

(2004) 03 AHC CK 0100
In the Allahabad High Court
Case No : Second Appeal No. 811 of 1988

Basudeo Lal Srivastava (D) through L.Rs.	APPELLANT
Vs	
Punjab National Bank	RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Employment of Children Act, 1938 — Section 2, 3(3)

Citation : (2004) 2 AWC 1871

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : H.N. Singh, Satyendra Nath Srivastava and Ravi Ranjan, for the Appellant; K.L. Grover, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The plaintiff filed a suit praying that the order dated 11.10.1982 passed by the Disciplinary Authority and the order dated 14.7.1983 passed by the appellate authority censuring the plaintiff and fixing his date of birth as 31.10.1925 be declared illegal, invalid, unconstitutional, void and not binding upon the plaintiff. The plaintiff further prayed that a declaration be issued holding that the correct date of birth of the plaintiff was 10.7.1932 and that the plaintiff was entitled to work till the date of superannuation, i.e., 31.7.1992.

2. The plaintiff alleged that he was appointed as a Daftari in Punjab National Bank in December, 1945. when he was only 13 years 5 months old. In the year 1953, the plaintiff, while in service passed the High School examination in which the date of birth was recorded as 10.7.1932. In the year 1965, the plaintiff realised that his date of birth recorded in the service register was incorrect and accordingly he made a representation to the District Manager, Lucknow to correct his date of birth on the basis of the date of birth recorded in the High School certificate. It was alleged that the District Manager, Lucknow, directed the Manager Branch Office, Varanasi, to make the necessary correction in the service

agreement of the plaintiff with regard to his date of birth on the basis of the date of birth recorded in the High School certificate. According to the plaintiff, pursuant to the aforesaid direction, the date of birth was corrected and recorded as 10.7.1932 in the service book of the plaintiff. The plaintiff alleged that after a lapse of 17 years, a charge-sheet dated 28.9.1981 was issued alleging that the plaintiff had mentioned different date of birth at various point of time, with the ulterior motive of continuing in the service beyond the age of superannuation. The plaintiff further alleged that without making any enquiry the disciplinary authority passed an order dated 11.7.1983 censuring the plaintiff and fixing his date of birth as 31.10.1925. The plaintiff, thereafter, preferred an appeal, which was rejected, hence the suit.

3. The defendant bank contended that at the time when the plaintiff joined the services of the bank in December, 1945, he had declared his date of birth as October, 1925. Subsequently at different point of time, the plaintiff gave different declarations with regard to his date of birth. The plaintiff deliberately suppressed his previous declarations and by playing a fraud, got an order for correcting his date of birth on the basis of the date of birth recorded in the High School certificate. The interpolation in the date of birth in the service book was noticed in the year 1981 and accordingly the plaintiff was given a notice and subsequently he was charge-sheeted. Since the reply of the plaintiff was not found satisfactory, the disciplinary authority took a lenient view and only censured him and further directed the Regional Manager to determine the date of birth of the plaintiff. The Regional Manager accepted the date of birth as 31.10.1925, as declared by the plaintiff in the Confidential Report Form dated 26.5.1949. The defendant contended that the plaintiffs date of birth as 10.7.1932, could not be accepted on the ground that the plaintiff would have been a minor when he was employed in December, 1945 and that as a minor he could not be employed in the service of the bank in December, 1945. The defendant further contended that the retirement of the plaintiff is governed by the date of birth as declared by him at the, time of his appointment.

4. The trial court after framing various issues and after considering the evidence on record dismissed the suit of the plaintiff holding that the correct date of birth of the plaintiff was 31.10.1925. The trial court further held that the order passed, by the disciplinary authority as well as by the appellate authority was valid and that the principles of natural justice was not violated by the authorities while fixing the date of birth of the plaintiff. The trial court further found that the date of birth recorded in the High School register could not be accepted as the correct date of birth, inasmuch as the basis of recording the said date of birth in the High School certificate had not been explained or proved by the plaintiff by any oral or documentary evidence. The trial court came to the aforesaid finding on the reasoning that the plaintiff had not given any satisfactory explanation as to on what basis did the plaintiff gave his date of birth while filling the High School Examination Form especially when the plaintiff never went to school nor appeared in Middle School and that the plaintiff had appeared directly for the

High School Examination. The trial court further held that various forms filled by the plaintiff at different point of time were in the handwriting of the plaintiff and therefore, the plaintiff at different point of time gave different date of birth for vested reasons. The trial court further found that no representation was made by the plaintiff in the year 1965 with regard to the correction of the date of birth in the Service Register and therefore, the defendant bank had power to rectify the interpolation of the date of birth made in the service book of the plaintiff.

5. The appellate court concurred with the finding of the trial court and dismissed the appeal of the plaintiff. Aggrieved by the judgment of the court below, the plaintiff has preferred the present second appeal.

