

(2002) 11 MAD CK 0084
In the Madras High Court
Case No : S.A. No. 885 of 1992

P. Baskaran

APPELLANT

Vs

Secretary, Neyveli Lignite Corporation Ltd. and The General
Manager (Mines-I), Neyaveli Lignite Corporation Ltd.

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Citation : (2003) 1 MLJ 194

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : G. Rajagopalan for V.N. Kumaraganapathy, for the Appellant; S.P. Karthik, for N.A.K.Sarma, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—P. Baskaran, the appellant herein filed a suit for declaration to declare his date of birth as 17-2-1935 and other consequential reliefs against the respondents, his employer Neyveli Lignite Corporation Limited ("NLC") at Neyveli.

2. The trial Court, on an appraisal of the materials placed by the parties before the Court, decreed the suit in favour of the appellant/plaintiff. Challenging the same, the NLC, the respondents herein, filed an appeal before the lower appellate Court, which in turn, allowed the appeal and dismissed the suit. Hence, this second appeal by the appellant/plaintiff.

3. The case of the plaintiff is as follows:-

"(a) The plaintiff joined NLC as an unskilled labourer on 4-1-1961. The NLC which was at the initial stage, used to give employment to whomsoever willing to join its services. When the plaintiff joined the services of NLC, he gave his age as 26 years.

(b) After few months, the appellant was made as a permanent employee. As

soon as his new service record was opened, he produced his school certificate to show that his date of birth is 17-2-1935. Accordingly, the said date of birth was carried out in all the official records.

(c) When he came to know that his date of birth was subsequently corrected as 1-7-1933 without his knowledge, he complained the same to the Plant Manager on 30-3-1974 that his date of birth was wrongly entered as 1-7-1933 instead of 17-2-1935. Accordingly, the Plant Manager sent a communication to the Production Superintendent to correct the appellant's date of birth as 17-2-1935 as per his school certificate. Accordingly, the correction was made.

(d) In January 1990, the plaintiff came to know that the mistake in the date of birth was not rectified and as such, he was due to retire on 31-6-1991 instead of 16-2-1993. So, the plaintiff sent a letter to the concerned authority of NLC on 18-1-1990, requesting for rectification of the mistake by mentioning all the above facts. But the authority of NLC sent a reply on 22-5-1990 informing that his request cannot be complied with. Hence the suit for declaration that the plaintiff's correct date of birth is on 17-2-1935 and for consequential mandatory injunction."

4. The case of the defendants is as follows:-

"(a) The plaintiff joined NLC on 4-1-1961. At that time, his date of birth was not recorded. Upto 1965, he could not furnish any documentary evidence relating to his date of birth. So, his age was approximately entered as 30 years in the year 1965.

(b) Later, the plaintiff was directed to furnish documentary evidence showing his correct date of birth, as contemplated under the Standing Orders for workmen of NLC. Even then, the plaintiff failed to furnish the same. Therefore, his age was assessed and computed as 1-7-1933 as provided under Clause 10 of the Standing Orders for workmen of NLC.

(c) Even though corrections were made in the comprehensive service record as per the school certificate with regard to his date of birth as 17-2-1935, it was struck off, since the said school certificate is not a certificate as provided under Clause 10 of the Standing Orders for workmen of NLC. This was communicated to the plaintiff by a memo dated 4-3-1974 and the same had been acknowledged by the plaintiff without any protest.

(d) The letter sent by the Plant Manager on 30-3-1974 on the requisition given by the plaintiff for correcting the plaintiff's date of birth as 17-2-1935, was not approved by the superior authority. This was informed to the plaintiff, by the said memo dated 4-3-1974. Therefore, the suit is belated and barred by limitation."

5. On the basis of the above pleadings, necessary issues were framed by the trial Court. During the course of trial, the plaintiff was examined as P.W.1 and Exs.A-1 to A-6 were marked on his side. On the side of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-6 were marked.

6. The trial Court decreed the suit in favour of the plaintiff as prayed for. However, the judgment and decree of the trial Court were set aside in the appeal filed by the defendants before the lower appellate Court and the appeal was accordingly allowed. Aggrieved by the same, the appellant/plaintiff has filed this second appeal.

7. When the second appeal was admitted by this Court on 25-6-1992, this Court formulated the following substantial question of law:-

"Whether the judgment of the lower appellate Court is vitiated by its failure to consider the entire evidence on record and apply the correct principles of law?"

