

The Indian Law Reports

Before S. S. Sodhi, J.

STATE OF PUNJAB AND OTHERS,—Appellants

versus

JASWANT SINGH,—Respondent.

Regular Second Appeal No. 2564 of 1987

May 25, 1988.

Punjab Civil Service Rules, Vol. I—Rl. 2.5, Note I of Annexure 'A'—Note prescribing period of limitation for change in date of birth—Change of date of birth sought after expiry of such period—Jurisdiction of Civil Court to order such change—Effect of rule of limitation.

Held, that the provisions of rule 2.5 of the Punjab Civil Service Rules, Volume I, Part I read with Notes 1 to 3 in Annexure 'A' of the said Rules, which prescribes the period of two years from the date of entry into service for correction in the date of birth is no bar to seeking correction of the date of birth from the civil court even after the said period of two years is elapsed. That a provision determining when the application for correction of date of birth should be entertained has the effect of limiting the exercise of the right of the government servant to show that the recorded entry is erroneous. Such limits could be imposed only by a provision having the force of law.

(Para 3)

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Chandigarh dated the 11th day of May, 1987 affirming with costs that of the Sub Judge 1st Class, Chandigarh, dated the 5th March, 1986, decreeing the suit of the plaintiff for a declaration that his date of birth is 5th March, 1928 and that he is deemed to be in service of the defendant as a Fair Officer till his retirement on the basis of his date of birth and further entitling the plaintiff to all service benefits which would have accrued to him during the period when he remained retired on the basis of his wrong date of birth, which was 1st April, 1926 and ordering that the defendant will also bear the costs of the suit.

Nemo, for the Appellant.

A. S. Chahal, Advocate, with N. S. Minhas, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns a change in the date of birth of a government servant after a period well beyond two years of his date of entry into government service. The point at issue being whether in view of the provisions of Note-I of annexure 'A' of rule 2.5 of the Punjab Civil Service Rules, Volume I, such correction could be asked for after a period of two years from the date of entry into government service mentioned therein has elapsed? The relevant Note in this behalf reads as under:—

"1. In regard to the date of birth a declaration of age made at the time of or for the purpose of entry into Government service shall, as against the Government employee in question be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interests of the Government employee when it is satisfied that the age recorded in the service book or in the History of service of Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may drive some unfair advantage therefrom."

(2) The plaintiff—Jaswant Singh—was working as Fair Officer in the Department of Rural Development and Panchayats, Punjab, when on March 21, 1984, he filed the present suit seeking a declaration to the effect that his date of birth was March 5, 1928 and not April 1, 1926 and he was thus entitled to continue in service with right to promotion and other service benefits accruing therefrom till the date of his retirement to be computed on the basis of March 3, 1928 being his date of birth.

(3) It was the concurrent finding of both the courts below that the date of birth of the plaintiff was indeed March 3, 1928, as asserted and he was therefore granted the relief claimed. This was, however, sought to be assailed on the ground that by virtue of the provisions of rule 2.5 of the Punjab Civil Service Rules, Volume I, Part I read with Notes 1 to 3 in annexure

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'A' of the said Rules, such correction in the date of birth could be applied for only within a period of two years from the date of entry into government service and as this period has elapsed, no change could be effected in the date of birth of the plaintiff. The answer to this is provided by the judgment of this Court in *State of Punjab v. Kishan Chand* (1), where it was held that this rule was no bar to seeking correction of the date of birth from the Civil court even after the said period of two years had elapsed. Reference there was also made to *Shri Manak Chand Vaidya v. State of Himachal Pradesh and others* (2), where it was held that a provision determining when the application for correction of the date of birth should be entertained has the effect of limiting the exercise of the right of the government servant to show that the recorded entry is erroneous. Such limits, it was said, could be imposed only by a provision having the force of law.

(4) Such thus being the settled position in law, no exception can be taken to the judgment and decree of the lower appellate court granting to the plaintiff the relief claimed. This appeal is consequently hereby dismissed. There will, however, be no order as to costs.

S.C.K.

Before J. V. Gupta, J.

MOHINDER SHARMA AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ Petition No. 5968 of 1986

May 26, 1988.

Land Acquisition Act (I of 1894)—Ss. 4, 11-A and 31—Acquisition of land by State—Policy decision to exempt built-up area from acquisition—Petitioners houses not exempted—Award made by Collector—Amount neither paid to owners nor deposited in Court—Validity of such award—Acquisition proceedings if lapse.

(1) R.S.A. 908 of 1983 decided on April 19, 1984.

(2) 1976(1) S.L.R. 402.