
(2005) 03 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : CIA No. 01 of 1995

Managing Director and Others	Vs	APPELLANT
Mst. Saleema and Others		RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Article 119, 14

Citation : (2005) 3 JKJ 33 : (2006) 1 LLJ 817

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : Ishfaq Muzamil Nehvi, for the Appellant; S.H. Thokar, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Backdrops of the case:

Plaintiff, Noor-ud-din Beigh, presented a suit in the court of Judge small Causes on 12th March, 1985 with the prayer that a decree of declaration,

declaring his date of birth as 5th May, 1938 instead of 1st July, 1928, which has wrongly been shown in the service book of the plaintiff, be

passed in his favour and he be permitted to continue in service and has also prayed for consequential benefits. The defendants resisted the suit and

the trial court decreed the suit of the plaintiff.

2. It is profitable to give brief resume of the plaint herein;-Respondent (Noor-ud-Din Beigh) was appointed as daily-wager in Government Flature

Unit JKI Ram Bagh and his services were regularized in the month November, 1974 and he became the permanent employee. The service book

of the plaintiff/respondent was prepared and his date of birth has been recorded as 1st July, 1928. In terms of Annexure-A to the plaint, the

government issued an order under No. GSM/48/83 dated 29th June, 1983, whereby the date of superannuation of the plaintiff/respondent was

shown as 1st July, 1983 and accordingly, the plaintiff retired on 1st July, 1983.

3. It is also averred in the plaint that the defendants have wrongly recorded the date of birth of the plaintiff as 1st July, 1928, while as date of birth

of the plaintiff is 5th May, 1938.

4. The case of the defendants/ appellants in that plaintiff retired on 1st July, 1983 after attaining the age of 55 years and the plaintiff was informed

about the date of his retirement on 1st Feb., 1983 and 29th March, 1983. The said fact stands admitted by the plaintiff in para-3 of the plaint. The

plaintiff Noor-ud-Din Beigh received all superannuation benefits including leave of 78 days preparatory to his retirement on his applications dated

14.03.1983 and 04.04.1983 and plaintiff is estopped from challenging his date of birth after his retirement. The suit is after thought and is not

maintainable and cannot be entertained after two years from the date of his retirement.

5. The trial court decreed the suit. The appellants assailed the said judgment and decree before the appellate court and the appellate court upheld

the judgment and decree, hence second appeal.

6. The following two substantial questions of law have been framed by this court vide order dated 9th Feb., 1996;-

1. Whether the law of limitation will apply in the case? And

2. Whether the case is covered by Articles 119 or 14 of the Limitation Act?

Heard. Perused. Considered.

It is profitable to reproduce Article 14 and 119 herein:-

Description of suit Period of Limitation Time from which period

Begins to run.

14. To set aside any act One year The date of the act or

or Order or an officer of order.

Government in his

official Capacity, not

herein otherwise

expressly provided for

119. Suit for which no Six years When the right to sue period of limitation is accrues, provided elsewhere in this Schedule.

7. Article 14 applies when a government order is challenged and when the cause of action is based on a government order, Article 119 is applicable where the Limitation Act does not prescribe period of limitation for filing suit or bringing any action.

8. Now, dwelling on first question, whether the law of limitation will apply in the case? In terms of provisions of Limitation Act, every suit is governed by Limitation Act, so it cannot be said that Limitation Act is not applicable. If period of limitation is not prescribed by the Limitation Act of Jammu & Kashmir State, then recourse is to be taken to Section 119 of Limitation which correspond to Article 113 of Central code. Hence, the first question is replied accordingly.

9. The second question is, whether the case is covered by Article 119 or Article 14 of Limitation Act of Jammu & Kashmir State?

10. In order to decide this substantial question of law, it is to be ascertained, what relief, the plaintiff has claimed. The plaintiff is aggrieved of the order No. GSM/48/83 dated 29th March, 1983 (annexure-A to the plaint) because as per this order the date of superannuation has been shown as 1st July, 1983. The order contained in Annexure has given cause of action to the plaintiff.

11. This court has also held that in order to ascertain which of the provisions of Limitation Act covers the case, the plaint and written statement is to be perused.

12. It is crystal clear that when a government order gives cause of action, the said order is to be challenged within one year in terms of Article 14.