8. I have heard learned Senior counsel for the appellant as well as the learned counsel for the respondents with reference to the above substantial question of law.

9. On going through the judgment rendered by the lower appellate Court, it is noticed that the lower appellate Court allowed the appeal merely on the ground that the suit was barred by limitation and the date of birth cannot be decided on the basis of the school certificate, without adverting to detailed reasonings given by the trial Court dealing with the various aspects of evidence, including the point relating to limitation and without mentioning any ground to hold that the findings of the trial Court are wrong.

10. In short, it is to be observed that the lower appellate Court rendered the judgment dismissing the suit without considering the materials available on record which are quite relevant for deciding the issues, and without considering the finding of the trial Court rendered on an analytical examination of the evidence brought on record, allowed the appeal on the ground of limitation by not applying the correct principles of law.

11. In other words, the lower appellate Court did not choose to appreciate the relevant evidence adduced by parties, nor dealt with the reasonings given by the trial Court in order to find out as to whether those reasonings are correct or not. On the other hand, on a perusal of the trial Court judgment, it is clear that the trial Court, being the first Court of fact, had made a threadbare discussion by analysing the evidence, oral and documentary adduced by both the parties through P.W.1, Exs.A-1 to A-6, D.Ws.1 to 3 and Exs.B-1 to B-6 and held that the plaintiff has established his plea by producing acceptable evidence that his date of birth is 17-2-1935 and rejected the case of the defendants, observing that the defendants had not come with consistent stand and produced the materials which are quite contradictory to their stand earlier taken through their written statement.

12. Under those circumstances, I am to hold that the findings rendered by the trial Court to decree the suit in favour of the plaintiff are perfectly valid, as in my considered view, the materials available on record would clearly show that the date of birth of the plaintiff is only 17-2-1935 and as such, the judgment and

decree of the lower appellate Court are liable to be set aside and that of the trial Court are to be restored.

13. The reasonings for my above conclusion are given below.

14. It is not disputed that as per Ex.A-2/school certificate, the date of birth of the plaintiff is 17-2-1935. At the time of joining NLC in 1961, the plaintiff gave his age as 26 years, as at that time, he was not required to produce the birth certificate or school certificate and accordingly his age has been entered. This is also not disputed. If the plaintiff's age was accepted as 26 years in 1961, then naturally, the year of his birth must be 1935.

15. According to the plaintiff, the school certificate/Ex.A-2 had been produced in the year 1962. This was not seriously challenged. But the said document had been objected merely on the ground that it is only a true copy and not the original one. But on the basis of Ex.A-2, an entry was made by the defendants-NLC in Ex.A-3/medical card relating to the plaintiff, Ex.B-1/service register and Ex.B-3/service book. These documents would show that Ex.A-2/school certificate was recognised by the defendants and accordingly, his date of birth was entered as 17-2-1935.

16. Ex.B-2 dated 4-3-1974 is the memo sent by the defendants-NLC to the plaintiff. This would show that the plaintiff was informed by the defendants-NLC through the said memo that his date of birth has been assessed as 1-7-1933. But Ex.A-4, the letter written by the Plant Manager to the Production Superintendent would show that immediately, on receipt of the same, the plaintiff requested for correction of the date of birth as 17-2-1935 through the Plant Manager on the strength of the school certificate which was already produced and as per his requisition, the Plant Manager sent the letter/Ex.A-4 dated 30-3-1974 to correct the date of birth as 17-2-1935. Thus, it is clear that the plaintiff raised an objection in the year 1974 itself and requested for rectification of the mistake.

17. Admittedly, in pursuance of the said letter dated 30-3-1974, the entry of date of birth has been made as 17-2-1935 in all the documents subsequent to 1974 and those entries were made upto 1989 as admitted by D.W.1. But Ex.A-3/medical card, Ex.B-1/service record and Ex.B-3/service book relating to the plaintiff would show that the said date of birth as 17-2-1935 was struck off and corrected as 1-7-1933. This must have been done only subsequent to the year 1989. Ex.A-4 was received by the defendants-NLC in the year 1974 itself. As noted above, the date of birth was entered as 17-2-1935 upto 1989. In such a fact situation, to contend that the letter dated 30-3-1974 sent by the Plant Manager to the Production Superintendent on the requisition given by the plaintiff, was not approved by the superior authority, is nothing but an incorrect statement. There are no reasons and details given by the defendants-NLC as to why this entry made upto 1989 was struck off and as to how the date of birth was assessed as 1-7-1933.

