

Before : J. V. Gupta, A.C.J. and M. S. Liberhan, J.

RAMA KANT SHARMA,—Appellant.

versus

HARYANA STATE,—Respondent.

Regular Second Appeal No. 2453 of 1981.

21st February, 1990.

Limitation Act, 1963—Art. 58 & 113—Suit for correction of date of birth—Limitation for such suit—Commencement of limitation.

Held, that once it is found that the plaintiff came to know about the incorrectness of his date of birth somewhere in the year 1950, the cause of action had arisen in the year 1950, the suit filed in the year 1980 was clearly barred by time in view of the provisions of article 58. Otherwise also even if article 58 does not apply the provisions of article 113 of the Limitation Act, (hereinafter called the Act), which provides that in a suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation is three years when the right to sue accrues. In view of the said provision, it could not be successfully argued that there was no limitation provided for such a declaratory suit. The said article 113 is a residuary article which applies to all suits for which no period of limitation is provided elsewhere in the Schedule to the Act. In these circumstances, the suit was clearly barred by time.

(Para 7)

(This case was referred to a larger Bench by Hon'ble Mr. Justice J. V. Gupta (as he then was) on May 30, 1989 for decision of some important questions of law involved in the case. The Division Bench consisting of Hon'ble the Acting Chief Justice Mr. J. V. Gupta and Hon'ble Mr. Justice M. S. Liberhan constituted under orders dated 15th January, 1990 of Hon'ble the Acting Chief Justice) has finally decided the case on February 21, 1990.)

Regular Second Appeal from the order of the Court of the Addl. District Judge Karnal dated the 29th day of August, 1981 affirming that of the Senior Sub-Judge Karnal dated the 31st March, 1981 dismissing the suit of the plaintiff but leaving the parties to bear their own costs.

Claim : Suit for a decree for declaration to the effect that the date of birth of the plaintiff is 11th March, 1925 instead of 4th March, 1923 as shown in his service record and as such the plaintiff be retained in service upto 11th March, 1983 the date on which he will attain the age of 58 years with full pay and allowances etc.

Claim in Appeal : For reversal of the order of both the courts below.

Naubat Singh, Advocate, for the Appellant.

S. S. Ahlawat, DAG Haryana, for the Respondent.

JUDGMENT

J. V. Gupta, A.C.J.—

This case was referred by me while sitting singly,—*vide* order dated May 30, 1989, and this is how this case has come up for final hearing before this Bench.

(2) This is plaintiff's second appeal whose suit has been dismissed by both the Courts below. The plaintiff who was working as an Additional Public Prosecutor, Karnal, filed the suit on September 16, 1980, for declaration that his actual date of birth was March 11, 1925 and as such, he was to retire on March 11, 1983, on attaining the age of 58 years, whereas it came to his notice in the year 1978 that his date of birth was wrongly entered as March 4, 1923, in his service record on the basis of his school certificate. In the written statement, it was pleaded on behalf of the State that the plaintiff was estopped from filing the suit on account of his own act and conduct, as at the time of his first appointment as P.S.I. he had represented his date of birth as March 4, 1923. It was also pleaded that his appointment was made on the basis of information supplied by him and that was corroborated by the documents produced by him at the time of his entry into government service and, therefore, he had no cause of action to file the present suit which was also barred by limitation besides being not maintainable. It was further pleaded that the Director, Prosecution, had rightly rejected his representation for correction of his age and the said order was legal and valid. Reference was also made to rule 7.3 of the Punjab Financial Rules, Volume I, to contend that if within two years from the date of his appointment, the government servant does not represent regarding the correctness of his age then that would be presumed as correct and, therefore, the plaintiff was now debarred from bringing the suit regarding his age.

