

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

CSA no.08/2014

Pronounced on: 11.02.2025

Ghulam Nabi Sofi

.....Petitioner(s)

Through: Mr M.Y.Bhat, Senior Advocate
with Mr Sajid Bhat, Advocate

Versus

State of J&K and others

.....Respondent(s)

Through: Mr Mir Majid Bashir, Advocate
Mr Jehangir A. Dar, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. This is a Civil Second Appeal against judgement and decree dated 28th June 2014, passed by Additional District Judge, Srinagar (for short "1st Appellate Court") in Civil Frist Appeal bearing File no.30/Appeal titled as *Ghulam Nabi Sofi v. State of J&K and others*, as also against judgement and decree dated 31st December 2012 passed by 1st Additional Munsiff, Srinagar (for short "Trial Court") in a civil suit bearing File no.238/Numbree titled as *Ghulam Nabi Sofi v. State of J&K and others*, and for setting-aside both the judgements.
2. I have heard learned counsel for parties and considered the matter.
3. Appellant's case is that he was born on 31st December 1958. However, his date of birth has been wrongly shown in his service record as 3rd January 1953. His date of birth had been made at the instance of his

illiterate parents. He believed that incorrect date of birth of 1953 was correct, but when he learned from school records of his elder brother and other record maintained by Registrar, Births and Deaths, he came to know that his actual and correct date of birth is 1958 instead of 1953, he approached Registrar Births & Deaths for issuance of Date of Birth Certificate. He was referred to Medical Board to undergo scientific test pertaining to determination of Date of Birth. According to appellant, his date of birth as 1958 has been endorsed by competent authority. Thus, he approached respondents for making necessary correction in his service records qua his date of birth. Respondents, it is next contended, were required to make changes in his date of birth, but of no avail. So, he filed a writ petition, which was disposed of directing respondents to redress his grievance. Respondents turned down his request. Then, he filed a civil suit, seeking following relief:

- (a) A decree of declaration declaring plaintiff being born on 31.12.1958 and declaring the recorded date of birth of plaintiff, i.e. 03.01.1953 as incorrect for all purposes including superannuation of the plaintiff;
- (b) A decree of mandatory injunction commanding defendants to correct their record pertaining to the date of birth of plaintiff and record 31.12.1958 as actual and correct date of birth of plaintiff;
- (c) A decree of permanent injunction restraining defendants 3&4 from retiring plaintiff from the services on the basis of incorrect date of birth recorded in the service book.

4. Defendants/respondents herein, upon notice, filed their written statement, contending that appellant's/plaintiff's suit was time barred and as such hit by Section 10 of the Code of Civil Procedure as also against rules and regulations of defendant-Board and that plaintiff has not disclosed necessary information regarding his first appearance in Matriculation Examination which would suggest his age at the time of

such examination inasmuch as medical board opinion was not binding upon them. His date of birth as 3rd January 1953 was recorded by defendant-Board on the basis of record sent by defendant no.3 and date of birth cannot be permitted to be changed after a period of more than twenty years. The Trial Court, in view of rival contentions of parties, framed following issues;

- (1) Whether the suit is not maintainable in the present form in view of Section 10 CPC? OPD
- (2) Whether the suit is liable to be dismissed for non-disclosure of cause of action? OPD
- (3) Whether the suit is time barred? OPP
- (4) Whether the actual date of birth of plaintiff is 31.12.1958 instead of 0301.1953? OPD

5. Aforesaid issues 1&3 were taken/treated by Trial Court as preliminary issues and dismissed the suit on 1st January 2006. However, an appeal was preferred by plaintiff. By order dated 10th September 2008, Trial Court judgement was set-aside with a direction to dispose of the suit after hearing afresh and after affording opportunity to parties to amend their pleadings if they choose so.

6. Defendant no.2 sought amendment of his written statement to the extent of reading Section 11 CPC instead of Section 10 CPC, which amendment was allowed vide order dated 23rd January 2012. As a consequence of which, issue no.1 was redrafted “(1) *Whether the suit is hit by Section 11 CPC? OPD*”. Thereafter parties adduced witnesses in support of their respective stand. While considering the case of plaintiff, the Trial Court found that plaintiff’s brother’s date of birth is 30th December 1954, but one of the plaintiff’s witness, namely, Mohammad Shafi, stated that basically date of birth of plaintiff’s brother was recorded as 30th may 1950 but there was overwriting and it

