

(2009) 12 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : CSA No. 30 of 2003

J and K State Board of School Education	APPELLANT
Vs	
Krishan Lal Gupta (Dr.)	RESPONDENT

Date of Decision : 29-12-2009

Acts Referred:

Jammu and Kashmir Specific Relief Act, 1977 — Section 55

Citation : (2010) 2 JKJ 160

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nisar Ahmad Kakru, J.—A civil suit filed in the Court of Sub Judge (CJM) Jammu, way back in the year 2000, by Dr. Krishan Lal Gupta,

Assistant Professor Government Medical College Jammu (now Professor), against the State of Jammu and Kashmir, its functionary, the Principal

Medical College Jammu for declaration, to the effect that his actual date of birth is 22-3-1953 and for consequential relief, to command the

Defendant-State, his employer to reflect it in his service records, with a further prayer to direct the Secretary Jammu, and Kashmir Board of

School Education, to correct his Matriculation Certificate, came to be allowed by the trial Court on the strength of documentary and oral evidence,

culminating the suit into a decree and judgment dated 22-07-2002. The Defendant-State, employer of the Plaintiff-Respondent, did not question

the decree and the judgment but the Jammu and Kashmir Board of School Education through its Secretary, Defendant in the suit, preferred a Civil

Ist Appeal which was dismissed on 30-04-2003, resultantly, Civil 2nd Appeal on hand, not by the State but again by the Jammu and Kashmir

Board of School Education through its Secretary (Appellant-Board for short), seeking interference with the concurrent findings of the fact, on the

questions formulated in its memo of appeal, terming them as substantial questions of law which may be noticed:

(a) Whether a mandatory injunction could be issued against a statutory body to correct its record which was otherwise recorded in accordance

with the Regulations and procedures prescribed thereunder?

(b) Whether the principle of estoppel could be attracted in a case in which Board was not at fault in incorporating the date of birth in its record and

the certificates as per the declaration made by the student himself?

(c) Whether the courts below were not estopped from directing the correction of the date of birth when the certificate of date of birth was issued in

accordance with the declaration made by the candidate himself?

(d) Whether relief in the nature of mandatory injunction could be issued against the Appellant Board to do something which was otherwise not

permissible under the relevant regulations of the Board?

(e) Whether the period of limitation to file a suit under Article 67 of the Limitation Act is to start from the date of knowledge of the mistake even in

a case where the Plaintiff could have with the diligence discovered the mistake earlier?

(f) Whether in terms of Section 55 of the specific Relief Act, the courts of law in addition to preventing the breaches of a legal obligation are also

supposed to prevent the breach of a moral obligation?

(g) Whether the Plaintiff was not entitled to any relief of declaration mandatory injunction having acquiesced and admitted the recording of his date

of birth in his admission-cum-permission form as 10.4.1949 AD?

(h) Whether the courts below recorded a perverse finding as regards the issue of limitation?

(j) Whether the courts below recorded a perverse finding on the issue of non-joinder of necessary parties by holding that Secretary J&K Board of

School Education as a party Defendant should amount to impleading the Board itself as a party?

2. Having noticed the questions, it will be appropriate to extract Section 1.00 of Code of Civil Procedure;

100. Second appeal (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal

shall lie to the High Court from every decree passed in appeal by any Court, subordinate to the High Court, if the High Court is satisfied that case

involves a substantial question of law.

(2)

(3)....

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the Respondent shall, at the hearing of the appeal, be allowed to argue that the

case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reason to be recorded, the

appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question].

3. It transpires from a plain reading of the section that an appeal shall lie to the High Court from a decree passed in appeal if it is satisfied that case

involves a substantial question of law which according to the learned Counsel for the Respondent-Defendant is wanting, hence maintainability of

appeal questioned, therefore a necessity to address the above said questions.

4. Question (a) suggests that if an entry is made in the record in accordance with the Regulations, a mandatory injunction cannot be issued. Answer

to the question depends on the proof of the fact that the entry was made in accordance with the procedure established by law and if such fact is

proved, another question that would arise is, as to which the law is, that forbids the Court from passing a decree. Apart from the fact that the

requisite facts have not been proved, question raised is not a substantial question of law but a mixed question of fact and law.

