

(1984) 07 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 214 of 1976 and Cross Objections 7-C, 1976

Hari parshad Handa PCS
(Judicial) Magistrate Ist Class,
Subordinate Judge Ist class,
Garhshankar, Hoshiarpur

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision: July 23, 1984

Hon'ble Judges: S.P. Goyal, J

Bench: Single Bench

Advocate: Roshan Lal Sharma, for the Appellant; Gurmukh Singh, Asst. A.G. Punjab for Respondent No. 1 and Mr. M.R. Agnihotri with Mr. Anil Seth, for the Respondent

Final Decision: Allowed

Judgement

S.P. Goyal, J.

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 intonate. 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 came 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 Plaintiff even after holding that the date of birth has not been correctly recorded in his service record. The learned District Judge 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 prescribes 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 Anr. v. Daksha Prasad Deka and others* 1971 (2) S.L.R. 14. The instructions contained in note 3 to Rule 7.3 were omitted with effect from November 17, 1973. It appears that this effect 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 *Deksha 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 Ors.* 1976 (1) S.L.R. 402. 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 ultravires of his statutory right to remain in the service upto the age of super-annuation according to his correct date of birth. A contrary view appears to have been taken by Choudhary. J in *Bathul Gabriel v. District Manager A.P.S.R.T.C. Kurnool* 1982 (1) S.L.R. 576, 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 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 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 could 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 or 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.