
(2006) 03 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 521 of 1993

Karam Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 20, 80, 80
Punjab University Calendar Rules, 1976 — Rule 3, 3

Citation : (2006) 143 PLR 709 : (2006) 2 RCR(Civil) 755

Hon'ble Judges : Viney Mittal, J

Bench : Division Bench

Advocate : Divya Sharma, for the Appellant; Sushant Maini, D.A.G. for Respondent No. 1 and G.S. Sandhawalia, for the Respondent

Judgement

Viney Mittal, J.—The present regular second appeal has been filed by an unsuccessful plaintiff.

2. The plaintiff-appellant filed a suit for declaration on August, 24, 1985. It was claimed by him that his date of birth mentioned in the matriculation certificate as January 1, 1948 is absolutely incorrect and his correct date of birth is April 17, 1949 as correctly entered in the register maintained by the Office of the Registrar, Births and Deaths, Amritsar. Consequently, a relief was sought against the defendants for directing them to correct the entry regarding date of birth of the plaintiff in the University record, as per the record maintained in the office the Registrar, Births and Deaths, Amritsar.

3. It may be relevant to notice here that the suit in question was filed by the plaintiff against the State of Punjab as well as Punjab University. The said suit was filed by him in the Court of Sub Judge at Amritsar. The plaintiff pleaded that he was born on April 17, 1949 at Village Alkare, Police Station Kathu Nangal, District Amritsar. An entry to the aforesaid effect was made in the register maintained by the office of Registrar, Births and Deaths Amritsar. Along with the suit, a certificate issued by the Additional District Registrar, Births and Deaths

was appended. The plaintiff claimed that he was admitted in the Primary School, Waryam Nagal, District Amritsar and, at that point of time, his date of birth was recorded by his parents by guess work as January 1, 1948, which resulted into an incorrect entry of date of birth. The plaintiff pleaded that his parents were uneducated, rural folk and at the time of admission could not give correct date of birth. Upon coming to know the aforesaid error in recording his correct date of birth, he approached Punjab University, Chandigarh by giving his correct date of birth as April 17, 1949. As required by the University, the plaintiff submitted an affidavit duly sworn by his mother, indicating the date of birth of the plaintiff along with dates of birth of her other children. All the requisite documents, as required by the University were submitted by him but his date of birth was not corrected by the University.

4. The plaintiff further pleaded that he entered the Government service as a Lecturer on April 24, 1974 by joining G.K..S.N. Government College Tanda Urmur, District Hoshiarpur. In February, 1976 itself, the plaintiff applied to the Punjab University for correcting the date of birth. He also requested the D.P.I., Punjab, Chandigarh for correction of the date of birth in the service record. However, the State Government maintained that the plaintiff should first get his date of birth corrected in the University record and only thereafter his request for change of date of birth in the service record could be entertained. The plaintiff also pleaded that in May, 1981 he had joined Punjab Civil Services, Executive Branch but the matter with regard to the correction in his date of birth was still pending.

5. In the plaint, the plaintiff specifically pleaded that cause of action had accrued to him in May, 1983 when the defendants refused to admit the claim of the plaintiff. He also pleaded that since he was born at village Alkare, Police Station Kathu Nangal, District Amritsar and an entry in this respect was made in the register maintained in the office of the Registrar, Births and Deaths, Amritsar, therefore, the Courts at Amritsar had the jurisdiction.

6. Defendant No.1, State of Punjab chose not to appear despite service. Consequently, it was proceeded against ex parte. The suit of the plaintiff was contested by defendant No. 2, Punjab University. Besides generally denying all the facts contained in the plaint, defendant No. 2 also chose to raise a plea of limitation and also objected to the territorial jurisdiction of the court at Amritsar.

The learned trial Court framed the following issues:

1. Whether the plaintiff is entitled for the declaration prayed for? OPD
2. Whether the suit is barred by limitation? OPD
3. Whether the civil court at Amritsar has no jurisdiction to try this suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.

