first application dated 11.09.1997 should be explained by the appellant. In order to push forth this point, Mr.V.Sivakumar would rely upon Section 111 of the Indian Evidence Act.

30. I would have found merit in this submission, had the first respondent/plaintiff produced the acknowledgement of the application said to have been given on 11.09.1997. In the absence of acknowledgement, I cannot presume that an application had been made and had been misplaced by the University. Mr.V.Sivakumar facing this difficulty, he presented the point under Section 111 of the Indian Evidence Act, in order to argue that the employer is in “active confidence” with an employee.



S.A.No.878 of 2013

WEB COPY

31. My reading of Section 111 of Indian Evidence Act is that an employee can be treated to be in “active confidence” of the employer in certain cases, but the same rule certainly cannot apply vice versa. Therefore, the argument placed under Section 111 of the Indian Evidence Act stands rejected.

32. However rejection of the said argument does not make any difference in the result of the appeal because I have already concluded that the first respondent had been regularised in service on 31.10.1996 with effect from 05.06.1996 and her application on 17.09.2001 is in time.

33. In fine, I find both the substantial questions of law did not arise for consideration in the present second appeal. Consequently, the second appeal is dismissed. The parties shall bear their respective costs. The connected M.P. is closed.

29.02.2024

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Index : Yes / no

Neutral Citation : Yes / no

Speaking / Non Speaking Order



WEB COPY



S.A.No.878 of 2013

To

- 1.The I Additional Subordinate Judge, Coimbatore
- 2.The II Additional District Munsif Court, Coimbatore



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S.A.No.878 of 2013

V.LAKSHMINARAYANAN, J.

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S.A.No.878 of 2013

29.02.2024