13. My this view is fortified by the judgment reported in 1999 SLJ 511 (Abdul Hamid Bhat v. State of J&K& Ors.). It is profitable to reproduce para-13 of the said judgment herein;-

13. The impugned order was issued in the year 1993. The petitioners had the cause of action against the order from the very date the order came into existence. This order could have been set aside even through the suit which

could be instituted within the period of one year from the date of its issuance. Under Article 14 Schedule I of the J&K Limitation Act, the petitioners had one year's time from the date of the impugned order to sue for getting it set aside. The relief to the cause was barred by limitation Act. Even the suit was thus hopelessly barred by limitation in the year 1995 when the writ petition was filed. State claims, related to Service matters, cannot be entertained, more-so when subsequent developments have taken place and the circumstances have changed. The writ petition is thus liable to fail on the ground of laches (Reliance AIR 1973 SC 1160).

14. This point has also been thrashed out by this court in a judgment reported in 2003 (1) SLJ 112 (Ghulam Nabi Bhat v. State and Ors.). It is

profitable to reproduce relevant portion of para-7 of the said judgment herein;

The case of the petitioner also is required to be examined as pointed out by the learned counsel for the respondents as pleaded in their reply that

the cause of action has accrued to the petitioner to assail the dispute of date of birth on 2nd July, 1998 when the Govt. vide its order No. 827-

GAD of 1998 decided the case of the petitioner maintaining his date of birth as 13.04.1943 instead of 13.04.1948. The petitioner has opted not to

challenge it within one year. The cause of the petitioner thus is time barred in terms of Article 14 Schedule-1 of Jammu and Kashmir Limitation

Act....

15. Having regard of the above discussion, I am of the firm opinion that the case in hand is governed by Article 14. In terms of Annexure-A to the

plaint i.e. order dated 29th June, 1983, the plaintiff came to know about his date of superannuation and stands retired on 1st July, 1983 and has

also received and accepted at the benefits. Viewed thus, the suit should have been filed within one year from 1st July, 1983 but the suit has been

presented on 12th March, 1985 i.e. beyond the period of one year.

16. Thus suit is time barred, merits to be dismissed and the impugned judgment needs to be set-aside.

17. After examining the plaint, written statement, first civil appeal and the second appeal in hand, the following substantial question is also required

to be answered;-

18. Whether the suit is maintainable after the retirement and receiving all the benefits?

19. The learned counsel for the parties were heard on this question also.

20. The Apex Court has held in a judgment reported in State of Orissa and others Vs. Ramanath Patnaik, that when the entry made in the service

record has not been assailed or even an attempt has not been made to correct the service record, while in service then the suit is not maintainable

afterwards. It is profitable to reproduce para 4 and 5 of the said judgment herein;-

4. When entry was made in the service record and when he was in service, he did not make any attempt to have the service record corrected.

Therefore, any amount of evidence produced subsequently would be of no avail. The High Court, therefore, has committed manifest error of law in

refusing to entertain the second appeal.

5. The appeal is accordingly allowed. The judgment of the High Court stands set aside. The judgment and decree of the appellate Court stands

reversed and that of the trial Court stands confirmed. No costs.

21. The Apex Court has also held in a judgment State of T.N. Vs. T.V. Venugopalan, as under;

... This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejection the correction of date

of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag

end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just

before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are

unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an

impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it....

22. The plaintiff is caught by latches and delay. Thus the court of first instance and appellate court should not have decreed the suit because delay

in seeking correction in date of birth is an important factor which always goes against the person who seeks such a correction. It is profitable to

reproduce para-15 of judgment reported in 2000 SLJ 257 herein; -

15. In Union of India and others Vs. Mrs. Saroj Bala, , the correction in the date

of birth was sought after 18 and a half years of service. This was disallowed. The delay in the matter of seeking correction in the date of birth is a factor which normally goes against the person who seeks such a correction. See Union of India (UOI) Vs. Ram Suia Sharma, .

23. The Apex court and this court has held that delay in seeking change of date of birth is suffice to reject the claim in the circumstances of the case. It is profitable to reproduce para-8 of the judgment of this court reported in 1999 SLJ 99 herein:-

8. In 1996(1) SLR 797, the Apex Court held that unreasonable delay in seeking change of date of birth can in the circumstances of a case, suffice to reject the claim.

24. Viewed thus the suit of the plaintiff is not maintainable. Thus the question is answered accordingly.

25. Having glance of the aforesaid discussion, I am of the considered opinion that appeal is to be allowed. Accordingly, the appeal is allowed and judgments and decrees of the appellant court and trial court are set aside and the suit is dismissed. Registry is directed to prepare a decree sheet accordingly. Send down the record.