
(1987) 08 MP CK 0046
In the Madhya Pradesh High Court
Case No : S.A. No. 18 of 1987

State of M.P.

APPELLANT

Vs

Sumer Singh Sikarwar

RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Citation : (1987) JLJ 706

Hon'ble Judges : Ram Murti Rustogi, J

Bench : Single Bench

Advocate : Arvind Dudawat, Additional Govt, for the Appellant; R. C. Lahoti, for the Respondent

Final Decision : Dismissed

Judgement

Ram Murti Rustogi, J.—This is defendant-State's second appeal. The plaintiff/respondent had filed a suit before the Civil Judge, Class II, Morena, praying for a declaration that due to clerical mistake his date of birth was wrongly recorded as 11-12-1928 in his service book (Ext. D-1) and that his true date of birth was 10-11-1930. Rejecting the plaintiff's contention, the suit was dismissed by the trial Court. The plaintiff went in appeal and the lower appellate Court, accepting his case, decreed the suit. The defendant-State of M. P has now come up in second appeal before this Court.

2. The necessary facts for the appreciation of the controversy between the parties are : The plaintiff had entered into the service of the erstwhile Gwalior State on 1-8-1946 as a clerk. At the time of his entry into the service, his date of birth was recorded in his service book (Ext. D-1) as 11-12-1928. That entry was signed by him. In due course, his services were absorbed by Government of Madhya Bharat and then by Madhya Pradesh Government. In 1980, by his application, Ext. P 4, the plaintiff requested the State Government that his correct date of birth was 10-11-1930 and the entry in his service book regarding his date of birth should, accordingly, be corrected. That application was rejected by the State Government by its order, Ext. P-7, dated 10-8-1982. Thereafter, the

plaintiff filed the suit. The suit was based on 3 certificates, (i) High School Middle Examination, 1946, of the Gwalior State (Ext. P-1); (ii) Clerical Examination, 1947, of the Education Department of the Gwalior State (Ext. P-2); and (iii) High School Examination, 1952, conducted by the Madhyamik Shiksha Parisbad, Madhya Bharat (Ext. P-3). All these 3 certificates, the credibility and genuineness of which are beyond doubt, showed the plaintiff's date of birth as 10-11-1930. The defendant/State of M.P. has contested the suit on the ground that the date of birth declared by the plaintiff and recorded at his instance in his service book at the time of his entry into the service, was binding on him.

3. After going through the records carefully and hearing both the counsel, I am of the opinion that this appeal fails and has to be dismissed. The lower appellate Court has rightly placed reliance on Exts. P-1, P-2 and P-3 showing the true date of birth of the plaintiff. Even in the service book (Ext. D-1), the two documents, Ext. P-2 and Ext. P-3, have been taken note of and are mentioned on its first page, and it is recorded therein that the plaintiff had passed his High School Examination in 1952 and his Clerical Examination in 1947. The three certificates furnish preponderant evidence in favour of the plaintiff and 10-11-1930 appears to be his true date of birth.

4. The learned Additional Government Advocate Shri Arvind Dudawat submitted that under Rule 84 of the M.P. Financial Code, Vol. 1. the entry of date of birth in the service book shall be deemed to be absolutely conclusive, except in the case of a clerical error. This Court in M.P. No. 36/1981, decided on 12-10-1985, has laid down that when it is shown by credible evidence that the entry in the service book regarding the date of birth was erroneous, it could always be revised. The material placed on record in the form of very credible evidence—the three certificates Exts. P-1, P-2 and P-3—shows that the date of birth as initially recorded in the service book was nothing but a clerical error, as it was based on no material. The learned Additional Government Advocate utterly failed to demonstrate any basis on which the entry in the service book was made. The conclusion of the lower appellate Court does not call for any interference on any ground.

5. The learned Additional Government Advocate also urged that the date of birth in the service book was recorded at the instance of the plaintiff himself and he had deliberately so given it in order to get into the service, otherwise as a minor he would not have been taken in. In support of it, the Learned Counsel has placed reliance on Rule 8 of the Gwalior Civil Services Rules, Samvat 1991, which provided that a person below the age of 18 years would not be appointed in the menial staff. The plaintiff had entered into the service on 1-8-1946 and even computing from 11-12-1928 (the date of birth as entered into the service book) the plaintiff was only 17 years, 8 months and 17 days old, and not 18 years. Still a minor, even by this reckoning. This argument also fails.

6. The learned Additional Government Advocate has placed reliance on *P. Nagamuni Vs. Government of Andhra Pradesh and Another*, "This authority is of

no aid or assistance to the State-appellant. In that case, the appellant's date of birth was recorded in his service book as 20-4-1924 and he had contended that his true date of birth was 19-8-1925. The Supreme Court, on evaluation of the material brought on record, held that there was no credible evidence to show that the date of birth of the appellant as recorded in his service records was wrong and the appeal was dismissed.

7. In the result, this appeal fails and is dismissed. The parties are left to bear their own costs throughout.