7. The parties led their evidence. After the conclusion of the evidence by the parties, vide judgment dated January 16, 1988, learned trial Judge decided issues No. 2 and 3 against the plaintiff. It was held that suit filed by the plaintiff was barred by limitation. It was further held that civil court at Amritsar had no territorial jurisdiction to try the suit. Issues No. 4 with regard to maintainability of the suit was decided against the defendants. However, in view of the findings recorded on issues No. 2 and 3, learned trial Judge chose not to give any finding on issue No. 1 i.e. on merits of the controversy. Consequently, the suit filed by the plaintiff was dismissed.

8. The plaintiff filed an appeal before the learned first appellate Court. The appeal of the plaintiff was also dismissed by the learned first appellate Court vide judgment dated September 16, 1992.

9. The judgment and decree of the Courts below have been challenged by the plaintiff through the present regular second appeal.

10. I have heard the learned Counsel for the parties at some length and with their assistance have also gone through the record of the case.

11. As noticed above, the learned courts below have chosen not to deal with the merits of the controversy at all. Since the learned trial Judge chose to non-suit the plaintiff only on account of issues No. 2 and 3 having been decided against him, the first appellate court has also affirmed the findings on the aforesaid issues and rejected the appeal of the plaintiff. In these circumstances, although the arguments have been addressed on merits of the controversy also by the learned Counsel for the plaintiff, I deem it appropriate to confine my judgment only with regard to the issues which have been decided against the plaintiff-appellant.

12. The following substantial questions of law, arise for consideration in the present appeal:

(a) Whether the suit filed by the plaintiff could be held to be barred by limitation?

(b) Whether the civil Court at Amritsar had the territorial jurisdiction to decide the suit and therefore, the finding recorded otherwise by the courts below is liable to be set aside?

13. The learned Counsel appearing for the appellant has vehemently argued that the suit filed by the plaintiff could not have been held to be barred by limitation. It has been contended that the plaintiff had applied to Punjab University for correction of the date of his birth from January 1, 1948 to April 17, 1949. The said correction was sought by the plaintiff on the basis of the record maintained by the office of the Registrar, Births and Deaths. Learned counsel maintains that the request of the plaintiff for the aforesaid correction was placed before a Committee constituted by the University and the aforesaid Committee had opined that since the claim of the plaintiff was not covered under the Rules, the same being not based upon any clerical error, therefore, the same could not be

accepted. The aforesaid opinion of the Committee was communicated to the plaintiff. However, later on the plaintiff had moved an application/appeal before the Vice Chancellor of the University requesting him to order the necessary correction. The aforesaid request dated February 1, 1983 made by the plaintiff was also rejected by the Vice Chancellor vide communication dated March 25, 1983, when the plaintiff was again informed by the Vice Chancellor that his case was not covered under the Rules governing correction in the date of birth cases, as framed by the Syndicate of the University. According to the learned Counsel, the aforesaid communication was sent by the office of the Vice Chancellor on March 25, 1983 and, therefore, the suit filed by the plaintiff on August 24, 1985 could not be treated to be barred by limitation, in any manner. The learned Counsel has also argued that the case of the plaintiff was covered u/s 20(c) of the Code of Civil Procedure, as a part of cause of action had arisen to the plaintiff within the jurisdiction of courts at Amritsar and therefore, the plaintiff had rightly filed the suit at Amritsar.

14. On the other hand, learned Counsel appearing for the respondent-University has argued that the plaintiff had requested the University for correction of the date of his birth and vide communication received by him in the year 1979, he was duly informed of the decision dated June 30, 1978, when his claim was rejected. According to the learned Counsel the cause of action had, thus, accrued to the plaintiff in the year 1979 itself and, therefore, the suit filed by him in the year 1985 was clearly barred by limitation. The learned Counsel has also reiterated that courts at Amritsar had no territorial jurisdiction.