(3) The trial Court held that the plaintiff had failed to prove his date of birth to be March 11, 1925, as claimed by him in the plaint. It was also held that the plaintiff could bring the suit for correction of his age within two years of his joining service in the year 1950 and the suit having been filed in 1980 was not within time. A finding was also recorded that the plaintiff by his own act and conduct was estopped from filing the present suit as he could not be allowed to blow hot and cold and to allege that he was younger than the age given in his service record while his remaining service was for two years. In view of these findings,

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the plaintiff's suit was dismissed,—*vide* judgment dated March 31, 1981. In appeal, the learned Additional District Judge reversed the finding of the trial Court as regards the date of birth and came to the conclusion that the evidence led by the plaintiff clearly established that his date of birth was March 11, 1925. The suit was also held to be not within time as the same was filed not within three years from the date of the knowledge of the mistake by the plaintiff. According to the lower appellate Court, the cause of action for correcting his date of birth had accrued to the plaintiff in or around the year 1950 and, thus, the suit was clearly time-barred. Ultimately, the suit was dismissed with the observations :—

“The sum and substance of the discussion foregoing is that his real date of birth is 11th March, 1925, but he is estopped from asserting *qua* the State of Haryana that his date of birth is 11th March, 1925 and not 4th March, 1923 and so the relief which he has sought in the present suit against the State of Haryana cannot be granted to him.”

(4) Before me while sitting singly, it was argued that the suit for declaration was filed within time. Once the declaration was given, he was to be retired from that date of birth, that is, March 11, 1925, but as he was retired earlier, he was entitled to pay etc. At that time, I was of the view that even if the suit for declaration as such was maintainable, the question raised in the appeal was of great importance because such like suits are being filed by the Government servants at the fag end of their service career, i.e., before their superannuation and, therefore, the two questions to be decided are as to what is the limitation for such a suit in order to bind the State Government as regards the date of birth and secondly, whether the Government servant who files the suit is estopped by his own act and conduct from bringing such a suit against the State Government when he himself has given his date of birth differently at the time of his entry into Government service and taken the benefit accordingly. Thus, as observed earlier, the case was referred to a larger Bench.

(5) The learned counsel for the appellant submitted that the view taken by the two Courts below that the suit was barred by time because of rule 7.3 of the Punjab Financial Rules, Volume I, which provides a period of two years to get the date of birth corrected by the department was wrong and illegal. Thus, argued the learned counsel, since the view taken was wrong and illegal, the suit is within time.

(6) After hearing the learned counsel for the parties, we do not find any merit in this appeal.

(7) According to the plaint itself, the cause of action had arisen to the plaintiff in the year 1978, when he came to know incorrectness of the date of birth entered in his service record. Now, it has been concurrently found by both the courts below that the plaintiff came to know about the incorrectness of his date of birth somewhere in the year 1950. That being a finding of fact could not be challenged in second appeal. Once it is so found that the cause of action had arisen in the year 1950, the suit filed in the year 1980 was clearly barred by time in view of the provisions of article 58. Otherwise also even if article 58 does not apply the provisions of article 113 of the Limitation Act, (hereinafter called the Act), which provides that in a suit for which no period of limitation is provided elsewhere in the schedule, the period of limitation is three years when the right to sue accrues. In view of the said provision, it could not be successfully argued that there was no limitation provided for such a declaratory suit. The said article 113 is a residuary article which applies to all suits for which no period of limitation is provided elsewhere in the Schedule to the Act. In these circumstances, the suit was clearly barred by time. Though the view taken by both the Courts below in this behalf was wrong, yet the said finding is otherwise maintained on the above said reasoning. In view of this finding, the other question does not arise.

(8) Consequently, this appeal fails and is dismissed with costs.

P.C.G.

Before : G. R. Majithia, J.

SMT. SEWATI DEVI,—*Petitioner.*

versus

TULSI RAM,—*Respondent.*

Civil Revision No. 3136 of 1989.

8th December, 1989

Haryana Urban (Control of Rent and Eviction) Act, 1973—Ss. 7, 15(4)(6)—Ejectment application on the ground of non-payment of rent—Dispute regarding rate of rent—Tenant tendering rent claimed by landlord—Application dismissed in default—Appeal against such order—Power of Appellate Authority to remand—Refund of excess rent—Case remanded back to Rent Controller.