6. Heard Sri H.N. Singh, the learned counsel for the plaintiff-appellant and Sri K.L. Grover, the learned counsel for the defendant bank.

7. The present second appeal was admitted, on the following substantial questions of law, namely :

(1) Whether the court below erred in ignoring the date of birth mentioned in the High School certificate; the genuineness whereof was never disputed by the defendant?

(2) Whether the defendant acted entirely without jurisdiction in changing the correct date of birth of the appellant without affording any opportunity to him of being heard and the entire proceedings being in violation of principles of natural justice were void?

(3) Whether the court below has erred in law in altogether omitting to consider the admission of the defendant, which has vitiated the order?

(4) Whether the order dated 26/27.2.1965 of the defendant had become final and was not open to the defendant to proceed on the assumption that the date of birth of the appellant, as mentioned in the High School certificate was not his date of birth?

(5) Whether the order dated 10.10.1982 passed by the defendant was clearly without Jurisdiction null and void?

(6) Whether the suit was barred by the provisions of Section 34 of the Specific Relief Act?

8. The learned counsel for the appellant has only raised two submissions for the consideration of this Court. At the outset, the learned counsel for the appellant conceded that as per rules, the date of birth recorded in the service book could only be rectified on the basis of the date of birth recorded in the High School certificate, provided the incumbent had passed the High School before being employed in the service of the bank. The learned counsel for the appellant further conceded that where the Incumbent passed the High School examination after being employed, then, in that case the date of birth recorded in the service book given by the incumbent at the time of employment would be taken as

correct and treated as final and that the date of birth recorded in the High School certificate could not be made the basis for correcting the date of birth in the service book. However, the learned counsel for the appellant contended that the matter with regard to the plaintiffs date of birth was finally settled in the year 1965, in which his date of birth was recorded as 10.7.1932 on the basis of the High School certificate and which was accepted by the defendant bank. Therefore, the bank could not reopen the issue after a lapse of 17 years and that too at the fag end of the plaintiffs career. In support of his contention the learned counsel for the appellant has relied upon a decision of a Division Bench of this Court in Sankatha Prasad v. Zila Basic Shiksha Adhikari, Fatehpur and Ors., 1989 (1) UPLBEC 613 . wherein it was held that the date of birth once entered In the service record became final and in the absence of any provision for correcting the date of birth, the same could not be rectified and became final. The learned counsel for the appellant further relied upon a decision of the Supreme Court in Hindustan Lever Ltd. Vs. S.M. Jadhav and Another, , holding that at the fag end of the career, a party cannot be allowed to raise the dispute regarding the date of birth.

9. The aforesaid submissions raised by the learned counsel for the appellant cannot be accepted and has to be rejected. It has come in evidence that the plaintiff had played a fraud and gave different declarations of his date of birth at different point of time. It has also come in the evidence that the plaintiff had suppressed his previous declaration with regard to his date of birth and somehow managed to get the date rectified. The contention of the learned counsel for the appellant that the matter with regard to the date of the birth was finally settled in the year 1965 and cannot be reopened after 17 years is devoid of any merit. If the date of birth in the service book has been interpolated by suppressing material facts and by playing fraud, there is no reason why the bank cannot investigate into the matter and rectify the date of birth, whenever the error comes to light. The judgment of this Court cited by the learned counsel for the appellant is neither helpful nor applicable and in fact goes against the appellant. The said judgment clearly indicates that in the absence of any rules, the date of birth once entered in the service record becomes final. In the present case, the plaintiff-appellant conceded that as per the rules, the date of birth recorded in the service book could not be rectified on the basis of the date of birth recorded in the High School certificate where the incumbent had passed the High School examination after being employed in service. Thus, as per the rules, the date of birth recorded in the service register at the time of employment became final and the same could not be rectified or corrected on the basis of the date of birth recorded in the High School certificate especially when the plaintiff had passed the High School examination after being employed in service. The rectification of the date of birth in the service book in the year 1965 was made on misrepresentation and by concealment of material facts.

The rectification could not be done in the first place as it was against the rules. When the fraud played by the appellant was detected by the bank, a notice was

served upon the plaintiff and thereafter a charge-sheet was issued. After considering the explanation of the plaintiff the date of birth was rectified by the bank. Therefore, when fraud is played upon the bank, it is always open to the bank to rectify the error whenever it is detected. Consequently, for the aforesaid reasons, the judgment of the Supreme Court in Hindustan Levers case (*supra*), cited by the learned counsel for the appellant is neither helpful nor applicable to the present facts and circumstances of the case. Thus. I hold that the rectification of the date of birth in the service book of the plaintiff made in the year 1965 had not become final and it was open to the bank to rectify the interpolation when the fraud committed by the plaintiff was detected.

