
(1998) 02 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 58 of 1995

Municipal Committee

APPELLANT

Vs

Lal Chand

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1998) 118 PLR 532

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Kamal Sharma, for the Appellant; Deepak Agnihotri and Girish Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This present second appeal is directed against the judgment of the learned first Appellate Court dated 3rd October, 1994.

2. The necessary facts are that plaintiff Lal Chand filed a suit for declaration that he had come to know of his actual date of birth recently to be 14.1.1938 and not 19.2.1936 as recorded in his service record with the appellant-committee. His representation for correction in the date of birth in his service record was rejected by the Municipal Committee, thus, giving rise to the filing of the suit. The Committee had, contested the suit. It raised objection with regard to very maintainability of the suit being barred by time and that the plaintiff was estopped from filing the suit. In addition to this it contested the suit on merits also. The learned trial court framed the following issues:-

1. What is the date of birth of the plaintiff ? O.P parties.
2. Whether the figures of the date of birth 9.3.1936 does not reflect the true date and as such the same is liable to be changed to that of 14.1.1938? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff is estopped from filing the present suit? OPD.

5. Whether the plaintiff has no cause of action to file the suit? OPD.

6. Whether the plaintiff has no cause of action to file the suit? OPD.

7. Relief.

3. All the issues were decided against the defendants and in favour of the plaintiff. Consequently the suit was decreed by the learned trial court. The appeal preferred by the Committee was also dismissed as mis-conceived. The learned courts below after appreciation of evidence had come to the concurrent finding of fact that plaintiff was entitled to the relief claimed in the suit. Mr. Ishwar Dass P.W.1., who was examined by the plaintiff has stated that the committee has passed a resolution accepting the change requested by the plaintiff but this was not granted approval by the Deputy Commissioner, Karnal.

4. The main contention raised on behalf of the appellant committee is that the principles of law governing the subject have clearly laid down that a government employee must not seek correction in the date of birth at the end of his service career. Further, it is contended by the learned counsel for the appellant that in any case the benefit that has accrued to the plaintiff cannot be permitted to count towards other pensionary and retiral benefits. In this regard, learned counsel has relied upon Union of India Vs. Harnam Singh, , Burn Standard Company Limited v. Dina Bandhu Majumdar and Ors. 1996(3) R.S J.512, State of Tamil Nadu v. T.V. Venugopalan 1994 (4) R.S.J. 795, Union of India v. Mrs. Saroj Bala, 1997 (2) R.S.J. 451, The Steel Authority of India and others Vs. New Marine Coal Co. (Pvt.) Ltd., , Union of India v. Rama Swamy and Ors. 1997 (2) S.L.R. 584.

5. On the other hand counsel appearing for the respondent hat contended that there are concurrent findings of fact and in a regular second appeal this Court need not to interfere with such findings arrived at by the learned courts below. According to him, the plaintiff his been rightly granted the relief to which the plaintiff was entitled to. In support, of his submission he has relied upon to the case of Shri Manak Chand Vaidya v. State of Himachal Pradesh and Ors. 1976 (1) S.L.R. 402.

6. In view of the peculiar facts and circumstances of the case, I do not propose to discuss the merits of this case in great detail. This is for the reason that admittedly the respondent herein had already, retired from service. In fact, the plaintiff has al ready taken the advantage of the decree passed in his favour even before filing of the present appeal. This appeal was filed in the year 1995 while the petitioner had retired on the basis of the amended date of birth in the year 1994 itself. The respondent has actually worked and the appellant has paid him in accordance with the rules for the period he worked It is a settled principles/of law that if an employee under the order of the Court or otherwise has actually worked and received salary, it will not be fair or just to direct repayment of the salary even it later on the relief to that person is declined. In this regard, reference can be made to the judgment of the Hon''ble Supreme Court in the

case of Dr. Ramji Dwivedi Vs. State of Uttar Pradesh and Others, , Keshav Tripathi v. State of U.P., Service. Cases Today 760, and Sahib Ram State of Haryana and Ors. J.T. 1990 (34) S.C 24.

7. The facts that the respondent has actually worked received his salary and has retired and the decrees passed by the courts below fully stand implemented, are not disputed. Thus, the question primarily become academic for all purpose and intents.

8. The only question that survives for consideration is, whether the period of two Years of extra service which was given to the respondent by the order of the Court below should be computed towards his pension or not. Even if, the judgment in favour of the respondent was to be disturbed by this Court, it was then alone such a contention was available to the present appellant. The appellant has neither taken in the memorandum of appeal such a ground nor it was raised or argued before the learned trial court and the first Appellate Court. It was for the appellant to be vigilant about its rights and to ensue their timely implementation. The judgment of the first Appellate Court does not even make a reference that any such ground was raised. In any case, the total excess amount in the computation of pension resulting from this period is Rs.3,000/- in all. Keeping in view the entire facts and circumstances and more particularly, the amount involved, it would neither be just, fair nor proper to reduce the pension of the respondent on the aforestated basis at this juncture. The observation of the Hon'ble Supreme Court in the case of Bum Standard Company Limited and others. (supra) relied upon by the learned counsel for the appellant would not be of advantage to the appellant as the appellant itself failed to raise this plea before the first Appellate Court, which was the most appropriate opportunity/ forum for the appellant to raise that objection. The concurrent finding of fact based on proper appreciation of evidence are not normally to be disturbed by this Court in regular second appeal. In this regard reference can be made to the case of Rajinder Kumar v. Jamna Dass Kotewala J.T. 1990(3) SC 197 and specially when the decrees passed in favour of the plaintiff stands fully implemented.

For the aforestated reasons, I find no merits In this appeal and the same is dismissed. However, without any order as to costs.