

M. Radhakrishnan Vs. the District Educational Officer and ors.

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Court : Chennai

Decided On : Mar-29-1996

Reported in : 1997(1)CTC133; (1996)IIMLJ464

Judge : P. Sathasivam, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 113; [Specific Relief Act, 1963](#) - Sections 34

Appeal No. : S.A. No. 234 of 1983

Appellant : M. Radhakrishnan

Respondent : The District Educational Officer and ors.

Advocate for Def. : R. Swaminathan, A.G.P.

Advocate for Pet/Ap. : E. Padmanabhan, Sr. Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

P. Sathasivam, J.

1. The plaintiff in O.S.No. 129 of 1979 on the file of the District Munsif's Court, Palani is the appellant in the above second appeal. He filed the suit for declaration

declaring that his correct date of birth was 11.1.1948, he belongs to Theeya Community and in consequence, a direction to the defendants to make suitable corrections in the S.S.L.C. Book.

2. The case of the plaintiff as found in the plaint are as follows: The Plaintiff is the permanent resident of Agraharam, A. Kaliamputhur, Palani Taluk. His father died while he was young and he was brought up by his mother Vellaiammal, who is an illiterate. The plaintiff was born on 11.1.1948 in the headquarters hospital at Coimbatore. His date of birth was reported by the Medical Officer of the hospital and the same was registered in the Coimbatore Municipality. The plaintiff belongs to Theeya Community. But it is generally mentioned as Hindu in the birth extract maintained in the Municipality at Coimbatore. The plaintiff was admitted in the Panchayat Elementary School in the Agraharam of A. Kalaiamputhur and at the time of his admission his mother being an illiterate woman furnished the date of birth to the school authorities as 7.6.1946 instead of 11.1.1948. Since she was working in a mill from 7.00 a.m. to 7.00 p.m, she requested one peon to admit the plaintiff in the school. The mother signed the S.S.L.C. Book declaration also without noting the wrong date of birth mentioned therein. In the S.S.L.C. Book also the caste has been noted as Nayar instead of Theeya community. This mistake also occurred because of the ignorance of the mother. After getting copy of the birth extract the plaintiff came to know that his date of birth has been wrongly noted and that his community also has been wrongly noted as Nayar instead of Theeya community. After knowing this mistake he has been repeatedly writing to the Education Department for the correction of his date of birth in the S.S.L.C. Book. But no favourable reply was given by the Education Department. Ultimately, the plaintiff issued notice on 20.3.1978 to the defendants. The Director of School Education sent a reply stating that the request of the plaintiff cannot be entertained. The District Collector also sent a reply that the notice issued by the plaintiff was recorded. Under the law and equity, the plaintiff is entitled for declaration of his correct date of birth and community. The abovesaid declaration will not prejudice the defendants in any way. Hence the present suit.

3. The second defendant filed written statement and the other defendants adopted the same. The averments in the written statement are as follows: The plaintiff is

not entitled to the relief of declaration that his correct date of birth is 11.1.1948 and he belongs to Theeya Community. The suit as framed is not maintainable in law and on facts. The entries of name, date of birth etc. in Secondary School Leaving Certificates are governed by the subsidiary Rule No. 5 of the Secondary School Leaving Certificate Scheme. As per the said Rule, the request for alteration of date of birth cannot be considered after the pupil completed his school course, sat for public examination, marks entered and the certificate completed. When once the plaintiff ceased to be a student, there is no relationship between him and the Director of Public Instruction and there is no Regulation also to direct the Director of Public Instruction to correct the date of birth. The entries regarding the date of birth, caste, etc. are filled in the Secondary School Leaving Certificate only on the information furnished by the parent or guardian of the student at the time of admission into the Elementary School. The parent or guardian is given an opportunity to get any defect in the entry rectified at the time of preparation of the Secondary School Leaving Certificate. Hence at this stage, there is no necessity to direct the defendants to correct the date of birth and caste of the plaintiff in the S.S.L.C Book. In the notice issued by the plaintiff he has admitted that he obtained the extracts from the birth register in September, 1966. But he has not given any explanation as to why he did not pursue the authorities for more than 12 years. There is delay of more than 12 years from the date of knowledge of the plaintiff about the wrong entry. The S.S.L.C. Book was handed over to the plaintiff at the time of his leaving his school as early as 1963. The authorities mentioned by the plaintiff are not duty-bound to correct the date of birth and caste given in the S.S.L.C. Book of the plaintiff. The suit is not maintainable against the defendants in view of the settled position of law. With these averments, the defendants prayed for dismissal of the suit.

