



RSA-4876-2002 (O&M)

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

RSA-4876-2002 (O&M)

Date of Decision: 19.11.2024

Ram Avtar

.....Appellant

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ankur Sheoran, Advocate for
Mr. Samrat Malik, Advocate,
for the appellant.

Mr. Harish Nain, AAG, Haryana,
for the respondents.

SUDEEPTI SHARMA J.

1. Challenge in the present appeal is to the judgment and decree dated 06.09.2002 passed by learned Additional District Judge, Jhajjar (hereinafter referred to as 'First Appellate Court'), whereby the appeal filed by the respondents against the judgment and decree dated 20.05.2002 passed by learned Civil Judge (Senior Division), Jhajjar (hereinafter referred to as 'trial Court'), was allowed and the said judgment and decree dated 20.05.2002 passed by learned trial Court was reversed.

2. The facts in brief are that the appellant/plaintiff was appointed as a Teacher in the Haryana Education Department in village Siwana District, Rohtak, on 24.02.1973. He was informed about the date of his

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retirement as 06.06.2003 on attaining the age of superannuation i.e. 58 years on the basis of his date of birth as 06.06.1945 as mentioned in his service record. He pleaded that his date of birth is not 06.06.1945 and in fact it is 06.06.1948 and on the basis of the same, after attaining three years' extension, he was due to retire on 06.06.2006. He further pleaded that his date of birth was recorded as 06.06.1945 in his matriculation certificate and in the service record subsequently, was due to clerical mistake. He further pleaded that in his admission register of 1st standard in the Government Primary School, Khorda, his date of birth was recorded as 06.06.1948, which continued in the school record and remained the same when he passed 5th standard and even in the school leaving certificate, his date of birth was mentioned as 06.06.1948. Thereafter, in 6th standard, he took admission in the Government High School, Chiria, District Bhiwani and got recorded his date of birth to be 06.06.1948, however, in his school leaving certificate, his date of birth was inadvertently written as 06.06.1945 instead of 06.06.1948 and this mistake continued and did not come to the notice of the appellant at the time of passing of matriculation. He only came to know about the same at the time of inspection of his service record and he requested the respondents to change his date of birth in his service record, but the same was not done. Therefore, he filed civil suit. In the civil suit, the respondents filed reply, wherein they took the stand that the appellant joined as a Teacher on 24.02.1973 and his date of birth was recorded as 06.06.1945 as per his matriculation certificate. Appellant did not raise any objection regarding

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incorrect date of birth, whereas, he could raise objection as per Rule 7.3 of the Punjab Financial Rules, Volume-I, within two years from the date of joining his service. Therefore, the respondents prayed for dismissal of the civil suit.

3. Appellant filed replication controverting the pleas taken in the written statement.

4. After hearing learned counsel for the parties, the suit filed by the appellant was decreed, vide judgment and decree dated 20.05.2002, which was challenged by the respondents by way of filing an appeal against the said judgment and decree. The appeal filed by the respondents was allowed by the learned First Appellate Court, vide its judgment and decree dated 06.09.2002, which is challenged before this Court by way of the present appeal.

5. Learned counsel for the appellant contends that the learned First Appellate Court has failed to appreciate the evidence on record and has set aside the well reasoned judgment of the learned trial Court. He therefore, prays that the present appeal be allowed and the judgment and decreed dated 06.09.2002 passed by the learned First Appellate Court be set aside.

6. *Per contra*, learned counsel for the respondents submits that the learned First Appellate Court has rightly set aside the judgment and decree dated 20.05.2002 passed by the learned trial Court, vide its judgment and decree dated 06.09.2002. He relied upon the judgments of Hon'ble Supreme Court passed in **Punjab & Haryana High Court at Chandigarh Vs. Megh**

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Raj Garg and another, 2010(6) SCC 482 and The General Manager, M/s Barsua Iron Ore Mines Vs. The Vice President United Mines Mazdoor Union and Ors., 2024 AIR Supreme Court 2527. Therefore, he prays that the present appeal be dismissed.

7. I have heard the learned counsel for the parties and perused the whole record of the case in hand.

8. A perusal of matriculation certificate (Ex.D3) of the appellant shows that his date of birth is recorded as 06.06.1945. No objection was raised by the appellant at the time of getting school leaving certificate of 6th standard or at the time he was issued his matriculation certificate regarding the incorrect date of birth. Even while joining government service, he filled his date of birth to be 06.06.1945 and on the first page of his service book, again his date of birth is noted as 06.06.1945 under his signatures. As per Rule 7.3 of the Punjab Financial Rules, Volume-I, as applicable to the appellant, he could have applied for correction of date of birth within a period of two years from the date of joining of service. It was at the time when three years' extension in service on completion of 55 years of age was granted by the respondents that the appellant represented the respondents for correction of his date of birth. The appellant was appointed as a Teacher and it is unbelievable that if the date of birth in his matriculation certificate was wrongly mentioned then no effort was made by him to get it rectified by the respondents within two years from the date of joining service.

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9. Hon'ble the Supreme Court in **Megh Raj Garg's case** (supra) held that being a law graduate, respondent-judicial officer must have been aware of the date of birth recorded in his matriculation certificate. He would have immediately after joining the service made an application to the university for change of his date of birth recorded in matriculation certificate. He waited for more than ten years after entering into service and submitted application to university for effecting change in the date of birth. It is further held that he applied for change of date of birth recorded in his service book much beyond the time limit of two years specified in the rule. Therefore, the Apex Court held that the High Court or the State Government did not have power, jurisdiction or authority to entertain such representation made by respondent after more than twelve years of entering into service.

10. In **The General Manager, M/s Barsua Iron Ore Mines's case** (supra), Hon'ble the Supreme Court held that respondent initially declared his date of birth on the basis of which, he got employment cannot seek change of date of birth belatedly. Principles of estoppel would come into play.

11. In view of the above, I do not find any infirmity in the judgment and decree dated 06.09.2002 passed by learned First Appellate Court, whereby the judgment and decree dated 20.05.2002 passed by learned trial Court was set aside. Therefore, the present appeal is hereby dismissed and the judgment and decree dated 06.09.2002 passed by the learned First Appellate Court is affirmed. Parties are left to bear their own costs.



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12. Decree sheet be drawn.
13. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

19.11.2024
Virrendra

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No