15. I have duly considered the aforesaid respective contentions of the learned Counsel.

16. It is not disputed by the learned Counsel appearing for the respondent-University that originally the plaintiff had applied to the University for correction of his date of birth in the year 1976, He was asked to complete certain formalities. The aforesaid formalities were duly completed by the plaintiff, when he submitted an affidavit duly sworn by his mother and also appended birth certificate issued in case of the plaintiff by the Registrar, Births and Deaths, Amritsar and also the birth certificates issued with regard to his two sisters. The said record was duly placed before the Committee constituted by the University. The proceedings of the aforesaid Committee dated June 30, 1978 are as Ex.DW1/1 on the record of the case. A perusal of the aforesaid proceedings shows that the Committee had opined as under:

The powers of the Committee are limited under Rule 3(a) and (b) given at page 392, P.U. Cal. Vol.III, 1976. In the present case neither clerical error i.e. a mistake in transferring age of date of birth from one Admission Register to another of the school where the applicant joined for the first time in the infant class, nor any absurdity had occurred and there is also no other similar reason to recommend correction as envisaged under the rules framed by the Syndicate of the Panjab University for the disposal of such applications.

17. It is also apparent that the plaintiff approached the Vice Chancellor through an appeal/representation for reconsideration of the matter. He also requested that on previous occasions the University had corrected the date of births of several other candidates whose entries were found to be correct according to the Municipal record. The plaintiff had further stated in the aforesaid appeal/representation that previously University had not constituted the Committee for correction in the date of birth but he had come to know that the aforesaid Committee had been reconstituted. Accordingly he requested the Vice Chancellor to reconsider his case. However, the aforesaid request of the plaintiff was rejected vide communication dated March 25, 1983. Even a notice u/s 80 of the CPC was issued by the plaintiff on March 14, 1985, prior to the filing of the suit. Reply Ex.P4 dated April 16, 1985 was received by him from the Punjab University, informing him that his case had already been rejected by the Date of Birth Committee appointed by the Syndicate to deal with such case, being not covered under the Rules. It is, thus, clear that the claim of the plaintiff was never considered by the Punjab University or any Committee appointed by it, on merits. In these circumstances, the said claim was not even rejected on merits. The only stand taken by the University, and the Sub Committee appointed by it, was that the case of the plaintiff could not be considered since "the powers of the Committee are limited under Rule 3(a) and (b) under the Punjab University Calendar." It was maintained that since the case of the plaintiff was neither a case of clerical error nor of "any absurdity", therefore, the same did not fall within the power of the Committee. The said rejection by the Committee and consequently by the University is not a rejection of the claim of the plaintiff on merits at all. At the most it could be taken to be a communication by the University that power of correction did not lie with the University. Therefore, in my considered view, the communication of the proceeding of the Sub Committee in the year 1979 did not furnish any cause of action to the plaintiff nor the limitation could be taken to have commenced from the aforesaid date. The limitation could have commenced for a cause of action to the plaintiff if his claim had been rejected on merits by the University. By conveying the limited power of the Committee, the University had merely conveyed its helplessness in acceding to the request of the plaintiff.

18. There is another aspect of the matter also. The plaintiff had joined the Government service in the year 1974 as a Lecturer. In the year 1976, he had requested the State Government, defendant No.1, to correct his date of birth. The State Government vide a communication dated December 20, 1982/January 4, 1983 (Ex.P2) had advised the plaintiff to get his date of birth changed from Punjab University before approaching the State government. In these circumstances, the plaintiff approached the Vice Chancellor again with the request to reconsider his claim as per the record of the office of the Registrar, Births and Deaths. When his request was not accepted by the University and the necessary change was not effected, then the plaintiff approached the civil Court by filing a suit.

19. At this stage, certain observations made by a Division Bench of this Court in the case of *Jiwan Dass v. State of Haryana and Anr.* ILR 1989 P&H 110 may be noticed as follows:

(18) A question that would naturally arise now is what should happen in cases where after the stipulated period of two years, a government servant comes to know, or acquires proof to the effect that his actual date of birth is different from the one he had given out at the time of his entry into government service. We find that the government is not insensitive to such situations. It must be precisely for this reason that the government of Haryana inserted a new provision, vide Note 4 below Rule 2.5 of C.S.R. Volume I, Part 1, by an amendment in 1973 whereby those employees who entered service on or before 21st February, 1969 were given a special opportunity to apply within six months requesting for alternation in date of birth. For reasons which need not be elaborated, such relaxations cannot be granted too frequently, and may not always cover all categories of cases. Nevertheless the fact remains that even though there is no remedy wider the administrative law after the stipulated period has expired legal remedy under the civil law will still be available, because administrative law cannot, in fact, the C.S R. and P.F.R. do not bar jurisdiction of civil courts. It may be stated here that decisions of administrative authorities allowing or rejecting those requests for alternation in date of birth which may have been made within the stipulated period, too are open to judicial scrutiny when challenged before a Court of competent jurisdiction.

