

(2010) 01 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : CIA No. 133 of 2009

S. Mohan Singh Sethi	Vs	APPELLANT
J and K State Board of School Education and Others		RESPONDENT

Date of Decision : 01-01-2010

Acts Referred:

Jammu and Kashmir State Board of School Education Regulations, 1992 — Regulation 17

Citation : (2011) 2 JKJ 809

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohd. Yaqoob Mir, J.—The instant Civil 1st Appeal is directed against the judgment and decree passed by the Court of 3rd Additional

District Judge, Srinagar in Civil Suit file No. 21/N captioned S. Mohan Singh Sethi v. J&K Board of School Education and Ors.

2. The Controversy involved in the lis is that the Appellant is actually born on 7th of August, 1954 but his date of birth has been recorded on 7th of

August, 1951 in the matriculation certificate, same date of birth is recorded in this service record. According to the Appellant in the school records

of Primary School, Tral, where he was admitted by his father on 20.04.1959, his date of birth has been recorded as 25th of Sawan 2011 which

correspond to 7th of August, 1954 of the Christian era. In his Higher Secondary certificate instead on 07.08.1954 his date of birth has been

recorded as 07.08.1951.

3. Appellant claim to have been appointed in the month of July, 1979 as Accountant-cum-Store Supervisor, then as Extension Officer in 1988. In

the same year he had come to know that his date of birth is not correctly recorded in his service book, so in the year 1988 moved a representation to the Principal Higher Secondary School, Tral where-from he had qualified higher secondary (Elective) examination.

4. It is further contended that Government issued SRO 310 which provide that the Government while exercising powers u/s 124 of the

Constitution of Jammu and Kashmir deleted Note No. 2 of Article 35-A of Civil Service Regulations and below Note-1 of Article 35-A, Article

35-AA has been added, pursuant to which the Government servant has been given chance to move an application within a period of six months

from the date of notification for alteration of date of birth and same is required to be considered by the Government. Appellant taking benefit of the

said notification has filed the application will within the period of six months praying therein for correction of his date of birth. In support thereof, he

had furnished the certificate issued by Headmaster Government Middle School, Saimoh Tral dated 26th of April, 1999, wherein it has been

certified that as per primary school admission register date of birth of the Appellant is recorded as 7th of August, 1954. After filing hectic

representations he has been finally informed by Deputy Director Handloom Development Department vide letter dated 24th of September, 2005

that before processing his case for correction of date of birth in service record, Appellant shall approach J&K Board of Secondary Education,

Srinagar for rectification in his matriculation certificate as issued by the said Board. Date of birth recorded in the service records as per C.S.R is

based on the date of birth as recorded in matriculation certificate.

5. The application filed by the Appellant before the Respondent No. 1 was returned with the remark that the delay cannot be condoned.

Consequently Appellant filed the suit for declaration and mandatory injunction wherein he had prayed for directing the Respondent No. 1

(Defendant) to correct the official record pertaining to date of birth of the Appellant by recording his actual date of birth as 07.08.1954 and a

further direction in the name of Respondents 2 to 5 to correct the date of birth of the Appellant by recording 07.08.1954 in the service record as

against the existing entry of 07.08.1951.

6. The trial court on the basis of respective pleadings of the parties has framed

as many as 11 issues which are reproduced as under:

1. Whether the Plaintiff has filed the application for rectification of mistake in his date of birth within time in pursuance to SRO 310 dated 29.11.1995? (OPP)
 2. Whether the Plaintiff has a subsisting cause against the Defendants? (OPP)
 3. Whether the date of birth certificate issued from the office of Head Master, Govt. Middle School, Saimoh Tral, Kashmir dated 26.04.1999 has no substance or effect under the rules and regulations of the Defendant Board? (OPP)
 4. Whether the Defendant No. 1 is under an obligation to decide the date of birth dispute of the Plaintiff in pursuance of SRO 310 on the basis of documents as submitted by the Plaintiff in support of his claim? (OPP)
 5. Whether the Defendant No. 1 has failed to discharge his duties in rectifying the mistake in the date of birth certificate of the Plaintiff despite having received application from the Plaintiff in this behalf under rules? (OPP)
 6. Whether the Plaintiffs suit is barred by Limitation? (OPD1)
 7. Whether the Plaintiff has no cause of action against the Defendants? (OPD1)
 8. Whether the Defendant No. 1 is not competent to order rectification/correction in the date of birth certificate of the Plaintiff as per relevant rules and regulations on the subject? (OPD1)
 9. Whether the suit has been properly valued? (OPD1)
 10. Whether this Court has no jurisdiction to try the suit? (OPD1)
 11. Relief and costs.
7. The finding on issue No. 1 has been correctly returned in favour of the Appellant as he had filed the application as required in terms of SRO 310 well within six months from the date it came into force.
8. The finding returned on issue No. 3 also needs no interference as the learned trial court has properly appreciated the factual and legal position by stating that certificate issued by the Headmaster Government Middle School, Saimoh Tral dated 26.04.1999 has no relevance because the Appellant had passed his higher secondary elective in the year 1966-67 and as per his own showing the Appellant had come to know about the actual date of birth all of a sudden in the year 1988, when in terms of Regulation

16(1) framed under the J&K State Board of School Education

Act, the entry regarding various particulars including the date of birth for admission to the secondary school examination of the Board has been

accepted on the certificate of the Headmaster of the school, so after long gap of two decades the certificate issued in the year 1999 cannot be

looked into.

