

(2001) 06 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3944 of 1999

Pepsu Road Transport
Corporation, Patiala

APPELLANT

Vs

Mehar Chand

RESPONDENT

Date of Decision: June 1, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 14, 16

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Arun Nehra, for the Appellant; S.K. Sharma, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.L. Singhal, J.

Mehar Chand joined Pepsu Road Transport Corporation as driver on 4.5.1972. As per him, he was born on 15.8.1940 and he should have retired on 31.8.1998 on attaining the age of superannuation. To his surprise, General Manager, Pepsu Road Transport Corporation passed order bearing No. 435/PRTC/E dated 31.7.1993 retiring him from service with effect from 30.4.1988. Mehar Chand challenged order No. 435/PRTC/E dated 31.7.1993 retiring him from service with effect from 30.4.1988 by means of suit for declaration. It was alleged in the plaint that he could not be retired from service with effect from 30.4.1988 as retirement with effect from back date is illegal, inoperative honest, malafide against the service rules and the principles of natural justice. He prayed that his retirement with effect from 30.4.88 brought about by order No. 435/PRTC/E dated 31.7.1993 should be adjudged inoperative, honest, malafide, discriminatory and he shall be deemed to be in service entitled to continue till 31.8.1998. It was alleged in the plaint that he was

born on 15.8.1940 and 15.8.1940 was correctly recorded as the date of birth in the service record. Assumption of the department that his date of birth was 19.4.1930 was wrong, it was further alleged in the plaint that he was given no opportunity of being heard before the order No. 435/PRTC/E dated 31.7.1993 was passed retiring him from service with effect from 30.4.1988.

2. Defendant PRTC contested the suit of the plaintiff urging that the plaintiff gave 19.4.1930 as the date of his birth in the application for appointment to the post of driver but later on the gave incorrect affidavit that his date of birth was 15.8.1940. He got driving licence No. 11896 on 23.2.1951. If he had been born on 15.8.1940, he could not have been given the driving licence. If he was born on 15.8.1940, he would be 9-1/2 years old as on 23.2.1951. Driving licence could not be given to a child aged 9-1/2 years. He was retired vide the impugned order with effect from 30.4.88 as he was born on 19.4.1930 which was his correct date of birth.

3. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled to declaration prayed for ? OPP

2. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD

3. Whether the suit of the plaintiff is liable to be dismissed under Order 7 Rule 11 CPC ? OPD

4. Whether the plaintiff is estopped from his act and conduct from filing the present suit ? OPD

4-A. Whether the civil court has no jurisdiction to try the suit which is impliedly barred ? OPD

5. Relief.

Civil Judge (Junior Division), Mansa decreed the plaintiffs suit for declaration that order No. 435/PRTC/E dated 31.7.1993 retiring the plaintiff with retrospective effect from 30.4.88 was illegal, null and void and that he was entitled to continue in service till 31.8.98, in view of his finding, that he was born on 15.8.1940 and not on 19.4.1930. It was found that his date of birth was changed from 15.8.1940 to 19.4.1930 to his disadvantage without giving him opportunity of being heard. It was found that 15.8.1940 was rightly mentioned in his service book as the date of his birth. It was found that PRTC could not change the date of birth of the plaintiff from 15.8.1940 to 19.4.1930 after such a lapse of time when 15.8.1940 as the date of his birth had held the field for so long. Dissatisfied with the judgment and decree of Civil Judge (Junior Division), Mansa dated 11.6.1996, PRTC went in appeal which was dismissed by Additional District Judge, Mansa vide order dated 2.12.1997. Still not satisfied, PRTC has come up in further appeal to this court.

4. Learned counsel for the appellant submitted that the respondent was recruited to the post of driver in the PRTC in the year 1972 in pursuance of an application made by him for recruitment to the post of driver in which he was shown to have been born on 19.4.1930. It was submitted that he was shown to have been born on 19.4.1930 on the basis of the statement made by him in his application for recruitment to the post of driver that he was born on 19.4.1930. It was submitted that he could not be taken to have been born on 15.8.1940 as if he is taken to have been born on 15.8.1940, he could not have been given driving licence No. 11896 on 23.2.1951 because driving licence could not be given to a child aged 9-1/2 years. It was submitted that he was retired with effect from 30.4.1988 though through an order passed on 31.7.1993 because he managed to continue in service beyond 30.4.1988 on false representation that he was born on 15.8.1940 and when it came to the notice of the PRTC that his representation that he was born on 15.8.1940 was false, he was retired.