18. The contention of the defendants in the written statement is that the plaintiff's request made in 1974 was rejected and the school certificate was not recognised as a valid certificate and the same was informed to the plaintiff by the memo dated 4-3-1974. This is again factually incorrect, because Ex.B-2/memo dated 4-3-1974 did not refer to the earlier alleged wrong entries and rejection of his request. The wordings in Ex.B-2 are as follows:-

"Shri Baskaran, son of Parameswaran employed as Vul-Gr.I, in the Vul/Mines division of the....unit/branch is informed that his date of birth as entered in his Service Record is 1-7-1933.

2. He is directed to acknowledge receipt of this communication in the duplicate copy."

19. The above memo Ex.B-2 dated 4-3-1974 does not show that an enquiry was conducted for fixing his age and an opportunity was given to the plaintiff and thereafter, it was decided that his date of birth is 1-7-1933. Admittedly, the date of birth was fixed as 1-7-1933 only as an approximate date for all the employees who have not given the documentary evidence to prove their actual date of birth in pursuance of the circulars. In this case, it has been established that the plaintiff produced the school certificate even prior to 1974. Hence the contention that the defendants-NLC had assessed the date of birth as 1-7-1933, as no documentary evidence was produced by the plaintiff, is totally untrue.

20. Ex.B-5/memo, the instruction issued given to the Department on 14-11-1973, would show that the correct date of birth has to be found out from the employees by following the prescribed procedures in the absence of any valid acceptable proof of age, namely, the school certificate or the birth certificate. Through the said Memo dated 14-11-1973, the Union Heads were requested to furnish the certificates before 31-12-1973. In this case, the memo has been sent on 4-3-1974. It has been established that even prior to the said date, the school certificate was produced by the plaintiff. In the instructions in Ex.B-5, it has been specifically stated that the school certificate can be considered. But Ex.B-2 dated 4-3-1974 does not refer to anything about the school certificate submitted by the plaintiff. Thus, it is clear that the defendants-NLC never considered the school certificate, which is in violation of the instructions given through Ex.B-5.

21. It is contended that clause 10 of the Standing Orders for workmen of NLC only provided for matriculation or SSLC certificate or the birth certificate and not the school certificate. If the request of the plaintiff has been rejected on this ground, then the same could have been mentioned in Ex.B-2 dated 4-3-1974. As indicated above, a perusal of Ex.B-2 would show that it was merely an intimation to all the employees including the plaintiff that his date of birth has been assessed as 1-7-1933. Admittedly, there was no enquiry and no consideration of the school certificate produced by the plaintiff in the year 1962 before the assessment of date of birth, even though the entries were made as 17-2-1935 as his date of birth on the basis of the said Certificate.

22. Learned counsel for the respondents-NLC would submit on the strength of a decision of the Supreme Court rendered in Sahadu Bala Botre (dead) by LRs. and another Vs. Namdeo Bapuji Kerala (Dead) by LRs. and others, that the Court, at the belated stage, cannot entertain a claim for the correction of date of birth and as such, the claim of the plaintiff should be rejected.

23. I am unable to persuade myself to agree with the above contention for the reason that in this case, Ex.A-2/school certificate has been produced in the year 1962, and when the plaintiff was informed by letter/ Ex.B-2 dated 4-3-1974 that his date of birth was assessed as 1-7-1933, he rushed to the concerned department of NLC claiming correct date of birth immediately, which is evident from Ex.A-4 dated 30-3-1974. So, this is not a belated claim.

24. The trial Court has given detailed reasons as to how the suit is not barred by limitation. It is not shown before this Court as to how those reasons are wrong. On the other hand, the finding given by the trial Court that the suit filed on 17-12-1990, is not barred by limitation, as the correction made in the entry of date of birth as 1-7-1933 by striking out the real date of birth as 17-2-1935 subsequent to 13-12-1989, has never been intimated to the plaintiff by NLC and the plaintiff came to know the rejection of his claim only through Ex.A-6 dated 22-5-1990 and thereafter, the suit was filed on 17-12-1990. Therefore, the findings of the trial Court are perfectly justified.

25. In view of the discussion above, the judgment and decree of the lower appellate Court are set aside and that of the trial Court are restored. Consequently, the second appeal is allowed. No costs.