10. The learned counsel for the appellant next contended that there was no bar for a minor being appointed in the service of the bank and therefore, the plaintiff was validly appointed in the year 1945 even though he was only 13 years 5 months old at that point of time. In support of his submission, the learned counsel for the appellant invited my attention to Section 3(3) of the Employment of Children Act, 1938, and contended that a child of 12 years old could be permitted to work in a workshop, which is not mentioned in the schedule. Since the bank is not mentioned in the schedule, the plaintiff-appellant was validly appointed even though he was a minor in the year 1945. The argument of the learned counsel for the appellant is devoid of any merit. The main object of the Employment of Children Act, 1938, was to prevent exploitation of child labour in workshops and other specified occupations. The Act regulates the employment of children in certain Industrial employments. Section 3 of the Act prohibits the employment of a child, who had not completed his 15 years in certain occupation mentioned therein. Section 3 (3) of the Act reads as under :

"(3) No child who has not completed his (fourteenth) year shall be employed or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on."

11. The year "fourteenth" was substituted by the word "twelfth" w.e.f. 1.4.1949. On this basis, the learned counsel for the appellant submitted that a child, who had not completed his twelfth year could be permitted to work in such workshop other than those mentioned in the schedule and since the bank was not mentioned in the Schedule, the plaintiff-appellant was validly appointed as a minor in the year 1945. This argument of the learned counsel for the appellant is wholly misleading and misconceived. In the first place, the defendant bank is not a workshop nor an Industrial establishment. The Employment of Children Act, 1938, regulates the employment of children in Industrial Employment. The word "workshop" contemplated in Section 3 (3) of the said Act has been defined u/s 2 (d) of the said Act to mean any premises wherein any industrial process is carried on. Admittedly the defendant bank is not a workshop and therefore Section 3 (3) is not applicable, Not only this, the word "fourteenth" year was substituted by the word "twelfth" year w.e.f. 1.4.1949, whereas the plaintiff was engaged in the service of the bank in the year 1945. Therefore, the amendment

in Section 3 (3) of the said Act is not applicable. It is thus clear that the Employment of Children Act, 1938, is neither helpful nor applicable to the plaintiffs case.

12. On the other hand, the defendant had clearly stated in the written statement that no minor could have been appointed in the service of the bank. Even though this fact had been denied by the plaintiff in his rejoinder-affidavit, he has not been able to prove that the bank had employed persons who were minor in age during the pre-independent period. Thus, the contention of the learned counsel for the appellant that the plaintiff, being a minor in the year 1945, could have been appointed in the service of the bank is devoid of any merit and is rejected.

13. Looking into another aspect of the matter, I find, that the plaintiff had given different declarations with regard to his date of birth at different point of time. In the Confidential Report Form dated 26.5.1949, the plaintiff-appellant had declared his date of birth as October, 1925. He had also shown his educational qualifications as "up to High School". In the Confidential Report Form dated 6.2.1951 he had shown his date of birth as 20.10.1929 and had shown his educational qualifications as "Matric plucked", meaning thereby that he failed in his Matriculation examination. In the Identity Form dated 9.6.1952, the plaintiff declared his date of birth as 10.7,1929 and had shown his educational qualifications as "upto High School". It is in this Identity form in which the plaintiffs date of birth was altered from 10.7.1929 to 10.7.1932. The courts below have found that the entries in the aforesaid forms were made by the plaintiff-appellant himself and were in the handwriting of the plaintiff. The courts below further found that the alteration made in the identify form was made on the basis of the date of birth recorded in the High School certificate and that the Confidential Report Form was suppressed by the plaintiff, thereby misleading the Regional Manager. What is further striking and glaring is that the plaintiff had given his educational qualifications as "up to High School" whereas the plaintiff in his evidence has admitted that he never studied in any school and that he straightaway give his High School examination in the year 1953. Therefore, it is clear that the plaintiff not only furnished wrong information about his educational qualifications, but also gave different date of birth at different point of time with the ulterior motive of continuing in the service beyond the age of retirement. Thus, the disciplinary authority had rightly and validly rectified the mistake and corrected the date of birth of the plaintiff as 31st October, 1925.

14. In *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, , the Supreme Court held that concurrent findings of fact howsoever erroneous cannot be disturbed by the High Court in the exercise of powers u/s 100, C.P.C. The Supreme Court further held that in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court would be binding on the High Court in the second appeal.

15. In my view, the concurrent findings of fact given by the courts below requires no interference by this Court in the second appeal. I further find that the

conclusion drawn by the courts below are neither erroneous nor contrary to law. Further, I find that no substantial questions of law are Involved in the second appeal, which requires interference by this Court in the exercise of its limited Jurisdiction u/s 100 of the Code of Civil Procedure. Consequently the second appeal is devoid 6f any merit and is dismissed with costs throughout.