

RSA-1423 of 1994 (O&M)

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

RSA-1423 of 1994 (O&M)

Reserved on: 10.04.2024

Pronounced on: 23.04.2024

Municipal Committee, Panipat

.....Appellant

Versus

Rehtu Ram

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Kamal Sharma, Advocate,
for the appellant.

Mr. Gurpreet Jayia, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 21.04.1992, passed by the Court of learned Additional Senior Sub Judge, Panipat, whereby suit for permanent injunction filed by the respondent-plaintiff was decreed as well as against the judgment and decree dated 02.11.1993, passed by the Court of learned Additional District Judge, Panipat, whereby appeal filed by the appellant-defendant against the judgment and decree dated 21.04.1992, has been dismissed.

2. Parties to the appeal are being referred to as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for permanent injunction pleading therein that he was appointed as Boatman for running boat in Hali Park, M.C. Panipat by the Municipal Committee, Panipat on 01.02.1978. At the time of appointment, he was not having any documentary proof with regard to

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his age. He filed an affidavit deposing therein that he was of 35 years of age. On the basis of that affidavit, he was given appointment. As in the case of other employees, the plaintiff was required to furnish medical fitness certificate from the competent authority. He appeared before the Senior Medical Officer, Panipat, for medical examination. He was declared fit, but in a column his age by appearance was written as 50 years. Relying on the opinion of the Senior Medical Officer, Municipal Committee, issued impugned notice to retire him from service w.e.f. 30.06.1988 as according to the Municipal Committee on that date he would attain the age of superannuation i.e. 60 years. Plaintiff pleaded that on the day of joining of the service he was 35 years of age and not of 50 years of age. He tried to persuade the Municipal Committee not to retire him as still he had not attained the age of superannuation, but they were adamant to retire him. Alongwith the suit he filed an application for interim stay. The interim stay was declined to him on the ground that in case he ultimately succeeded he would not suffer any loss because in that eventuality he would be entitled for his emoluments.

3. Upon notice, defendant appeared and resisted the suit on preliminary objections that the Civil Court has no jurisdiction to entertain and try the present suit; the suit of the plaintiff has become infructuous because he has already been relieved; the suit is not maintainable in the present form. On merits, it is alleged that on the day of joining of his service, the plaintiff was of 50 years old and affidavit

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filed by him wherein he had deposed his age 35 years was found unsatisfactory.

4. Replication was filed by the plaintiff reiterating his stand set up in the plaint and controverting the allegations of the defendant raised in the written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff has a right to continue in service as he has not attained age of 60 years as on 30.6.88; if so, to what effect?OPP
2. Whether the suit is not maintainable? OPD
3. Relief.

5. After hearing learned counsel for the parties and appreciating the evidence on record, trial Court vide judgment and decree dated 21.04.1992 decreed the suit of the plaintiff. Aggrieved against the judgment and decree dated 21.04.1992, appellant preferred an appeal, which has been dismissed vide judgment and decree dated 02.11.1993.

6. Learned counsel for the appellant contended that judgments and decrees passed by both the Courts below are against law and evidence on record. He further contended that the Courts below wrongly believed the affidavit of the respondent-plaintiff dated 04.02.1978 whereby respondent claimed his age as 35 years at the time of appointment. He further contended that Courts below failed to appreciate that respondent-plaintiff did not lead any independent evidence as proof of his age. He further contended that judgments and

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decrees of the Courts below being based on surmises and conjectures are liable to be set aside.

7. On the other hand, learned counsel for the respondent supported the judgment and decrees of the Courts below. He further contended that doctor wrongly opined that respondent appeared to be 50 years of age as he did not conduct any test for determining his age and he had not given his opinion about age of the respondent as an expert. He contended that thus the suit of the respondent-plaintiff was rightly decreed.

8. I have heard learned counsel for the parties and perused the record.

9. Before proceeding further in the matter, it would be relevant to mention here that during the pendency of the present appeal, sole respondent Rethu Ram had died on 30.10.1995. An application bearing No.568-C of 1996 under Order 22 Rule 4 CPC for impleading his legal representatives was moved with the assertions that Shamsher Singh being adopted son and nephew of deceased-Rethu Ram was the only legal heir of the deceased. Notice in the said application was issued on 08.02.1996 and reply was filed thereto by the Municipal Committee controverting the averments made in the said application. On 29.08.1996, the said application was rejected by passing the following order: -

“Applicant-Shamsher Singh now claims to be adopted son of respondent Rethu Ram, since deceased. That application is opposed on the ground that he was not adopted son. There is nothing on record to show that

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Shamsher Singh was adopted by Rethu Ram (deceased). In the application, even the date of adoption is not mentioned. Any document to show adoption is also not forth-coming. The affidavit of Shamsher Singh further indicates that he has four cousin brothers. In these circumstances, application rejected.

Sd/-
(S.C. MALTE)
JUDGE”

29.8.1996

10. Till date, legal representative(s) of the deceased-respondent have not been impleaded. The matter was admitted on 09.10.1995 and operation of the judgment and decree of the Courts below was stayed.

11. Perusal of the record shows that respondent was appointed as Boatman for running boat in Hali Park, M.C. Panipat by the respondent on 01.02.1978. At the time of his appointment, he filed an affidavit to the effect that he was of 35 years of age. However, at the time of medical examination of the respondent, medical officer opined that on appearance, respondent was 50 years of age and as per the said opinion retirement age of respondent was fixed as 30.06.1988 on attaining the age of 60 years. Respondent did not raise any objection to the opinion, of the doctor regarding his age. At the fag end of his service career, respondent filed a suit claiming that opinion given by the medical officer that he appeared to be 50 years of age at the time of entry in service as well as notice to retire him from service w.e.f. 30.06.1988 was wrong as he was 35 years old at time of his joining. In support of his claim, respondent-plaintiff produced voter list and copy of ration card prepared in the year 1986, which have wrongly been

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believed by both the Courts below inasmuch as there is no material on record to indicate that the said documents had been produced by the respondent before the appellant at the time of his joining the service or thereafter. Further, entry of age in the voter list or ration card of a person is not a conclusive proof of his age. The position is well-established that if a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service.

12. Hon'ble Supreme Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. In the case of ***State of Maharashtra and Anr. v. Gorakhnath Sitaram Kamble & Ors. (2010) 14 SCC 423 : 2011(2) S.C.T. 195*** wherein a series of the earlier decisions of the Hon'ble Supreme Court were taken note and was held as hereunder:

"16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri [(2005) 11 SCC 465 : 2005(2) S.C.T. 785 : 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in State of Uttaranchal v. Pitamber Dutt Semwal [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that

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the High Court ought not to have interfered with the decision after almost three decades.

*19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in **Home Deptt. v. R. Kirubakaran [1994 Supp (1) SCC 155 : 1993(4) S.C.T 803 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828]** reads as under: (SCC pp. 158-59, para 7)*

"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be

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fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."

13. Hon'ble Supreme Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in ***State of M.P. v. Premlal Shrivastava, (2011) 9 SCC 664 : 2011(4) S.C.T. 383*** it is held as hereunder:

"8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of

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*right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see **Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993(3) S.C.T 120 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]**).*

12. 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. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

14. In view of the above, present appeal is allowed. Judgments and decrees of the Courts below are set aside and the suit of the plaintiff is dismissed. Decree-sheet be prepared accordingly.

15. Pending application(s), if any, stand disposed of accordingly.

23.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No