5. Question (b) and (c) deserve appreciation on the facts set out by the Plaintiff (Respondent 1 herein) in his plaint, that his parents were illiterate

and the mistake was committed by the Master of the School, knowledge whereof, had accrued to him for the first time in the year 1998 when he

had shown his horoscope to the Pandit. Be that as it may, the question aims at attraction of principle of estoppel, presupposing proof of two factual

aspects, one that the date of birth was declared by the Plaintiff-Respondent himself as a student, the other, that the Appellant-Board has not

faulted in recording it and both are questions of fact and not substantial questions of law.

6. Question (d) speaks of absolute immunity to the Appellant-Board from being sued for correction of the date of birth, indicating existence of a

legislation, out of which the privilege flows to it but no legislation, not even worth the name was pointed out by the Appellant and there being none,

question does not arise.

7. Questions (e) and (h) relate to limitation and need to be examined in the light of the language of the article 67 of the Limitation Act No: IX of

1995 which reads:

Description of suit Period of limitation Time from which period begins to run.

67 For relief on the ground Three Years When the mistake of mistake becomes known to the Plaintiff.

A bare perusal of the article reveals that the period of limitation begins to run from the date, the mistake becomes known to the Plaintiff. Thus

introduction of the words ""discovery of mistake by diligence"" into the article is nothing beyond a wishful thinking, on the part of the Appellant-

Board to assume a power to re write the statute unto itself. Regarding contention of the Appellant-Board, alleging perversity of finding of the fact,

suffice it to say, that on the face of the article, it is without any basis and is wholly misconceived.

8. Question (f) would arise, if it is pleaded by the Plaintiff-Respondent that in exercise of its powers u/s 55 of the Specific Relief Act, the Court has

to prevent the breach of a moral obligation as well, apparently dependant on proof of a fact, therefore not a substantial question of law and proof

thereof cannot be conceived of by the Appellant-Board even in his widest dreams because no such averment is pleaded at all by the Plaintiff and

the foundation of the question is hypothetical and unreal.

9. Question (g) necessitates proof of the fact by the Appellant-Board, that the Plaintiff had admitted that his date of birth was recorded on his

statement, made by him and also of the fact, that the Plaintiff has entered into an agreement with the Board that he will not sue it, or that there is a

legislation preventing him from invoking the civil court's jurisdiction, then only

question of acquiescence would arise and in absence of proof of the facts so stated, lack of jurisdiction of the court could not be comprehended. All said and done, it is a mixed question of a fact and law and not a substantial question of law. Regarding contention of the Board that the Plaintiff has acquiesced to its jurisdiction, the Board has to prove existence of an agreement between the Plaintiff-Respondent and the Appellant-Board, providing for acceptability of the orders and decisions of the Appellant-Board by the Plaintiff-Respondent and finality thereof, preventing the Plaintiff-Respondent from exercising his right to sue and all these aspects of the matter are factual and not legal.

10. Question (j) refers to nonjoinder but no rule or regulation is referred which would make it imperative upon the Plaintiff to sue the Appellant-

Board through the Board itself and not through the Secretary of the Board who is otherwise also a party to the lis, therefore, question doesn't arise.

In addition to that being a technical objection and not a substantial one, cannot be a ground to upset the decree and the judgment.

11. One more fact crying for attention of the court, is the total failure of the Appellant to bring anything to the notice of the court which would

forbid the aggrieved person from invoking the jurisdiction of the civil court, therefore, challenge calls for consideration on the pleadings of the

Appellant and relevant being Notification No. 1-B of 1995 dated 06-02-1995, forming annexure D3 to the written statement (running page 26)

filed by the Board in opposition to the plaint, is extracted:

THE JAMMU AND KASHMIR STATE BOARD OF SCHOOL EDUCATION JAMMU
Notification No. 1-B of 1995 DATED 06.02.1995

Pursuant to the decision taken by the Board as its meeting held on 24.01.1995, it is hereby notified for the information of a concerned that: -""the

name, parentage, date of birth and other particulars of any candidate registered with the Board for examination shall be final and shall not be

subject to any change.

