

-1-

RSA-869-2006 (O&M)
Reserved On: 11.11.2024
Date of Decision: 14.11.2024

... Appellant

Vs.

... Respondents

Present: Mr. Aman Godara, Advocate
amicus curiae for the appellant
Mr. Sandeep Kumar, DAG, Punjab

1. The appellant through instant second appeal is seeking setting aside of judgement and decree dated 26.08.2003 passed by learned Civil Judge (Jr. Div.), Chandigarh while dismissing the suit filed by the present appellant for declaration to the effect that order issued vide memo No. 21/37/2K-2G (6)/1447 dated 24.08.2000 by the Principal Secretary Home, Department of Home Affairs & justice, Punjab, Chandigarh in rejecting his representation for recording the correct date of birth as 05.04.1946 in the service record of the appellant, is illegal and void. At the same time, prayer is also made in the instant second appeal for setting aside the judgement and decree dated 16.11.2005 passed by learned Additional District Judge, Chandigarh vide which the first appeal filed by the appellant was dismissed.
2. Succinctly, the facts as per the plaint are that parents of the appellant-plaintiff delivered four children including him, i.e., Gani @

**RSA-869-2006 (O&M)****-2-**

Shingara born on 27.01.1943, Manjooran born in the year 1944, Manjoor Lal born on 10.08.1945 and Gian Chand-appellant on 05.04.1946. The birth of the appellant took place at Yol Camp Military Hospital, then in district Hoshiarpur and now part of District Kangra (Himachal Pradesh) after reorganization of State of Punjab in the year 1966. The records were later transferred to District Hoshiarpur. At the time of admission of the appellant in a school, some unknown person accompanied him to the school and got his date of birth recorded as 05.04.1943, which was incorrect. The wrong date remained in play throughout his academic career and travelled into his service book as well. Unfortunately, on 21.05.1999, Manjoor Lal (brother) passed away in a road accident. During the proceedings under the Motor Vehicle Act, it came to the fore that the deceased brother Manjoor Lal, who was a Class IV employee in a Government Middle School, was set to retire on 31.08.2005 as per his date of birth 10.08.1945. It struck the appellant-plaintiff that he could not have possibly taken birth on 05.04.1943 being younger to Manjoor Lal. Thereafter, Gurmeet Kaur who was Sarpanch of the Gram Panchayat and the sister of the appellant namely Manjooran even submitted their respective affidavits qua his correct date of birth. Then, in the year 1996, the appellant made a representation to respondent-defendant no.3 for correction of his date of birth entry but it fell on deaf ears. A subsequent representation was made on 28/30.05.2000, which was dismissed by respondent-defendant no.1 vide order dated 24.08.2000. The suit preferred by the appellant sought to challenge the aforesaid order wherein notice was

**RSA-869-2006 (O&M)****-3-**

issued to the respondents-defendants.

3. The respondents-defendants appeared and filed their written statement wherein certain preliminary objections were taken including maintainability of the suit, suit being time barred. On merits it was contended that at the time of joining his service, the appellant-plaintiff mentioned his date of birth as 05.04.1943 that too against his signatures and is therefore estopped from claiming it to be 05.04.1946 after 32 years of service, when he is nearing his stipulated date of superannuation. Reference has also been made to Rule 2.5 of Punjab Civil Service Rules, Part I, Chapter II which provides that date of birth once recorded at the time of entry in Government service shall be conclusive unless he applies for rectification within 2 years from the date of entry.

4. Resultantly, as many as 8 issues were framed including the issue of relief. Ultimately the suit filed by the appellant was dismissed by the learned trial Court being devoid of any merit. The appeal filed by him also met the same fate. Both these judgments and decrees of dismissal are under challenge in the present regular second appeal.

5. Learned counsel for the appellant vociferously contended that certified copies of order passed in the MACT case pertaining to the deceased brother of the appellant were proved on record. A perusal of the same clearly establishes the true date of birth of his deceased elder brother as 10.08.1945 since PW-1 Surjit Singh who was examined in the MACT case, was not cross-examined by the Government Pleader and thereby, his statement was



RSA-869-2006 (O&M)

-4-

admitted *in toto* as per the settled law. To buttress this argument, reliance was placed on the judgment rendered in the case of ***Hansraj Puri vs Haryana State, 1989(1) RSJ-507***. It was also submitted that it is the admitted case of the respondents that representation dated 28.05.2000 was rejected vide order dated 24.08.2000 and the rejection letter shows that it was done so without due application of mind and by passing a non-speaking order. Further, no opportunity of personal hearing was ever afforded to the appellant as admitted by PW-2 Ajit Singh Jassi, Superintendent Grade II, Home Department, which is completely against the settled law. Reliance is placed on the case of ***Balbir Singh Dhami vs Union of India and Others, 2002(2) RSJ 197(DB)***. It was also argued that PW3 Parminder Singh, School Teacher has categorically stated on oath that as per Government rules, children below the age of 4 years could not be admitted to a Government School, which shows that the true date of birth of the appellant is 05.04.1946 as from the evidence of PW-4, date of birth of the elder brother has been established on record as 10.08.1945. Government Pleader again chose not to cross-examine the aforesaid witness. Above all, the appellant himself stepped into the witness box and deposed on oath that he is the youngest of four children, i.e., 3 brothers and 1 sister. He also proved on record that date of birth of his eldest brother is 27.01.1943 and the next born is his sister who was born in 1944, then his elder brother Manjoor Lal who was born on 10.08.1945 and then him. Therefore, in no humanly way possible could the date of birth of the appellant be 05.04.1943. It is argued that there is sufficient evidence on



record to establish the same.

