

N.K.S.

*Before J. V. Gupta, J.*

STATE OF PUNJAB,—Appellant.

*versus*

KISHAN CHAND SANDHIR,—Respondent.

*Regular Second Appeal No. 908 of 1983.*

April 19, 1984.

*Punjab Civil Services Rules, Volume I Part I, Main Rules—Rule 2.5 Note 1 Annexure A—Wrong age declared at the time of entry into service—Correction not got made within two years—Government servant filing suit for declaration regarding correct age—Such a suit—Whether barred by time under Rule 2.5 Note 1.*

*Held*, that according to Rule 2.5, Note 1, Annexure A of the Punjab Civil Services Rules, Volume I Part I main Rules, the date of birth once given by the Government employee at the time of his entering into Government service shall be conclusive unless he applies for the correction of the same, as recorded, within two years from the date of his entering into the Government service. If the correction thereof is sought after more than two years, the Government may reject his claim under the said rule but the delay in approaching the civil Court cannot be said to be a bar on that score alone. Thus, the suit of the plaintiff filed for a declaration regarding his correct age cannot be said to be barred by time under Rule 2.5 Note 1 of the Rules.

(Para 6).

*Regular Second Appeal from the decree of the Court of Shri S. S. Chahal, Senior Sub Judge, with Enhanced Appellate Powers, Chandigarh, dated the 12th day of November, 1982, reversing that of Shri V. P. Aggarwal, Sub Judge 1st Class, Chandigarh, dated the 24th day of May, 1982 and decreeing the plaintiff's suit to the effect that the date of Birth of the plaintiff is 4th November, 1927 and not 16th July, 1924 with consequential relief that the plaintiff is entitled*

to all the benefits attached to his salary till the age of his retirement to be computed on the basis of date of birth dated 4th November, 1927 and for mandatory injunction directing the defendants to correct the date of birth in service record as 4th November, 1927.

Devinder Verma, Advocate, for A.G. (Punjab).

J. S. Chahal, Advocate, for the Respondent.

### JUDGMENT

J. V. Gupta, J.—

(1) This is defendant's second appeal against whom the suit for declaration and for the grant of the mandatory injunction was dismissed by the trial Court, but decreed in appeal.

(2) The plaintiff-respondent was working as a Headmaster in the Government Co-Education High School, Chak Kalan, Ludhiana. It was alleged that he was born on November 4, 1927, at village Baddowal, Tehsil and District Ludhiana. The entry regarding his date of birth was made in the register maintained by the chowkidar of the village, and in the records maintained by the Chief Registrar of Births and Deaths, Punjab, Chandigarh. His date of birth was shown as November 4, 1927, in the above-mentioned records. Due to oversight, his date of birth was mentioned as July 16, 1924, in the Admission Form. On the basis of this information, the said date of birth continued in the school admission register, subsequent school record, university and the official records. He joined service in the State of Punjab in the year 1950. The wrong entry regarding his date of birth was made in his service record on the basis of the matriculation examination certificate. Since this wrong entry adversely affected his tenure of service, he filed the present suit for declaration to the effect that the date of his birth was November 4, 1927, and not July 16, 1924, with consequential relief, and for the grant of the mandatory injunction. The suit was contested *inter alia* on the grounds that the plaintiff's date of birth was July 16, 1924, and not November 4, 1927, as alleged. It has been correctly recorded in the official records. Under rule 2.5, Note 1, Annexure (A) of the Punjab Civil Service Rules, Volume I, Part I — Main Rules (Revised Edition), as corrected up to August 1, 1976, (hereinafter called the Rules), representation for correction of the date of birth could have been made within two years of his entering into the Government service. Since he did not come to the Court within two years; the present suit was

liable to be dismissed. On the pleadings of the parties, the trial Court framed the following issues :

1. Whether the plaintiff is entitled to the declaration that his date of birth is 4th November, 1927 and not 16th July, 1924, as alleged ? If so, to what effect ?
2. In case issue No. 1 is proved, whether the plaintiff is entitled to the injunction prayed for ?
3. Whether the suit is within time ?
4. Relief.

Under issue No. 1, the trial Court held that the plaintiff had failed to prove that his date of birth was November 4, 1927, and not July 16, 1924. Thus, issue No. 2 was held to have been rendered redundant in view of this finding. On the question of limitation, the suit was held to be within time. In view of the finding under issue No. 1, the plaintiff's suit was dismissed. In appeal, the learned Senior Subordinate Judge with enhanced appellate powers, reversed the said finding of the trial Court under issue No. 1, and came to the conclusion that the date of birth of the plaintiff was November 4, 1927 and not July 16, 1924. Consequently, his suit was decreed. Dissatisfied with the same, the defendant has filed this second appeal in this Court.

