(1993) 04 GAU CK 0006

Gauhati High Court

Case No: Second Appeal No. 24 of 1991

Surya Kanta Salai		APPELLANT
	Vs	
Gauhati University Represented By The Registrar, Jalukbari		RESPONDENT

Date of Decision: April 22, 1993

Acts Referred:

- Limitation Act, 1963 - Article 58, 58

Citation: (1993) GLR 51 Supp

Hon'ble Judges: S.N.Phukan, J

Bench: Single Bench

Advocate: H.A.Sarkar, M.K.Sarma, S.Medhi, S.R.Bhattacharjee, Advocates appearing for Parties

Judgement

1. Having lost in both the courts below for correction of his age, the plaintiff has filed the present Second Appeal. Briefly slated the facts are as follows :

2. The plaintiff laid the suit before the learned Munsif No. 3, Gauhaii (T.S. No. 20/86) making Registrar of the University a party for correction of his age in the matriculation certificate. According to the plaintiff, the University issued a circular on 14.8.69 calling for application for correction of age and last date was 27.8.1971. Plaintiff has alleged that he filed an application on 2.1.70 and did not get any reply. Another application was filed on 16.5.83. By letter dated 1.8.84 the plaintiff was informed that his application was rejected as it was not filed within time. It may be staled that the plaintiff appeared in the Matriculation Examination under Roll Gau No. 351 of 1952 and his matriculation certificate was issued showing his age as 18 years 5 months on 1.3.52, which according 10 the plaintiff was not correct. According 10 him from the horoscope and the record of the Gauborah he was born on 1.9.1938 and accordingly his age on 1.3.1952 should have been 13 years 6 months. It may be stated that on the basis of the matriculation certificate plaintiff

applied for a Govt. job and thereafter was appointed as a teacher and lie is still working as teacher.

3. The dismissal order of (he learned Munsiff No. 3 was affirmed by the learned lower Appellate Court, namely, Assistant District Judge No. 1, Gauhati in Title Appeal No. 27 of 1989 by judgment dated 12.11.90. While doing so, the learned lower appellate court after due calculation came to the finding that if the date of birth claimed by the plaintiff is accepted, it would show that he joined in the primary school at the age of six months. Of course Lined not enter this factual matter in this Second Appeal. Learned court below framed as many as five issues and most important issue was period of limitation and this issue was decided against the plaintiff. So, the limited question in this Second Appeal is whether the suit is barred by limitation.

4. Heard Mr. Medhi, learned counsel for the appellant and Dr. Sarma, learned counsel for the Respondent.

5. At the outset, I may state that Dr. Sarma has raised a point that the suit is bad for nonjoinder of the Gauhati University as in the plaint only Registrar has been shown as a party. In this second appeal, I need not enter into this aspect of the matter and I may confine myself on the point of limitation.

6. Admittedly there is no specific article regarding correction of age in the matriculation certificate. Therefore, it is covered by residuary articles, namely, Article 58. According to the said Article to obtain any other declaration, period of limitation is three years and lime begins to run when the right to sue first accrues, (emphasis added).

7. Matriculation certificate was issued in the year 1952. Thereafter plaintiff joined in the service on the basis of the said matriculation certificate and therefore, it cannot be accepted that he came to know about the mistake in the metric certificate only after the circular was issued by the University on 14869. On this point alone the suit is liable to be thrown out as it is barred by limitation. Mr. Medhi has vehemently urged that the cause of action accrued only when the University issued the notice on 1.8.1969 and thereafter the plaintiff filed the petition on 2.1.1970. The fact that the plaintiff filed the petition has been disputed by the University and I may quote in this regard the finding of the learned lower appellants Court which runs as follows:

"Moreover, if the detection was found on 30.12.69 as alleged by the plaintiff vide his exhibit 1, which though not proved to be genuine, the suit ought to have been sic. filed within 30.12.72 but this suit was filed on 7.1.85. Hence, the suit is barred by limitation."

This finding of the learned lower appellate court is binding on this court though Mr. Medhi has urged that the petition was pending before the University. According to the learned counsel, the cause of action arose only when the University sent the

reply on 1.8.84 which I am unable to accept in view of the statutory provisions as contained in Article 58 of the Limitation Act. If the plaintiff wanted to bring this matter within Article 58, the burden was on the plaintiff to show that within 3 years from the date of filing of the suit he came to know for the first time that in the matriculation certificate, the age was wrongly recorded.

8. Attention of this court has been drawn to a decision of the learned Single Judge of this Court in the Commissioner of Taxes vs. Golak Nath Kakati, AIR 1979 Gauhati 10. That case was also for correction of date of birth. The learned Single Judge held that for such a case Article 58 of the Limitation Act is attracted.

The court also held that accrual of the right to sue means accrual of cause of action for the suit. The court noted in that case that it was not the case of the plaintiff that he had no occasions to deal with the matriculation certificate and he was not aware of the age recorded in the certificate. In view of the above, the court held that the suit was barred by limitation. The court further held that merely because the plaintiff wrote to the Registrar of the University is of no consequences as far as limitation is concerned. The above decision squarely covers the case in hand.

For the reasons stated above, I do not find any merit in the present appeal and accordingly, it is dismissed. No costs.