

Abdul Sukur Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-16-1989

Reported in : ILR1990KAR649; 1990(3)KarLJ194

Judge : K.A. Swami, J .

Acts : Karnataka State Servants (Determination of Age) Act, 1974 - Sections 4 to 6

Appeal No. : R.S.A. No. 441 of 1989

Appellant : Abdul Sukur

Respondent : State of Karnataka

Advocate for Def. : Umakanth, HCGP

Advocate for Pet/Ap. : Makhija 'Motilal', Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Swami, J.

1. This Second Appeal arises out of a suit filed by the appellant/plaintiff for the following reliefs:

'(i) Declaration to the effect that the plaintiff was born on 2-3-1331) Fasli (Corresponding to 5-12-1921 A.D.) and consequently his date of birth (23-12-1919) as shown in the Service Register of the defendant is illegal wrong and incorrect and as such it deserves to be rectified and corrected as dated 5-12-1921.

(ii) Declaration that the order of the Deputy Commissioner, Raichur bearing No. RBR/EST/ 41/78-79 dated 26-9-1978 is illegal, void and liable to be set aside and plaintiff is entitled to be continued in the service till 31-12-1981 when he attains the age of Superannuation as per his correct date of birth viz., 5-12-1921 A.D.

(iii) Injunction restraining the defendant or its Subordinate Officers from retiring and relieving the plaintiff on 30th or 31st January 1980 as per the latest and recent decision of the defendant (to the effect that all Government Servants who are to retire in December, 1979 and January 1980 are to be retired in the end of January 1980), as per the order No. RBR/EST/41/78-79 dated 26-9-1978, till 31-12-1981 or alternatively mandatory injunction directing the defendant to reinstate the plaintiff forthwith till he attains the age of superannuation on 31-12-1981.

(iv) Any other appropriate relief which the Hon'ble Court deems just, proper and fit in the circumstances of the case or to which the plaintiff is found to be entitled to.'

2. The trial Court raised the following issues and answered them in favour of the plaintiff:

Accordingly, It decreed the suit. The lower Appellate Court has allowed the appeal and set aside the Judgment and Decree of the trial Court and dismissed the suit. The reason given by the lower Appellate Court for allowing the appeal is that the suit is not maintainable having regard to the provisions contained in the Karnataka State Servants (Determination of Age) Act, 1974 (hereinafter referred to as the 'Act'). The plaintiff is a Government servant. The relief sought for by the plaintiff relates to alteration of his date of birth as entered in the service records and for the consequential reliefs that flow out of such correction. If the plaintiff were to be an ordinary person not being a Government servant probably there was no difficulty for entertaining the suit and giving a decree relating to his date of birth. In the instant case the plaintiff being a Government servant he wants that it should be

declared that he was born on a particular date and the date of birth entered in the service - register should be corrected accordingly. To such a suit Sections 4 and 5 of the Act are attracted- Section 4 of the Act reads thus:

'4. Bar of alteration of age except under the Act:- Notwithstanding anything contained in any law or any Judgment, decree or order of any Court or other authority, no alteration of the age or date of birth of a State servant as accepted and recorded or deemed to have been accepted and recorded in his service register or book or any other record of service under Section 3 shall, in so far as it relates to his conditions of service as such State servant, be made except under Section 5.'

The relevant portion of Section 5 viz., Sub-section (2) of Section 5 of the Act provides that 'no such alteration to the advantage of a State servant shall be made unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of this Act, whichever is later.' The Act came into force on 18th June 1974. Therefore, within three years from the date on which his age and date of birth was accepted and recorded in the service register or book or any other record of service or within one year from the date of coming into force of the Act, whichever is later the plaintiff ought to have sought for alteration of his date of birth. Section 4 of the Act bars any other mode of alteration of the age or the date of birth of State servant as accepted and recorded in his service records except in accordance with the provisions contained in Section 5 of the Act. In addition to this Section 6 of the Act bars the jurisdiction of a Civil Court to settle, decide or deal with any question which is required to be decided under the Act and no decision under the Act shall be questioned in any Court of law. In the light of these provisions, it is not possible to hold that the ultimate decision arrived by the lower Appellate Court that the relief sought for in the suit cannot at all be granted and as such the suit is not maintainable, suffers from any infirmity. Hence, no substantial question of law arises for consideration in this appeal. The appeal is accordingly not admitted and it is dismissed.