4. The plaintiff has filed a reply statement wherein he has contended that a bona fide mistake or an incorrect entry can always be altered on the facts and circumstances of each case and the proof available for such a mistake in the entry. The interpretation given by the defendants to the Rule 5 is neither sound nor sustainable. The father of the plaintiff died on 18.12.1949 and the mother was an illiterate. Hence the opportunity said to have been given cannot be considered as sufficient. As he was studying in the Post Graduate Course and working as a

labour in the mill, he could not take steps earlier to correct the date of birth and community in the S.S.L.C. Book. He, therefore, prayed that the suit may be decreed.

5. In support of the plaintiff's case, he was examined as PW 2 and he has also examined PW1, PW3 and PW4 in support of his case. He has also marked Exs.A1 to A9. No one was examined on the side of the defendants and also no documents were marked.

6. After framing necessary issues, the Trial Court has held that the present suit for declaration of the correct date of birth and community of the plaintiff is maintainable under Section 34 of Specific Relief Act. However, relying upon a decision of this Court reported in Director of Public Instruction v. Mohandas, 1955 (1) M.L.J. 488, held that the civil court has no jurisdiction to find out the correct date of birth and community of the plaintiff and pass necessary declaration. On the basis of the above findings, the Trial Court by judgment and decree dated 11.8.1980 dismissed the suit with costs.

7. The unsuccessful plaintiff filed an appeal in A.S.No. 141 of 1980 before the Sub-court, Dindigul. After framing necessary points for determination, in view of the inordinate delay of 15 years in approaching the Court, the lower Appellate Court rejected the claim of the appellant and dismissed the appeal.

8. Against the concurrent findings of the Courts-below, the unsuccessful plaintiff filed the present second appeal before this Court. While entertaining this second appeal, this Court has determined the following substantial questions of law for consideration:

(1) Whether the Courts below acted illegally and misdirected them-selves in declining to grant the reliefs of declaration that the plaintiff's correct date of birth is 11.1.1948 and he belongs to Theeya Community in spite of the unchallenged Exs.A1, A2 and A7 to A9 and the evidence of PWs 1 to 4, when grant of the same is neither barred by limitation nor such reliefs have been excluded from the jurisdiction of Civil Courts?

(2) Whether the Courts below erred in law in refusing to grant the reliefs of two declarations and consequential injunctions prayed for despite public documents produced just because the plaintiff has instituted the suit after leaving the school and belatedly according to them and in law the cause of action for such a suit is per day-diem?

(3) Whether the Courts below erred in law in proceeding as if the Civil Courts have no jurisdiction to grant the relief of two declarations prayed for?

9. Mr. E. Padmanabhan, learned Senior Counsel for the appellant raised the following contentions:

1. In the light of Section 34 of the Specific Relief Act, the plaintiff/appellant is entitled to maintain the suit against the respondents/defendants.

2. Both the Courts below failed to consider Exs.A1,A2 and A9.

3. The reasoning of the Courts below that the plaintiff did not take any step for more than 12 years is not sustained in as much as he was all along corresponding with the defendants.

10. He also relied on State v. T. Srinivas; : AIR1988 Kant67 , K.M. Sastry v. Director, Post Graduate Centre, Anantapur; Director of Technical Education v. K. Sitadevi, : AIR 1991 SC308 and Balachandran, G. v. State of Tamil Nadu and Anr., 1993 (2) LW 367, in support of his contentions.