Provided that the Board or any Committee nominated by it for this purpose may consider change in the registered particulars of any candidate, in

case the same is warranted.

12. The argument of the learned Counsel for the Appellant that correction of the date of birth is impermissible under regulations, is both misplaced

and misconceived and is belied by Notification forming part of Appellant-Board's pleadings which provides very specifically for correction of the

date of birth wherever warranted which would mean that if the Board fails to make the correction in a genuine case, the Court is within its powers

and has the jurisdiction to direct the Board to make the correction. Moreover, there is nothing in law which would construe as taking away from

the Plaintiff his right to sue by an administrative decision taken by the Appellant-Board.

13. Coming to the argument of the learned Counsel for the Appellant that the questions have been raised by the Board for the first time, apposite it

is to refer to the issues on which suit was contested by the parties which read:

1. Whether suit is time barred and deserves to be dismissed? OPD
2. Whether suit is bad for non-joinder of necessary parties? OPD
3. Whether the principle of estoppel apply to the facts of the case? OPD
4. Whether the Plaintiff's date of birth is 22.3.1953 and not 10.4.49? OPD
5. Whether notice u/s 80 CPC was served upon all the Defendants? OPD
6. Relief.

14. Perusal of the issues framed by the trial court would make it clear that the questions (a), (d), (f) and (g) formulated by the Appellant were not

urged and no effort was ever made by the Appellant-Board to seek amendment of the pleadings or reframing of the issues, therefore, he cannot be

allowed to raise these questions for the first time in the civil second appeal.

15. Now a word on the basis of record. Its perusal reveals that the findings recorded by the trial Court, affirmed by the appellate Court, declaring

the date of birth of the Plaintiff-Respondent as 23-02-1953 instead of 10-4-1949 is founded on the certificate of the Municipality, genuineness and

authenticity whereof stands established by having proved it to be the true copy of the original record, produced by the Municipality before the

Court, supported by oral evidence as well. More so, credibility of the witnesses of the Plaintiff-Respondent has remained unshaken despite cross

examination by the counsel for the Appellant-Board. In the said backdrop, there is no reason for this Court much less justifiable one to take a view

contrary to the one taken by the trial Court and the Ist Appellate Court on the merits of the evidence.

Thus even on re-appreciation of evidence interference with the concurrent findings is unwarranted.

16. I would now like to examine the scope of interference in the Civil Second Appeal by reference to Section 100 of CPC but any deliberation on

my part on that count is uncalled for in view of readily available guidance from a catena of judicial pronouncements handed down by the apex court

and a few are, relevant paragraphs whereof are reproduced hereunder:

Gurdev Kaur and Others Vs. Kaki and Others, , :

71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100

CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any

second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is

their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the

duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

72. When Section 100 CPC is critically examined then, according to the legislative mandate, the interference by the High Court is permissible only

in cases involving substantial questions of law.

Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others,

40. Similarly, before amendment in 1976, this Court also had an occasion to examine the scope of Section 100 Code of Civil Procedure. In *Deity*

Pattabhiramaswamy v. S. Hanymayya the High Court of Madras set aside the findings of the District Judge, Guntur, while deciding the second

appeal. This Court observed that (AIR p.59, para 13) notwithstanding the clear and authoritative pronouncement of the Privy Council on the limits

and the scope of the High Court's jurisdiction u/s 100 of the Code of Civil Procedure, some learned Judges of the High Courts are disposing of

second appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it

does not possess, a gambling element in the litigation and confusion in the mind of the litigant public. This case affords a typical illustration of such

interference by a Judge of the High Court in excess of his jurisdiction u/s 100 of

the Code of Civil Procedure. We have, therefore, no alternative but to set aside the judgment of the High Court which had no jurisdiction to interfere in second appeal with the findings of fact arrived at by the first appellate court based upon an appreciation of the relevant evidence.

17. The dictum of the judgments supra is unambiguous to the effect that interference with the findings of fact would amount to excess of jurisdiction

u/s 100 of the CPC and indulgence by the High Court is permissible if the Civil Second Appeal involves a substantial question of law which it does

not in my considered opinion, therefore liable to dismissal.

18. For the reasons stated above, the appeal fails and is dismissed. No order as to costs.