(3) The learned counsel for the appellant contended that the trial Court rightly came to the conclusion that the plaintiff had failed to prove his date of birth to be November 4, 1927. The said finding of the trial Court, according to the learned counsel, has been reversed arbitrarily on surmises and conjectures by the lower appellate Court. In any case, argued the learned counsel, in view of rule 2.5, Note 1, Annexure (A), of the Rules, the plaintiff's suit was barred by time.

(4) I have heard the learned counsel for the parties and have also gone through the relevant record.

(5) The lower appellate Court after discussing the entire evidence has given a firm finding that the date of birth of the plaintiff was November 4, 1927 and not July 16, 1924, as mentioned in the school register. In order to reach this conclusion, the lower appellate Court relied upon the statement of Puran Chand, P.W. 3, the father of the plaintiff, and the two birth certificates, Exhibits P. 3 and P. 4, relating to both the sons of Puran Chand, P.W. From the said documents,

it has been proved that the plaintiff was born on November 4, 1927 and not on July 16, 1924. Of course in the birth certificate, Exhibit P. 3, against the column of name, the entry made is: "Kidar Chand", and not Kishan Chand, but Puran Chand, P.W., the father of the plaintiff, categorically stated that the plaintiff was known by the name of Kidar Chand in his childhood. Thus, from the documentary as well as the oral evidence, the plaintiff has been able to prove his date of birth to be November 4, 1927. The said evidence has been believed by the final Court of fact. Thus, this being a finding of fact, could not be interfered with in second appeal.

(6) The next contention raised on behalf of the appellant is that under rule 2.5, Note 1, Annexure (A) of the Rules, the plaintiff's suit was barred by time. It reads,—

"2.5 Age — The day on which a Government employee retires or is retired or is discharged or is allowed to resign from service as the case may be shall be treated as his last working day. The date of death shall also be treated as working day.

Note 1.—Every person newly appointed to a service or a post under Government should at the time of appointment declare the date of his birth by Christian era with confirmatory evidence as far as possible confirmatory documentary evidence such as Matriculation Certificate, Municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under note 2 below should be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government Employee's service under Government and once recorded, it cannot be altered except in the case of a clerical error without the previous orders of Government (see also Annexure A to this Chapter).

Note 2.—(a)	***	***	***	***	***	***
(b) and	***	***	***	***	***	***
(c)	***	***	***	***	***	***

Note 3.—For administrative instructions in respect of alterations in the date of birth see Annexure 'A' to this Chapter."

## ANNEXURE (A)

(Referred to in Rule 2.5 and note 3 thereunder).

1. In regard to the date of birth a declaration of age made at the time of or for the purpose of entry into Government service shall, as against the Government employee in question be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interests of the Government employee when it is satisfied that the age recorded in the service book or in the History of service of a Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom.

2. to 4.   \*\*\*   \*\*\*   \*\*\*   \*\*\*   \*\*\*   \*\*\*

4.       \*\*\*   \*\*\*   \*\*\*   \*\*\*   \*\*\*   \*\*\*

Primarily, the above-said rule is meant for the Government if the age is sought to be corrected later on. Of course, the date of birth once given by the Government employee at the time of his entering into Government service shall be conclusive unless he applies for the correction of the same, as recorded, within two years from the date of his entering into the Government service. If the correction thereof is sought after more than two years, the Government may reject his claim under the said rule, but the delay in approaching the civil Court cannot be said to be a bar on that score alone.

(7) Similar matter also came up for consideration before the Division Bench of the Himachal Pradesh High Court in *Manak Choud v. State of Himachal Pradesh* (1). The relevant observations in this behalf are *inter alia* contained in paragraph 5 of the judgment and read,—

“A Government servant is entitled to show that the entry made in his service record does not represent his true date

of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government servant, the Government finds that there is substance in the claim it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous. Now, the Government of India decision, on which the respondents rely, does not have the status of a statutory rule and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth, it must be considered *ultra vires* for the reasons set out above."

Reference was also made to *Sohan Singh v. State* (2), wherein also it was observed that, where a Government servant applied for correction of his date of birth before retirement on the basis of a corrected Matriculation Certificate, but the Government rejected the claim being time barred without examining the material submitted by the Government servant, no decision was taken on the

merits or on the basis of the material furnished by the petitioner or available on the record of the Government. Such an order was set aside and a direction was given that the petitioner was entitled to be given an opportunity to prove the factum of his real date of birth before his representation was rejected.

(8) In view of the afore-said decisions, it could not be successfully argued on behalf of the appellant that the plaintiff's suit was barred by time under rule 2.5 Note 1 Annexure (A) of the Rules.

(9) No other contention has been raised.

(10) Consequently, this appeal fails and is dismissed with no order as to costs.

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N.K.S.