6. Learned State counsel contended that both the impugned judgments and decrees have been passed in accordance with law as well as principles of natural justice and therefore, deserve no interference by this Court.

7. I have heard the learned counsel for the parties and perused the paper-book as well as judgments referred, with their able assistance. It transpires that the stand taken by the appellant is self-contradictory. It is claimed by him that he filed a representation in the year 1996 before the respondent-employer asking for correction in his date of birth entry in the service record but at the same time, it is averred that he first discovered his true date of birth from the statement of Satwant Kaur, made in the MACT proceedings qua his deceased elder brother. It is pertinent to note that the elder brother Manjoor Lal died in a road accident on 21.05.1999 and MACT proceedings were initiated subsequently but the appellant claims to have been confronted with this fact in year 1996. Furthermore, PW-3 Parminder Singh, Teacher has only conveyed the minimum prescribed age for school admissions and not the maximum age. If a child born on 05.04.1946 could be admitted on 23.05.1950, so could be the one born on 05.04.1943.

8. Moreover, if the averment of the appellant qua his correct date of birth is taken to be true, it becomes a biological anomaly as the time gap between the birth of his elder brother Manjoor Lal and his own comes to 7 months and 25 days only whereas the possible gestation time comes to only

**RSA-869-2006 (O&M)****-6-**

6 months. In absence of any plea taken by the appellant that he was born prematurely, the contention raised by him qua his correct date of birth becomes unpalatable. Furthermore, no efforts have been made by the appellant to summon the original record from Yol Camp Hospital where he was born. Neither was any evidence led by him to establish that the records had been transferred to the office of Registrar of Births and Deaths, Hoshiarpur after reorganization of States. It is equally untenable that some unknown person accompanied the appellant-plaintiff when he was only 4 years old without supervision of his parents or relatives. Further, the appellant failed to provide the name of that person or examine him. As far as the version of the appellant-plaintiff is concerned that he made a representation to the Director, Prosecution and Litigation, wherein he sent the certificate relating to his date of birth issued by Civil Surgeon, Hoshiarpur, the same appears to be an afterthought when it has been conceded by him that there is no entry qua his date of birth in the office of Civil Surgeon, Hoshiarpur.

9. The contention raised qua disregard for the principles of natural justice while rejecting his representation, has no legs to stand upon. Most importantly, the appellant-plaintiff has miserably failed to establish that his correct date of birth is 05.04.1946 and not 05.04.1943. The plea regarding rectification of date becomes obsolete when the plaintiff is unable to prove his correct date of birth. In addition, only the representation moved by the appellant has been rejected and it is not an order inflicting punishment on an employee where a departmental inquiry is required. Procedure and guideline



RSA-869-2006 (O&M)

-7-

provided for by Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules cannot be invoked in the present case. Further, this Court has gone through the judgments referred by the appellant-plaintiff but they do not come to his rescue as facts of his case are on different footing altogether. Although, it is a settled law that there is no bar of limitation in cases pertaining to correction of date of birth in service record where the error has emerged from a clerical mistake but it is not the case of the appellant-plaintiff. The learned Courts below have rightly held that suit of the appellant was time-barred. In a judgement passed by a co-ordinate Bench of this Court in **Gurdial Singh v. State of Punjab, CWP No. 6062 of 2017, decided on 20.7.2017**, following observations were made which are quite relevant to the present case: -

“5. Similar is the position under the instructions dated 9.3.1961 issued by the Inspector General of Police, Punjab with regard to making correction in the date of birth of the employees and wherein a time frame of 2 years has been stipulated from the date of recruitment for the employees to seek any correction as regards date of birth.

*6. There is no dispute as regards the fact that the petitioner had gained entry in service in the year 1985. A representation seeking correction in the date of birth was also admittedly made first in point of time in the year 2015. The Hon'ble Apex Court has considered such aspect of an application seeking correction of date of birth having been filed beyond the stipulated period as envisaged under the recruitment rules/instructions in the case of **Union of India v. Harnam Singh, 1993 (3) S.C.T 120(SC)** and held in the following terms:-*



"It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service after 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979, but in any event later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule-making authority."

*7. Similar view has been taken by the Supreme Court in the case of **Cement Corporation of India Ltd. v. Raghbir Singh and another, 2002 (9) Supreme Court Cases 398 and Hindustan Lever Limited v. S.M.Jadhav and another, 2001(2) SCT 369 (SC): 2001(4) Supreme Court Cases 52.**"*

10. When the averments made by the learned counsel for the appellant are seen in light of the aforementioned facts, they do not appear to be of unimpeachable character.

11. Therefore, this Court is of the considered opinion that no interference is warranted by this Court in judgement and decree dated

**RSA-869-2006 (O&M)****-9-**

26.08.2003 passed by learned Civil Judge (Jr. Div.), Chandigarh and the judgement and decree dated 16.11.2005 passed by learned Additional District Judge, Chandigarh. Resultantly, the instant second appeal is hereby dismissed.

12. High Court Legal Services Committee is directed to pay remuneration of learned *amicus curiae* as per rules.

14.11.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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