5. Learned counsel for the respondent, on the other hand, submitted that he was entitled to continue in service till 31.8.98 on the strength of the date of birth which was 15.8.1940 recorded in his service book. It was submitted that entry as to the date of birth recorded in once's service book is entitled to credence particularly when that entry, holds the field for such a long time. Suffice it to say, in his application for appointment to the post of driver, he had given his date of birth as 19.4.1930. He gave affidavit wherein he mentioned 15.8.1940 as the date of his birth and it was on account of that affidavit that he was shown to have been born on 15.8.1940.

6. Learned counsel for the respondent submitted that he could not have been born on 19.4.1930 as if he had been born on 19.4.1930, he could not have been eligible for the post of driver in the year 1971 as age limit for the post of driver is 25 years to 35 years and in the case of SC/BC and military personnel, the concession of age limit is available as applicable to the Punjab Roadways employees from time to time. In support of this submission, he drew my attention to PRTC Conditions of appointment and Service Regulations, 1981, Part II, Regulation 6(3)(c). He also submitted that the respondent is illiterate. He never made any application for obtaining driving licence in the year 1951 nor was he given any driving licence in the year 1951. He submitted that he could be eligible for the post of driver only in the year 1971 if he is taken to have been born on 15.8.1940 because if he is taken to have been born on 19.4.1930, the age bar would stand in his way.

7. It was further submitted that both the courts below have concurrently found that he was born on 15.8.1940 and this court cannot appraise evidence for going behind a concurrent finding of fact arrived at by both the courts below on consideration of evidence.

8. It was further submitted that 15.8.1940 as the date of his birth held the field for quite some time. It could not be altered. While dismissing RSA No. 3492 of 1999

titled PRTC v. Hardial Singh, Hon"ble V.K. Jhanji, J. observed that no presumption can be drawn regarding the date of birth on the basis of the date of birth given in the licence issued by the Motor Vehicle Authority. View taken by the learned Single Judge was taken to the Hon"ble Supreme Court in SLP No. 18679 of 1999 and the same was upheld. The facts of the present case are squarely covered by the decision of the said appeal and, therefore, no case for interference in second appeal is made out. RSA No. 507 of 2000 was also dismissed by the same Bench on 4.12.2000 saying that the matter is squarely covered by decision dated 14.5.1999 rendered in RSA No. 1320 of 1999, and therefore, no case for interference in the second appeal is made out.

9. Grievance of the plaintiff is that he was not joined in the inquiry and that he was not given opportunity of being heard by the PRTC before determining that he was born on 19.4.1930. He was ordered to be retired from service with effect from 30.4.1988 on the basis of the age recorded in his application when he applied for the job of driver in the year 1971. His grievance is that he never made that application. No offer was made to him by the PRTC to have his signatures compared with his arguments purportedly appearing on that application. Simply because 15.8.1940 as the date of birth of the plaintiff held the field for a considerably long time, the PRTC cannot be said to be estopped from saying that he was born on 19.4.1930 and also he was shown to have been born on 19.4.1930 in the application which he made in the year 1971 for securing the post of driver. It was held in *State of Orissa v. Binapani Dei*, 1967 SLR 465 that "the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. It is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version of defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our Constitutional set up that every citizen is protected against exercise of arbitrary authority by the state or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed, it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made,

the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

10. It was held in *Poosa Ram v. State of Rajasthan*, 1975(2) SLR 81 that "date of birth originally recorded in service record altered unilaterally without affording opportunity - refixation of birth bad - retirement order quashed". It was held in *Malook Chand v. State of Punjab*, 1993(3) SCT 41 that the order retiring the petitioner with effect from 31.7.1997 by presuming his date of birth 15.7.1939 is liable to be quashed on the ground that it has been issued in violation of rule of audi alteram partem. However, the competent authority is at liberty to pass an appropriate order for effecting a change in recorded date of birth of petitioner after making an enquiry in accordance with the principles of natural justice."

11. It is thus clear that the PRTC could not unilaterally determine the date of superannuation of the respondent-plaintiff. Respondent-plaintiff had to be joined in re : determining the date of his superannuation and his date of superannuation could be determined only after an enquiry to which he was required to be a party. Impugned order has, thus, to be adjudged illegal having been passed without joining the plaintiff in re: determining his age.

12. For the reasons given above, this appeal has to be allowed and is accordingly allowed. Judgment and decrees of both the courts below are set aside and PRTC is directed to determine the date of superannuation of the plaintiff after an enquiry which shall conduce to the principles of natural justice and fairplay. Plaintiff shall be afforded full opportunity of being heard in the enquiry viz to prove 15.8.1940 as the date of his birth or some other date entitling him to continue beyond 30.4.1988. If PRTC finds that he was not born in the year 1930 but on a later date, he shall be deemed to have continued in service on attaining the age of 58 years counting from that date with all the benefits available to the one who is actually in service.

13. Appeal allowed.