had been written as 30th December 1954 and therefore there was tempering in the record of plaintiff's brother's date of birth, upon which plaintiff made basis for his claim. Defendants' witness, namely, Fayaz Ahmad, who appeared before the Trial court stated that plaintiff had submitted his examination form for Matriculation firstly in the year 1972 as private candidate and again in the year 1973, he submitted his examination form. This fact has been deliberately concealed by plaintiff because according to the said witness, if plaintiff had appeared in Matric examination in the year 1972 and if his date of birth would be taken as 1958, it would mean that his age at the time of appearing in Matric Examination was 14 years, which was not possible that a person belonging to an illiterate family would reach to Class 10th at the age of 14 years and therefore, there was a reason for concealing this material fact that plaintiff appeared in Class 10th as private candidate in the year 1972 as previously there were rules that a candidate appearing in Matriculation Examination must not be below the age of 16 years. It was also found by the Trial Court that plaintiff joined the service of respondent-department in early Seventies and his date of birth as 3rd January 1953 has been recorded on first page of service book on the basis of certificate issued by the Government High School, Khrew, Pampore. It is the plaintiff who appended his signature thrice against the column meant for the purpose. This entry has been countersigned under the signatures of competent officer. The Trial Court also observed that plaintiff has not explained as to why he remained silent and did not make any representation to respondents for change of his date of birth for 20 years, if it was within his knowledge that his date of

birth was 31st December 1958. By a detailed judgement, impugned herein, the Trial Court has dismissed the suit of plaintiff/appellant.

7. Against Trial court judgement and decree, plaintiff preferred a Civil First Appeal. The 1st Appellate Court while scanning the record meticulously, found a letter (Mark G) addressed by Headmaster Government High School, Khrew, to District Education Officer, Pulwama, in which it is mentioned about plaintiff that the concerned has taken his discharge certificate of Class 10th on 25th September 1970 and that his last qualification is Matric. From this fact situation, the 1st Appellate Court observed that as per Mark-G plaintiff was in Class 10th and got Discharge Certificate of Class 10th issued on 25th September 1970, that means plaintiff was in Class 10th much earlier to the said date. The 1st Appellate Court also observed that if 31st December 1958 assumed as correct, its result would be that plaintiff was less than 12 years as on 25th September 1970, when Discharge Certificate for Class 10th was issued in his favour, which was highly improbable inasmuch as the plaintiff might have passed Class 1st at the age of less than 02 years when a child hardly learned to talk and that in other words plaintiff reached in Class 10th under less than 12 years of age. The Appellate Court upheld the judgement of Trial Court.
8. This appeal has been filed in the year 2014. However, substantial questions of law have not been framed, which was prerequisite before issuing notice to other-side. Nevertheless, it would be apt to see what plaintiff/appellant has proposed/raised as substantial questions of law. In paragraph 01 of appeal, following issues have been raised by appellant as substantial questions of law for determination:

- (a) That there is complete misreading of evidence by both the courts below, the learned Trial Court having wrongly observed that the scientific evidence placed on record (though not refused by other-side) is inadmissible and the learned appellate court by observing that the opinion of medical board has not been proved as no member of board has been produced as witness. Forgetting that the appellant having proved the medical board proceedings and certificate by examining the competent witness of medical board. The aforesaid principle has been laid down by the Apex Court in a judgement reported in SCC Vol 9 Page 152 Para (D). Both the courts below have exercised their judicial authority by non-application of mind. Both the impugned judgements are based on improper consideration of substantive law and the procedural law. The law is that courts should not interfere with the order passed on the opinion on the subject.
- (b) That the court below had committed substantial violation of law by framing divergent opinion on one and same material.
- (c) That the courts below have committed a grave error of law for the reason that both the courts have overstepped by adjudicating a so-called controversy upon which the parties were not at diversion. The law is settled that in cases of civil nature where a fact is asserted by one party and not denied by opposite party, all such facts are taken to be admitted both under substantive law like evidence act and procedural law like CPC. The courts below have passed impugned judgements in utter disregard of the aforesaid legal position. The courts below are again guilty of violation of law because both the courts have not settled the controversy in the manner prescribed under law. The trial court has erred by dismissing the suit on the ground that according to learned trial court the petitioner has not been able to establish that he was born in 1958. The appellate court was to consider whether the trial court is right or wrong. The appellate court has given a finding

against the appellant as according to the appellate court the Date of Birth has not been proved because any member of the medical board was not examined as witness. The findings are foreign to the material and against the procedural law.

9. I have given my thoughtful consideration to the case set up by appellant, submissions made by learned counsel for parties. I have gone through impugned judgements.

The afore-quoted proposed issues are not *stricto sensu* substantial questions of law but extract of facts.

Nonetheless, it can be said that it is to be seen as to “*whether 1st Appellate Court and Trial Court have committed illegality in passing impugned judgements*”. This can be, at the most, a substantial question of law in the present appeal.

Impugned judgements are lucid, comprehensive and does not call for any interference inasmuch as there is no substance muchless material or cogent one in the instant appeal and, as such, it warrants dismissal for all what would be said hereinafter.

