

(2005) 11 AP CK 0007
Andhra Pradesh High Court
Case No: SA No. 227 of 2001

Nalam Bharathi

APPELLANT

Vs

Secretary, Board of Secondary,
Education, Govt. of A.P. and
Others

RESPONDENT

Date of Decision: Nov. 29, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Industrial Disputes Act, 1947 - Section 33C(2)
- Specific Relief Act, 1963 - Section 34

Citation: AIR 2006 AP 137 : (2006) 1 ALD 753 : (2006) 2 CivCC 523

Hon'ble Judges: C.V. Ramulu, J

Bench: Single Bench

Advocate: M.V. Surest, for the Appellant; Govt. Pleader for School Education for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

C.V. Ramulu, J.

This second appeal is filed being aggrieved by a judgment and Decree dated 6-11-2000 made in A.S. No. 73 of 1999 on the file of the learned District Judge, East Godavari, Rajahmundry, wherein the judgment and Decree dated 8-9-1997 made in O.S.No. 46 of 1991 on the file of the learned I Additional District Munsif, Rajahmundry, decreeing the suit, has been partly reversed.

2. The appellant is the plaintiff. Respondents are the defendants. The parties are hereinafter referred to as they are arrayed in the suit.

3. It is the case of the plaintiff that she passed SSLC Examination from Town High School, Rajahmundry in March, 1964. Thereafter, she studied PUC, B.Sc, and M.Sc. After completion of her studies, she joined as Lecturer in the 4th defendant's

College in the year 1983. Her date of birth was mistakenly reported by her parents as 10-3-1948. The said incorrect date of birth was mentioned in the SSLC register. In October, 1989 she came to know that her date of birth was wrongly mentioned as 10-3-1948 instead of 24-4-1949. She was born at Rajahmundry and her date of birth was entered in the Municipal records as 24-4-1949. As her date of birth was incorrectly recorded in SSLC register as 10-3-1948, she has to retire prematurely by about one year. Before filing the suit, she had made all efforts with the authorities for correcting her date of birth, but they were of no avail. Hence, the suit.

4. Defendants 3 and 4 filed separate written statements. Defendants 1 and 2 by filed a memo adopting the written statement filed by the 3rd defendant. In the written statement of the 3rd defendant, it is stated inter alia that the date of birth furnished by the plaintiff in her SSLC register is according to the statutes and they have adopted the same. Defendant No. 4-employer filed a separate written statement stating that the plaintiff is put to strict proof that her date of birth is 24-4-1949. If the plaintiff establishes her correct date of birth as 24-4-1949 and if defendants 1 to 3 accept the same and agree to correct the relevant records, they have no objection to rectify the same in the College records also. Defendants No. 2 filed additional written statement stating that the plaintiff has completed her SSLC examination in March, 1964. The plaintiff has not furnished the date of entry in the School, in which she was admitted. The said particulars are necessary for verification of her correct age by the date of appearance for SSLC examination or for admission into the School. Certain procedure has been prescribed by the Government for alteration of date of birth in the SSLC register and the plaintiff has not followed the same. Hence, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the following issues were settled for trial:

1. Whether the plaintiff is entitled for a declaration that her date of birth is 24-4-1949, but not 10-3-1948 ?
2. Whether the suit is bad for nonjoinder of necessary parties ?
3. Whether the value of the suit is not correct ?
4. Whether the suit is not maintainable under law ?
5. To what relief ?

On behalf of the plaintiff, she examined herself as P.W. 1 and also examined one N. Rajeswari as P.W.2 and marked Exs.A1 to A9. On behalf of the defendants, D.W.I was examined and Exs.B1 to B3 were marked. After an elaborate consideration of the entire evidence on record, the trial Court found that the plaintiff is entitled for the reliefs as prayed for and thus decreed the suit declaring the date of birth of the plaintiff as 24-4-1949 and directed the defendants to rectify her date of birth in their registers as 24-4-1949 instead of 10-3-1948. Aggrieved by the same, defendants 1 and 2 carried the matter in appeal being A.S.No. 73 of 1999 on the file of the learned

District Judge, East Godavari at Rajahmundry. The appellate Court, after reappreciation of the evidence on record and on perusal of the Judgment of the trial Court, held that the declaration made by the trial Court that the plaintiff is entitled for correction of date of birth is correct; however, held that as per the procedure prescribed in various Government Orders, the plaintiff has to make an application to the District Educational Officer through the Head of the Institution where she last studied with all required documents, such as, date of birth extract, within the stipulated period of three years from the date of completion of SSLC. The plaintiff without following the procedure prescribed in the G.Os has sought for direction to defendants 1 and 2 to carry out correction in the SSLC register with regard to her date of birth. Therefore, the appellate Court allowed the appeal in part setting aside the judgment and Decree of the trial Court so far as directing defendants 1 and 2 for rectification of date of birth in necessary records including the SSLC register. Challenging this portion of the judgment, the present second appeal is filed.

6. Learned Counsel for the appellant raised the following substantial question of law for consideration in this second appeal:

Whether there is any prohibition, in law, on the civil Court to grant ancillary relief of correction of records having declared the date of birth of the plaintiff as prayed for ?

