

(1998) 01 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Civil Revision Petition No. 31 of 1997

Managing Director, J&K Industries Ltd

APPELLANT

Vs

Ghulam Ahmad Sofi

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Citation : (1998) SriLJ 280

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : Syed Manzoor , G.R.Tantray, Advocates appearing for the Parties

Judgement

1. This civil revision has been filed against the order passed by learned SubJudge (City Judge) Srinagar on 351997, where under learned trial

judge has allowed amendment and permitted the plaintiff/respondent before me to include the relief in the plaint. By virtue of such amendment,

plaintiff seeks the relief of declaration regarding order issued by respondent No.2 under No.BWM/EP13/ 117376 dated 2231985 to be declared

as illegal, against his rights besides the relief, already prayed for in the plaint. In order to appreciate the controversy a brief resume of the facts of

the case are required be marshaled.

2. The person of the respondent before me, Ghulam Ahmad Sofi is an employee of Bemina Woolen Mills and is alleged to have been appointed in

the corporation as a permanent employee as Assistant Boiler man in the pay scale of Rs. 250500 in the year 1963. It is alleged that in March

1979, he was, as per rules referred by the defendants/ Petitioners to the Deputy Director, Health Services for determining his age. The Medical

Officer concerned having ascertained the age of the plaintiff a 35 years in the

year 1979 and has issued age certificate accordingly to that effect, which forms annexureA to the plaint.

3. It is further averred that the said age certificate was sent to the defendant No.1 i.e. the present petitioner. The defendant no. 1 issued a letter

addressed to Deputy Provident commissioner, Srinagar for necessary entries in the plaintiff's service record. This letter forms annexureB to the

plaint. However, in reply to the said letter, the Provident Fund authorities addressed a letter No.5519 dated 25/9/1998 to the petitioners before me,

stating therein that the date of birth of the plaintiff has been changed as per age proof certificate issued by Chief Medical Officer, Srinagar. A copy

of the said letter forms annexureC to the plaint. It was on 26/4/1983 that the petitioner before me passed an order No.BWM/Adm/431/35 dated

26/4/1983, by virtue of which, plaintiff has been retired from service with effect from 26/4/1983 on the ground that he has attained the age of 55 years.

The order of his superannuation is forming annexureD to the plaint.

4. The order of superannuation seems to have been put to challenge by the person of plaintiff by way of the suit and he alleges that he was to retire

from service in the year 1989 and the impugned order of his retirement, showing him to have superannuated on 26/4/1983, is not in accordance with

the correct appreciation of the records and the age of the respondent and a prayer has been made that the plaintiff/respondent before me be

allowed to continue to be an employee of the Mill and the order issued by defendant No.2 under NO.BWM/Adm/43/35 dated 26/4/1983 being

illegal, against rules, ineffective and inoperative against the plaintiff and as such, plaintiff be deemed and declared to be entitled to all the

emoluments and benefits as an employee of said Woolen Mills.

5. The suit of the plaintiff/respondent seems to have been resisted by the defendants /petitioners before me by raising all legal and factual pleas. It is

submitted that the date of birth as recorded in the service book of the plaintiff is 6th April 1928 which as per averments of the defendants cannot

be changed in view of the rules of the Company. However, the plaintiff having joined regular services in 1972, he could not have been referred to

the Medical Board in 1979 and if any unauthorised officer/person has referred him, that is not binding on the company.

6. It seems that the suit of the plaintiff was initially put to trial regarding only

two issues which were struck out of the pleadings of the parties, which read:

1) Whether the suit in the present form is not maintainable? OPP

2) Whether the suit has been valued correctly for the purpose of court fee and jurisdiction? OPP

7. The suit of the plaintiff was dismissed when findings on these two issues were returned by the trial court on 2021985. Against this order, plaintiff

seems to have filed an appeal before the court of learned District Judge and the court of learned District Judge Srinagar seems to have accepted

the same and remanded back the case after the findings returned by the trial court were set aside.