(Emphasis supplied).

Thus, as per the observations made by the Division Bench, it is apparent that even if a remedy as per the administrative law/rules had become barred by limitation, a legal remedy is available to the aggrieved person under the civil law before a civil Court.

20. This Court in the case of *Hari Parshad Handa v. The State of Punjab* (1985) 87 P.L.R. 39, held as follows:

The statement regarding the date of birth made by the employee is based upon his belief and not his personal knowledge. From further information it would always be open to him to show that the statement made was incorrect and his date of birth was in fact different from the one earlier stated by him. However, if he has entered into the service fraudulently by mis-stating his date of birth the question of estoppel would arise and he would be debarred from challenging the correctness of his date of birth. For instance, a man may not be of age to enter a particular service but by wrongly giving his age he may secure employment. Later on, he would certainly be estopped from saying that he was of a younger age than the one stated by him at the time of his entry into service. Short of such a fraud or mis-representation there is no rule of estoppel which would debar him from claiming and proving that the date of birth earlier given at the time of his entry into service was not the correct one.

21. Following the aforesaid law, a learned Single Judge in the case of State of Haryana and Ors. v. Chander Singh alias Chander Bhan (1988)94 P.L.R. 264 made the following observations:

Further, in dealing with this matter, it must be mentioned that by giving his date of birth to be November 15, 1931, the plaintiff had not in any manner gained for himself a benefit which he was otherwise not entitled to, inasmuch as, he was otherwise not, entitled to, inasmuch as, he would have been eligible for appointment as Naib Tehsildar on the date he joined service, whether his date of birth was "November 15, 1931 or September 6, 1935. He thus earned no undue benefit in securing service by mentioning his date of birth to be in the year 1931. Similarly, no such undue benefit was acquired by him by his entry in the Haryana Civil Service. There, thus, being no fraud or mis-representation as alluded to be in Hari Parshad Hands's case (supra) (1985) 87 P.L.R. 39 no exception can be taken to the judgment and decree of the lower appellate Court granting to the plaintiff the relief claimed.

22. In the present case, plaintiff, Karam Singh, has specifically pleaded that he was born on April 17, 1949. He had joined the service of the State Government with effect from April 24, 1974. In these circumstances, even if the pleas raised by the plaintiff were to be accepted and it was to be taken that his correct date of birth is April 17, 1949, he was still liable to join the service of the State Government on April 24, 1974. Thus, the plaintiff has not taken any undue advantage of his incorrect date of birth. It cannot be held that he had secured his employment on the basis of any fraud. Consequently, the observations made by this Court in Hari Parshad Honda's case (supra) and Chander Singh's case (supra) are fully attracted.

In view of the aforesaid discussion it has to be held that the suit filed by the plaintiff could not be held to be barred by limitation. The findings recorded by the Courts below on issue No. 2, thus, being incorrect and are liable to be set aside and are so set aside.

23. This brings me to the decision rendered by the two courts below on the question of territorial jurisdiction.

24. The plaintiff had filed a suit before Sub Judge at Amritsar. In the plaint it was mentioned by him that he was born on April 17, 1949 at Village Alkare, Police Station Kathu Nangal, District Amritsar and an entry to this effect was made in the register maintained in the office of Registrar Births and Deaths, Amritsar. In Para 2 of the plaint, the plaintiff had further specifically pleaded that he was admitted in the Government Primary School, Waryam Nangal by his parents, when his date of birth was given as January 1, 1948. The plaintiff had, thus, given all the details with regard to the mentioning of the incorrect date of birth in his primary school record, his date of birth being entered in the register maintained in the office of the Registrar, Births and Deaths, Amritsar. Apparently the date of birth as reflected in the matriculation certificate was carried forward

from the date of birth, as recorded by the parents of the plaintiff in the primary school record. In these circumstances, the learned Counsel appearing for the plaintiff-appellant has argued that a part of cause of action had arisen to the plaintiff within the territorial jurisdiction of the Court at Amritsar and, therefore, the suit filed by the plaintiff at Amritsar could not be held to be without jurisdiction.