10. Plaintiff wants change of date of birth to show him younger by five years, ostensibly, to get more five years’ service and service benefits.
11. Plaintiff/appellant when joined the Government Service of Forest Department, submitted his Date of Birth Certificate (viz. Matriculation Certificate issued by J&K Board of School Education). He got his date of birth entered and recorded in his service book/records as per the said Matriculation Certificate.
12. Before going to discuss laws/rules, it would be appropriate to say that when a person seeks job/employment in a Government Department,

he/she places reliance on the certificates, which he/she has in his/her possession.

13. A person applying for government job, cannot be heard saying that he/she had no knowledge about his/her credentials/testimonials which he submitted when he/she applied for government job.

14. Plaintiff's services are governed by J&K Civil Services Regulations 1956 (for short the "Regulations"). Rule 35-AA thereof relates to determination of date of birth. Clause (a) of Rule 35-AA provides that the date on which a government servant attains the age of superannuation shall be determined with reference to the date of birth declared by government employee at the time of appointment and accepted by appointing authority on production or confirmatory documentary evidence in the following manner: -

(i) In case of Government employee, where prescribed qualification is matriculation or above, matriculation or equivalent certificate issued by the Jammu and Kashmir Board of School Education or any recognised Board/University wherefrom the employee has passed such examination;

(ii) In case of Government employees, where prescribed qualification is below matriculation, the school leaving certificate, duly signed by the concerned Head of Govt. School and countersigned by the concerned Gazetted Officer of the Education Department in immediate administrative control of the said Institution (in case the Head of Institution/School is not a Gazetted Officer). Likewise, such certificate(s) issued by the Head of a Government recognized Private Institute/School shall be countersigned by the concerned Gazetted Education Officer, who is in immediate administrative control of Government Institutions in the area, such as Zonal Education Officer;

15. Clause (a) to Rule 35-AA also provides that in case of illiterate persons extracts from Birth Register duly signed by concerned Executive Officer of the Municipality, Chairman concerned Notified Area

Committee/Town Area Committee as the case may be can be entertained for determination of date of birth. In case an illiterate person is not falling within Municipal/Notified Area Committee limits, the certificate should be signed by concerned Tehsildar where the employee resides who will issue the certificate in the prescribed format or a certificate in a duly prescribed format issued a Medical Board of the respective district, where the employee is posted. The Medical Board shall comprise of Chief Medical Officer of the respective district, Radiologist, and Dental Surgeon.

16. In the present case, services of plaintiff are governed by the Regulations of 1956. When he joined the services, he produced Matriculation Certificate as a proof of Date of Birth Certificate.

Not only this, what Clause (b) of Rule 35-AA of the Regulations of 1956 says, is also worthwhile to be mentioned here. It says about recording of date of birth in the record of service. Subclause (i) to Clause (b) provides that on production of Date of Birth Certificate by the concerned Government employee in the manner prescribed in aforesaid Clause (a) to Rule 35-AA, the concerned Head of Office/Drawing and Disbursing Officer (DDO) under whose signatures the monthly bill of the establishment is paid from the treasury, shall record his/her date of birth in the service book or any other record that may be kept in respect of such Government servant with reference to relevant confirmatory documentary evidence.

17. The final nail in the coffin of plaintiff's case is Clause (c) of Rule 35-AA of the Regulations of 1956. It in clear-cut terms stipulates that alteration of date of birth after five years cannot be made. It says that

the date of birth so declared by the Government servant and accepted, and once recorded by the appropriate authority in the service book or any other record of service of the Government servant, as the case may be, shall not be subject to any alteration, except in the case of clerical error without the orders of the Government. No alteration of date of birth of a Government servant shall be made by the Government (Administrative Department) unless a request in this regard is made by the concerned Government servant within a period of *five years* of his/her entry into Government service and it is clearly established a genuine/*bona fide* mistake has occurred.

It is not the case of plaintiff that he approached the Government within a period of five years of his entry into Government service for alteration of his date of birth.

18. It is now trite law on the subject that change of date of birth in service records cannot be claimed as a matter of right. It has also been held by the Supreme Court that a decision on the issue of date of birth is as important for the employer as it is for the employee. The Court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that it would be to his advantage. Reference in this regard is made to *Bharat Coking Coal Ltd v. Shib Kumar Dushad*, (2000) 8 SCC 696; *Union of India v. C. Rama Swamy*, (1997) 4 SCC 647; *Karnataka Rural Infrastructure Development Ltd v. T. P. Nataraja and others*, (2021) 12 SCC 26; and *General Manager, M/s Barsua Iron*

Ore Mines v. Vice President United Mines Mazdoor Union and others,
[2024] 4 S.C.R. 63 : 2024 INSC 264.

19. Based on the aforesaid discussions, the instant appeal is without any merit and is accordingly **dismissed**. Decree sheet be prepared accordingly.

20. Record of the Trial Court and Appellate Court be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar

11.02.2025

Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/No.