8. After the case was remitted back, it seems that number of issues have been framed in the matter which are as many as nine and during the

tendency of the suit, evidence of the plaintiff has been recorded. In the meantime, defendants/present petitioners came out with another order of

superannuation of the plaintiff/respondent 'bearing No.BMW/PF/13/1127376 dated 2231985, which necessitated him to submit an application for

amending his plaint and to incorporate and challenge the said order in the plaint.

9. The learned trial court while dealing with the application for incorporation of this prayer, learned court after having heard/ the parties at length

and appreciated the law cited at the bar has observed that the amendment has been necessitated because the real matter in controversy is the date

of superannuation of the plaintiff/respondent/the date of birth and this has been done only when the order of superannuation of the

plaintiff/respondent before me has been issued. It has also been observed by the trial court that it will not entail recording of any further evidence

already plaintiff has lead his evidence Defendants have now to lead evidence in the matter

10. The pleas which have been taken by the petitioners in this revision petition before this court are that the amendment allowed at the belated

stage is bound to cause prejudice to the person of the defendants/petitioners.

11. I have heard learned counsel for the parties at great length and appreciated the law cited at the bar.

12. The mere fact that the plaintiff is not to lead any more evidence to project his prayer which he has incorporated by way of amendment is not

justifiable because the fact remains that the order which has been incorporated by way of amendment, to be put to challenge is the order which has been passed/issued way back in 1985 and the amendment application for incorporating this in the prayer clause of the suit already pending, has been made somewhere in November 1996. Ordinarily to put to challenge such an order, the law of Limitation provides a period of three years as per Article 62 of the Limitation Act. The plaintiff/ respondent before me should have been vigilant and should have approached the court for the proposed amendment within the statutory period when the order of superannuation which is being sought to be incorporated in the prayer clause issued in the year 1985 should have been got incorporated by way of amendment, which he has not done. Merely saying that the plaintiff/respondent before me was not properly and legally advised or he lacked legal advice will not absolve him, So the amendment in such circumstances, where in prayer for cancellation or declaration of order having been based by defendants/petitioners in the matter is being sought to be declared null and void, ineffective and inoperative in the eyes of law, by incorporating the same by way of amendment in the suit, already pending, is infact causing great prejudice and depriving the petitioners of their valuable right which has accrued to them by efflux of time, because on the date of allowing such amendment, the suit for cancellation of that order is totally barred by limitation. So such amendments are. not to be given effect or allowed. In support of his contentions, Mr.Manzoor has referred me to AIR 1957 SC 357,where in their lordships of the apex court have observed that it is nodoubt nature that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of application.

13. He has also referred to AIR 1957 SC 363,where in same principle has been reiterated by the apex court.

14. In the case in hand, the plaintiff/ respondent has sought amendment after more than ten years. So the suit for putting a challenge to such order would be totally barred by limitation and the amendments which are otherwise barred and for which fresh suit on the relevant date of incorporating of the amendment of making of the prayer of amendment is against the statute of Limitation Act.

15. Thus by allowing amendment under consideration by the trial court in derogation of law of Limitation and incorporating the prayer for declaration of the order which has been issued in the year 1985 and the amendment application having been made after more than ten years and at the time of allowing such amendment, a suit for such declaration of the order challenged by way of incorporating that in the prayer clause, would be totally barred by limitation, should and ought not to have been allowed. On that score, the order has resulted in miscarriage of justice, as is envisaged under the provisions of Section 115 clause (d) of Civil P.C. coupled with the exercise of jurisdiction which has been exercised by learned trial Judge, illegally and with material irregularity. Thus on that count, the order impugned cannot stand judicial test.

16. For the foregoing reasons, this revision is allowed and the order impugned passed by the trial court dated 351997 is set aside. Let the case file go back to the trial court for proceeding in the matter in accordance with law. Parties are directed to cause their appearance before the trial court on 30121997.