25. u/s 20 of the Code of Civil Procedure, every suit shall be instituted in a Court within the local limits of whose jurisdiction, the defendant, or each of the defendants resides or carries on business at the time of commencement of the suit; or where any of the defendants, where there are more than one, at the time of the commencement of the suit resides or carries on business, with the leave of the Court; or where the cause of action wholly or in part arises. The present case has to be examined with reference to Clause (c) of Section 20 of the Code.

26. The expression "cause of action" has not been defined in the Code. However, in Mulla's Code of Civil Procedure, cause of action has been defined as follows:

The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court.

In Chand Kaur v. Partab Singh 1889(16) Cal 98 Lord Watson said:

...the cause action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.

27. The Apex Court in the case of Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others, , held that by "cause of action" it is meant every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.

28. Thus, it has to be held that a cause of action is a bundle of facts on which the plaintiff bases his right to relief against the defendant and constitutes all such facts which would be necessary for the plaintiff to prove in order to sustain his claim and would include all such facts which if not proved would result in a failure for the plaintiff. In these circumstances, it has to be examined as to whether the facts which have been pleaded by the plaintiff in the plaint giving details with regard to his admission in the primary school at Amritsar wrong mentioning of the date of birth in the school register and the entry in the register of Additional District Registrar, Births and Deaths, Amritsar are such facts which the plaintiff was required to prove to succeed in his claim for correction of the date of birth. In my considered view, the aforesaid facts are not only necessary but are the basis of the claim of the plaintiff. The mere fact that the relief was being claimed

against defendant-Punjab University, which has no office at Amritsar, would be of no consequence. In these circumstances, the case of the plaintiff would be covered by Clause (c) of Section 20 of the Code of Civil Procedure. It is well settled that a territorial jurisdiction has to be determined with reference to the pleadings contained in the plaint, irrespective of the stand taken by the defendant. The stand taken by the plaintiff brings his case within the territorial jurisdiction of the Courts at Amritsar. In these circumstances, the finding recorded by the two courts below that courts at Amritsar had no territorial jurisdiction is also erroneous and, therefore, the said finding is set aside.

29. Before parting with this judgment, it must be noticed that the defendant-University has produced DW1 Prem Chand Gupta, Superintendent, as a witness. The aforesaid witness in his cross-examination has specifically admitted that the University had made inquiries from the office of Registrar, Births and Deaths and had found the claim of the plaintiff as correct. Learned counsel appearing for the plaintiff appellant, on the basis of the aforesaid statement of the said witness, has argued that the suit of the plaintiff was liable to be decreed and this Court should decide the whole claim. However, I find that to accept the aforesaid contention of the learned Counsel would be inappropriate. As noticed above, both the courts below have chosen not to give any finding on the merits of the controversy. It is also apparent that the entire evidence, of the parties has been led. In these circumstances, the learned trial Court should have given findings on all the issues, rather than deciding the suit on the basis of findings on issue No. 2 and 3 only. Such a course would have avoided the remand of the case. The suit was filed by the plaintiff in the year 1985. The present regular second appeal has remained pending in this Court for a period of 13 years. However, because of the fact that the trial Court as well as the learned first appellate Court have not touched the merit of the controversy, I am left with no other alternative except to remit the matter back to the trial Court.

In view of the aforesaid discussion, the substantial questions (a) and (b) are answered in favour of the plaintiff.

Consequently, the present appeal is allowed. Judgments and decree of the Courts below are set aside. The matter is remanded back to the learned trial Judge for decision afresh on merits of the controversy.

30. The parties are directed to appear before the learned District Judge, Amritsar on April 24, 2006. The learned District Judge shall allocate the case to a Court of competent jurisdiction, Since the parties have already led their evidence, therefore the learned District Judge shall direct the learned trial Judge, to whom, the case is entrusted, to decide the suit within a period of four months of the date of entrustment.

The office is directed to remit the lower Court record forthwith to the learned District Judge so that the directions with regard to entrustment and disposal of the suit can be complied with.