

Before S. P. Goyal, J.

HARI PARSHAD HANDA,—Appellant.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.
Regular Second Appeal No. 214 of 1976

July 23, 1984.

Specific Relief Act (XLVII of 1963)—Sections 34 and 39—Indian Evidence Act (I of 1872)—Section 115—Suit for declaration by an employee that his date of birth had not been correctly recorded—Court granting such a declaration—Prayer made for mandatory injunction as well seeking direction to the employer to correct the record accordingly—Relief by way of mandatory injunction—Whether could be granted—Plea of estoppel against the employee—When available in such cases.

Held, that the statement regarding the date of birth made by an employee is based on his belief and not his personal knowledge. From further information it would always be open to him to show that the statement was made incorrect and his date of birth was in fact different from the one earlier stated by him. However, if he had entered into the service fraudulently by misstating his date of birth, the question of estoppel would arise and he would be debarred from challenging the correctness of his date of birth. For instance, a man may not be of age to enter a particular service but by wrongly giving his age he may secure employment. Later on he would certainly be estopped from saying that he was of a younger age than the one stated by him at the time of his entry into service. Short of such a fraud or misrepresentation there is no rule of estoppel which would debar him from claiming and proving that the date of birth earlier given at the time of his entry into service was not the correct one. Moreover, the date of birth, apart from its bearing on the eligibility of a person for a given service, would not be ordinarily a part of the contract of service. The date of birth is nothing but a representation as to the age of the person concerned. The claim for the change of the date of birth thus, would not amount to a change of condition or contract of service and as such the question of estoppel by contract would not be attracted to such a situation.

(Para 3).

Bathul Gabriel v. District Manager A.P.S.R.T.C., Kurnool, 1982(1) S.L.R. 576.

DISSENTED FROM.

Regular Second Appeal from the decree of the Court of Shri C. S. Tiwana, District Judge, Chandigarh dated the 1st November, 1975 modifying that of Shri A. B. Singh Wasu, Sub-Judge, 1st Class, Chandigarh, dated the 17th day of April, 1974, (granting the plaintiff

a decree declaring that his date of birth is February 27, 1941, against the defendants and further directing the defendants to correct the entries regarding the date of birth of the plaintiff accordingly in his service book, the gradation list and all relevant records pertaining to his service and directing the defendants to pay the plaintiff the costs of the suit) to the extent of granting a decree for declaration that the plaintiff date of birth is 27th February, 1941 but dismissing his suit for mandatory injunction and leaving the parties to bear their own costs.

Cross-objection under order 41, Rule 22 of CPC praying that the same be allowed and the judgment decree under appeal be set aside and the plaintiff's suit dismissed with costs throughout.

Roshan Lal Sharma, Advocate, *for the Appellant.*

Gurmukh Singh Assistant, A.G., Punjab, *for respondent No. 1.*

M. R. Agnihotri, Sr. Advocate, with Anil Seth, Advocate, *for respondent No. 2.*

JUDGMENT

S. P. Goyal, J.

(1) The appellant filed this suit for a declaration that his correct date of birth was February 27, 1941 and the date of birth recorded in his service-book on the basis of matriculation certificate as March 1, 1940 was incorrect. He also claimed a mandatory injunction directing the respondents to correct his date of birth in his service record.

(2) The respondents contested the suit, denied the material allegations and pleaded that no correction was permissible after the expiry of 13 years of the joining of the service by the plaintiff. The trial Court holding that the correct date of birth of the plaintiff was February 27, 1941 decreed the suit. The learned District Judge upheld the finding of the trial Court so far as the date of birth was concerned but modified the decree of the trial Court so as to delete the relief of mandatory injunction. Aggrieved thereby the plaintiff has come up in this second appeal whereas the defendant has filed cross-objections against the declaratory decree passed in favour of the former.

(3) The only question to be determined in this appeal is as to whether the relief of mandatory injunction can be denied to the

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plaintiff even after holding that the date of birth has not been correctly recorded in his service record. The learned District Judge for denying the relief of mandatory injunction to the plaintiff relied on the administrative instructions contained in Annexure B to Chapter VII of the Punjab Financial Rules, Volume I which prescribed a period of two years from the date of the entry into government service for claiming a correction in the date of birth. To hold that the said instructions had a binding force, he relied on a decision of the Supreme Court in *State of Assam and another v. Daksha Prasad Deka and another* (1). The instructions contained in Note 3 to rule 7.3 were omitted with effect from November 17, 1973. It appears that this fact was not brought to the notice of the court by any of the parties. The whole basis of the impugned judgment was thus non-existent and in these circumstances relief could not be denied to the plaintiff on the basis of the judgment of the Supreme Court in *Daksha Prasad Deka's case* (supra) Moreover, the Supreme Court dismissed the plea of the government officer on the ground that he was bound by the statutory rules which prescribed a period for correction of any mistake regarding the date of birth in the service record, whereas in the present case the period was prescribed by executive instructions which too have since been deleted. Even such executive instructions would not be sufficient to estop a government employee from claiming correction in his service record regarding his date of birth. A similar question came up for consideration before a Division Bench of the Himachal Pradesh High Court in *Shri Manak Chand Vaidya v. State of Himachal Pradesh and others* (2) wherein it was held that a government servant had a right to show that the entry made in the service record does not represent his true date of birth and that any executive instructions debarring him from this right would be *ultra vires* of his statutory right to remain in the service upto the age of superannuation according to his correct date of birth. A contrary view appears to have been taken by Chaudhary, J. in *Bathul Gabriel v. District Manager A.P.S.R.T.C. Kurnool* (3) wherein it was held that the employee was bound by his contract of employment and he cannot later on turn round and dispute the correctness of his date of birth stated by him at the time of his entry into service. With due respect to the learned Judge I am unable to subscribe to this view. The statement regarding the date of birth

(1) 1971(2) S.L.R. 14.

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

(3) 1982(1) S.L.R. 576.

made by the employee is based upon his belief and not his personal knowledge. From further information it would always be open to him to show that the statement made was incorrect and his date of birth was in fact different from the one earlier stated by him. However, if he has entered into the service fraudulently by misstating his date of birth the question of estoppel would arise and he would be debarred from challenging the correctness of his date of birth. For instance, a man may not be of age to enter a particular service but by wrongly giving his age he may secure employment. Later on he would certainly be estopped from saying that he was of a younger age than the one stated by him at the time of his entry into service. Short of such a fraud or misrepresentation there is no rule of estoppel which would debar him from claiming and proving that the date of birth earlier given at the time of his entry into service was not the correct one. As in the present case even if the appellant would have given his date of birth as found out correct now he would have certainly been recruited in the service. Moreover, the date of birth, apart from its bearing on the eligibility of a person for a given service would not be ordinarily a part of the contract of service. The date of birth is nothing but a representation as to the age of the person concerned. The claim for the change of the date of birth thus would not amount to a change of condition of contract of service and as such the question of estoppel by contract would not be attracted to such a situation.

(4) For the reasons recorded above, this appeal is allowed, the cross objections dismissed and the judgment and decree of the learned District Judge modified so as to restore the decree of the trial Court. No costs.

N.K.S.

Before D. S. Tewatia & Surinder Singh, JJ.

SURINDER NATH JOSHI,—Petitioner

versus

THE PUNJAB PUBLIC SERVICE COMMISSION

AND OTHERS,—Respondents.

Civil Writ Petition No. 6084 of 1983.

July 24, 1984.

Constitution of India 1950—Article 320—Punjab Dental Education Service (Class-I) Rules, 1977—Rule 7—Maximum age limit prescribed for recruitment—One of the applicants overage but