

(2003) 01 KAR CK 0056

In the Karnataka High Court

Case No : Regular Second Appeal No. 595 of 2002

State of Karnataka and Another

APPELLANT

Vs

Shivanand Fakirappa Naik

RESPONDENT

Date of Decision : 27-01-2003

Acts Referred:

Karnataka State Servants (Determination of Age) Act, 1974 — Section 5

Citation : AIR 2003 Kar 185 : (2003) 1 KCCR 846

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Tajuddin, HCGP, for the Appellant;

Judgement

R. Gururajan, J.—The State of Karnataka is before me challenging the concurrence findings of the 3rd Additional Munsiff, Belgaum in O. S. No. 153/1992 and confirmed in R.A. No. 163/1991 by the III Addl. Civil Judge (Sr. Dn.), Belgaum.

2. Respondent-plaintiff filed a suit in O. S. No. 153/1992 seeking for declaratory relief with regard to his date of birth being 10-9-1945. He also sought for a direction to correct the entry of his date of birth in S.S.C. Certificate and marks statement. In the plaint, the plaintiff states that he was born on 10th September 1945 at Kasarkop Village in Sampgaon Taluk of Belgaum District. Horoscope was prepared. Horoscope shows his date of birth as 10-9-1945. Tahsildar, Bailhongal entered the name of the plaintiff in the birth and death register maintained in the office as 10-9-1945. He was admitted in the Primary School, Hosur, Shahapur, Belgaum. The register maintained by the Primary School also shows that the petitioner's date of birth as 10-9-1945. He studied up to 7th standard in the primary school, Hosur. Thereafter, he Joined the Karnataka Shikshan Samiti Kannada Training College in Belgaum and completed the course in the year 1958. He joined the Government service in the year 1962. In the service register also it was shown as 10-9-1945.

3. He appeared as an external candidate for the S.S.C. examination in the year 1959-60 at M. J. High School, Bailhongal. While appearing as an external candidate, his date of birth was shown as 10-9-1945 in the School Leaving Certificate. However, while issuing the marks statement of S.S.C. examination, the date of birth was not correctly mentioned. He sought for mentioning of the same in the marks card. He issued a written notice. He submitted necessary details. Even then, it was not done. In those circumstances, he filed a suit. The defendants entered their appearance through their counsel. They stated that the suit was not maintainable. One witness was examined in addition to filing 19 documents. Nobody was examined on behalf of the defendant. The Trial Judge passed the following order :--

"In the result, suit of the plaintiff is hereby decreed and declare that his date of birth is 10-9-1945 based on the birth certificate issued by the Tahsildar, Bailhongal, as per Ex.P2 and the defendant No. 2-Board shall have to enter the above said date 10-9-1945 in the S.S.C. Certificate of the plaintiff in the ends of justice.

Under the circumstances, parties are directed to bear their costs."

4. Appeal was filed by the State Government. The appellate Court dismissed the appeal.

5. The Government is before me challenging these two concurrent findings.

6. Heard Sri. Tajuddin, learned Government Pleader appearing for the State. His essential contention is that the Karnataka State Servants (Determination of Age) Act, 1974 comes in the way of relief in favour of the plaintiff.

7. In the light of the submission of the learned counsel, I have carefully perused the material on record. The Trial Judge has framed 5 issues reading as under :

- 1) whether plaintiff proves that his date of birth is 10-9-1945?
- 2) whether defendant proves that the suit is barred by time?
- 3) Whether defendants prove that this Court has no jurisdiction to try this suit?
- 4) Whether the plaintiff is entitled for declaration and injunction as prayed for?
- 5) What order or decree?

8. He has answered issues 1 and 4 in affirmative and issues 2 and 3 in negative. The learned Judge notices all the material facts referred to in the plaint and thereafter, has held in favour of the plaintiff. He has also noticed various documents including Ex. P1, original horoscope, Ex. P2, birth extract, Ex. P3, Leaving Certificate, Ex. P4 Certificate issued by the M.J. High School. Ex. P17 K.G.I.D. Policy, Ex. P18 G.P.F. application copy. After noticing all these documentary evidence, he has come to a conclusion that the plaintiff was born on 10-9-1945. The said finding is based on both oral and documentary evidence. In so far as the jurisdictional point is concerned, the learned Judge notices the

effect of Section 9 to come to a conclusion (that the Civil Court has jurisdiction. The appellate Court has accepted these findings. I do not find any legal error requiring my interference in the light of the orders being based on facts.

9. In so far as the argument of the Karnataka State Servants (Determination of Age) Act, 1974 is concerned, I must say that the said Act is not available to the appellant. The Karnataka State Servants (Determination of Age) Act, 1974 is an Act to provide for the determination of the age of State Servants. Section 3 provides for determination of age on entry into State Services. Section 4 provides for bar of alteration of age except under the Act. Section 5 provides for alteration of age or date of birth. In the case on hand, the material facts would reveal that what the plaintiff wants is a declaration with regard to the date of birth in the light of non mentioning of the same in the S.S.C. Certificate. In fact, the various documents filed in the Court below would show that he was born on 10-9-1945 as mentioned earlier. He only wanted an error to be corrected in the S.S.C. certificate. Correction of S.S.C. Certificate stands on different footing than the correct date of birth in the Government record. In fact, in the Government records, the petitioner's date of birth is shown as 10-9-1945. Therefore, it cannot be said that the petitioner is seeking alteration of date of birth in the service records maintained by the State authority. In the given set of circumstances, the determination of age Act is not applicable in the light of the acceptance of the age as 10-9-1945 by Govt. Therefore, this argument is devoid of merits.

10. In conclusion, this appeal stands rejected thereby, confirming the orders of the Courts below.