9. The finding recorded on this issue has to be considered also in the backdrop of the finding on issue No. 8. Regulation 17 as framed under J&K

State Board of School Education Act has been reproduced by the trial court in the impugned judgment, which provides for correction of the date

of birth in the record of the Board only when there has been a genuine clerical error in transcribing age of the applicant from admission register of

the recognized school through which he has appeared in the Secondary School examination of the Board but such cases are not to be opened if

time barred i.e. as per Clause (c) of the said Regulation such application has to be made within a period of one year from the date of issue of

Secondary School examination certificate. The certificate has been issued in the year 1966-67 itself. Even if it is taken that the Appellant all of a

sudden came to know about his wrongly recorded date of birth in the year 1988, still within one year he had to file the application, instead he has

filed application after more than decade which on the face of it is barred by time. The Appellant has not taken such step well within the time

prescribed. Learned trial court has appreciated this aspect of the case While returning finding on issue No. 8 and has correctly decided issue

against the Appellant.

10. Issue No. 6 in essence has a bearing on the vital interests of the Appellant because the Appellant being a Government servant, his date of

superannuation depends upon the date of birth recorded in his service record. It is only after entering into the service and serving nearly for a

decade he has become conscious about his age of superannuation so has initiated action for correction of his date of birth in the service record.

11. The Respondent No. 2 to 5 have taken a categorical stand to the effect that the date of birth recorded in the service book as per Article 35-AA

of C.S.R is based on the date of birth recorded in the matriculation certificate as was produced by the Appellant at the time of his entering into

service, so neither there is any mistake nor clerical error in recording the date of birth. However, now the Appellant claims that his date of birth has been wrongly recorded in the Board certificate as the same is not in consonance with the date of birth recorded in the admission register of the Government Primary School, Saimoh Tral. It becomes imperative for the Appellant to get his date of birth corrected in his certificate issued by the Board, rightly so because the authorities are bound to record the date of birth in the service record as per the Board certificate. They cannot change the same unless Board rectifies the date of birth in the certificate so issued by it.

12. Now the question is as to whether Board of School Education-Respondent No. 1, can now rectify the date of birth. For that answer is recorded in the findings vis-a-vis issue No. 8.

13. Learned trial court while recording finding on issue No. 6 much reliance the evidence as led, rule position and the law laid down in a most lucid manner.

14. Furthermore learned Counsel for the Appellant place much reliance on the judgment in the case captioned R.K. Jangra v. State of Punjab and Ors. reported in 2009 AIOL 2037.

15. In the reported case the Appellant therein had produced his Higher Secondary Part-1 examination certificate as proof of date of birth while entering in service wherein his date of birth was shown as 04.01.1952. Within two years of joining the service, he made an application for correction of his date of birth from 4.1.1952 to 3.1.1953 before the concerned Additional District Registrar, Birth & Deaths, Jalandhar. Same was accepted and his date of birth was corrected and his correct date of birth was shown as 3.1.1953 based on which he had made a representation seeking correction of date of birth in his service record. He was directed to get his date of birth in matriculation certificate corrected from the Registrar of Punjab University. Same was rejected on the ground of being barred by limitation as envisaged in the University regulations. The High Court observed that it shall be appropriate to relegate the Appellant to avail his ordinary remedy before a Civil Court. Same was challenged before the Hon'ble Apex Court. The said order was set aside. The principal Secretary, Department of Irrigation, employer of the Appellant therein, was

directed to consider the representation filed on 08.05.1987.

16. In the instant case position is different i.e. a proper civil suit has been filed. After proper trial case of the Appellant has been found to be barred

by limitation. It shall be quite appropriate to notice that the Appellant had passed his Elective examination in the year 1966-67, has entered into

service in the year 1979 and then in the year 1988 he had filed the representation before Principal Higher Secondary School, Tral, means nine

years after entering into service he has woke up from deep slumber and has started claiming correction of date of birth. So every case has its own

facts and features. Absolute indolence can't be helped. Lethargy is lethargy, can't be remedied when a considerable period of time has run out of

hands.

17. In the peculiar facts and features of this case, the issue wise findings recorded by the trial court do not warrant any interference, more

particularly a student is expected to complete his matriculation at least at the age of 16 years. If date of birth of the Appellant is taken as 1954,

then he could not complete his matriculation in the year 1966-67 i.e. at the age of 13 years.

18. In the examination form for the examination of Higher Secondary (Elective subjects) for the year 1967 date of birth of the Appellant

unambiguously is recorded as 07.08.1951, other blanks are also filled and same bears the signature of the Appellant, with all calculations date of

birth is recorded i.e. based on the said date of birth age of the Appellant was 16 years in the year 1967 otherwise Appellant would not have been

eligible to take the same examination. Though the Appellant has projected that he has been given double promotion but same has not been proved.

Even though this circumstance has not been noticed nor was an issue, even if to be ignored still on the basis of findings recorded by the learned trial

court and for the reasons recorded hereinabove, trial court judgment and decree impugned sustains.

For the stated reasons, appeal fails so is dismissed. Decree be drawn accordingly.

Copy of the judgment and decree along with trial court record be sent back to the trial court for further follow up.