7. Learned Counsel for the appellant strenuously contended that once the Court passed a decree declaring that the date of birth of the appellant-plaintiff as 24-4-1949 instead of 10-3-1948, nothing prevents it from granting further relief of directing the respondents-defendants to correct the records as per the decree. In this case, in fact, that is the prayer of the appellant-plaintiff in the suit and there was no objection as to this portion of the prayer by the plaintiff, except saying that the appellant-plaintiff is not entitled for any relief. Further, the respondents are the concerned authorities for correction of date of birth and once they are the parties to the suit and contested the suit effectively, unless and until the ancillary relief of correcting the date of birth in the records is not made, there is no use of obtaining the decree, particularly in a case like this when the date of birth of the appellant was declared as 24-4-1949.

8. Per contra, learned Government Pleader appearing for the respondents, contended that since a specific procedure is prescribed under various Governmental Orders for correction/alteration of date of birth of an individual as entered in the SSLC register, even if a decree is made declaring the date of birth of the appellant as 24-4-1949, she is not entitled for a decree directing the respondent-defendants to correct the date of birth in the records, since the appellant has not followed such a procedure; therefore, the lower appellate Court rightly allowed the appeal in part.

9. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and gone through the entire evidence on record and also the judgments of the Courts below.

10. As stated above, the trial Court decreed the suit holding that the date of birth of the appellant-plaintiff as 24-4-1949 and the respondent-defendants were directed to rectify her date of birth in their registers by correcting it as 24-4-1949 instead of 10-3-1948. But the appellate Court set aside the decree of the trial Court insofar as directing defendants 1 and 2 for rectification of date of birth in necessary records including the SSLC register, by allowing the appeal partly. In fact, by allowing the appeal partly, as notice above, the entire decree is made nugatory, rather nullified.

11. Learned Counsel for the appellant placed strong reliance on the judgment of the Apex Court reported in [Ishar Singh Vs. National Fertilizers and another](#), in which it was held as under:

If for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its door to the suitor. In that view of the matter, so far as the relief of rectification of the record relating to the date of birth is concerned, the Civil Court had jurisdiction to grant that relief. However, where the employee stood superannuated even on the basis of the corrected date of birth by the time the civil suit came to be decided in his favour, the relief of back wages could "not be granted by the civil Court. The employee can avail of the remedy u/s 33C(2) of the I.D. Act" and submitted that so far as relief of rectification of the records relating to the date of birth of the appellant is concerned, the Civil Court has jurisdiction to grant that relief. He also relied upon another judgment of the Supreme Court in [Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others](#), where it was held as under:

It is an erroneous view that civil Court does not have jurisdiction to adjudicate on an order passed by disciplinary authority and that only writ petition can be filed after exhausting departmental remedies. Provisions of CCS (CCA) Rules, 1965 do not oust the jurisdiction of civil Courts. It is a different matter to insist that departmental remedies should be exhausted before a person approaches the civil Court, but it was not proper for the Single Judge of the High Court to hold after five years, while hearing second appeal, that civil Court had no jurisdiction. The case should have been decided on merits. The appellant could not be non-suited on the ground that he had failed to take recourse to proceedings under the CCS(CCA) Rules, 1965 against the order of dismissal. It is also an erroneous view that jurisdiction of civil Court u/s 34 of the Specific Relief Act, 1963 is also ousted. Service Rules neither expressly nor by implication have taken away jurisdiction of civil Courts to deal with service matters.

and submitted that in view of the above decision, the findings of the appellate Court that the Civil Court's jurisdiction is ousted is erroneous. Once the jurisdiction of the civil Court as to declaration of date of birth is not disputed and the concerned authorities were made parties to the suit, the granting of other relief of directing the authorities (defendants) to correct the date of birth is automatic. The Civil Court's jurisdiction is not ousted either expressly or impliedly. Learned Counsel for the

appellant further drawn attention of the Court to a judgment of a Division Bench of this Court in *P. Madhava Sastry v. Director, P.G. Centre* 1980 (2) APLJ 413, wherein it was held that when, in a suite for mere declaration of correct date of birth filed by an employee impleading the employer, the consequential relief for correction in the service register is not sought for nor granted, the employee is bound by the decree and he cannot be heard to say that in the absence of a specific direction in the decree to amend the date of birth, he can act on the original entry in the register. Further, it was held that under Order II Rule 2 CPC, if a suit for a mere declaration of correction of date of birth without seeking the consequential direction to correct the entry in the service register is decreed, subsequent writ petition for directing the employer to implement the decree is maintainable.

12. From the above decisions, it is clear that a civil Court has jurisdiction to pass a decree directing the defendant-authorities (respondents herein) to rectify the date of birth in the registers while declaring the correct date of birth of the appellant-plaintiff. Further, the said decree is binding on the respondent-defendants and they are bound to comply with the decree. I am in full agreement with the submissions made by the learned Counsel for the appellant as per the ratio laid down by the Apex Court in the aforesaid judgments. Under the above circumstances, I am of the opinion that the judgment and Decree passed by the lower appellate Court insofar as setting aside the judgment and Decree of the trial Court directing the defendants 1 and 2 for rectification of date of birth of the plaintiff is necessary records including the SSLC register is concerned, is liable to be set aside.

13. Accordingly, the second appeal is allowed and the impugned judgment and Decree of the appellate Court are set aside. The judgment and Decree passed by the trial Court are confirmed. The respondents are directed to make necessary corrections as to date of birth in the connected records including the SSLC register of the appellant-plaintiff as per the decree of the trial Court. There shall be no order as to costs.