11. Mr. R. Swaminathan, learned Additional Government Pleader appearing for the respondents contended that in the light of the decision of the Apex Court in Secretary and Commissioner, Home Department v. R. Kirubakaran, AIR 1993 SC 264, and of the fact that there is inordinate delay in filing the present suit, the dismissal of the suit by the Courts below are perfectly in order. He also contended that the judgment of this Court reported in Balachandran, G. v. State of Tamil Nadu and Anr., 1993 (2) LW 367 is distinguishable.

12. According to the plaintiff, he was born on 11.1.1948 at Headquarters, Hospital, Coimbatore. Ex.A1 is the true extract of the birth register of the Coimbatore

Municipality showing the date of birth of the plaintiff as 11.1.1948. It is the case of the plaintiff that his father died while he was very young and his mother is also an illiterate. In these circumstances, he was admitted in the Panchayat Elementary School by his mother and as instructed by peon of the said school, without knowing the consequences her mother informed the date of birth to the school authorities as 7.6.1946 instead of 11.1.1948. Likewise, he also stated that he belongs to Theeya Community whereas in the S.S.L.C. Book the caste has been noted as Nayar instead of Theeya Community. Now he relied upon Ex.A2 a certificate issued by Cordite Factory, Aravemgadu to his father (Ex.A2) wherefrom it is seen that his father belongs to Theeya Community. He has also filed Ex.A9 issued by the Headquarters, Deputy Tahsildar, Palani stating that the plaintiff belongs to Theeya Community. He also produced Exs.A 7 and A 8 wherein it has been mentioned that the plaintiff belongs to Theeya Community. In support of the case of the plaintiff, apart from his own evidence, as PW 2, he had also examined his mother as PW3 and one peon by name Nanjappan as PW4.

13. It is the case of the defendants that the entries regarding the name, date of birth and caste etc. in the S.S.L.C. Book are governed by the Subsidiary Rule 5 of the Secondary School Leaving Certificate Scheme. As per this rule, a request for alteration of date of birth cannot be considered after the pupil completed his school course, sat for public examination, marks entered and certificate completed. It is also the contention of the defendants that the entries regarding the date of birth, caste etc. are filled in the Secondary School Leaving Certificate on the information furnished by the parent or guardian of the student at the time of his admission in the Elementary School. Moreover, parent or guardians is again given an opportunity to rectify any defective entry regarding the date of birth or caste when the S.S.L.C. Book is prepared. In this regard, the learned Senior Counsel appearing for the appellant has contended that the date of birth of a person and community to which he belongs form part of his legal character or legal status and so the person is entitled for a declaration regarding his date of birth and community as per the provisions in Section 34 of the Specific Relief Act. Section 34 of the Specific Relief Act reads as follows:

'Any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not institute such suit and ask for any further relief provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than mere declaration of title omits to do so'.

14. It is true that if the plaintiff is entitled to some legal character or to some right relating to the property and if the declaration sought for is that he is entitled to such legal character or to such right, the suit can be very well maintained. As seen from Ex.A4 notice dated 18.3.1978 issued by the plaintiff to the 1st defendant, he came to know the correct date of birth is 11.1.1948 as registered in the Coimbatore Municipal Office even in the year 1966. Till 1979 the plaintiff did not take step or file a civil suit to correct his date of birth and community. No doubt, the learned Senior Counsel for the appellant contended that all along the plaintiff was corresponding with the authorities viz., defendants and no favourable reply received from them till the date of suit notice under Ex.A4. As discussed by the Courts below as per Rule 5 of the Secondary School Leaving Certificate Scheme, alteration of date of birth cannot be considered after the pupil completed his school course for S.S.L.C, sat for public examination, marks entered and certificate completed. It is the definite case of the defendants that the Secondary School Leaving Certificate was handed over to the plaintiff at the time of his leaving his school as early as 1963. It shows that the plaintiff had not taken appropriate step from 1963 to 1978 for more than 15 years to correct the same. In this respect, it is useful to refer the observation made in the judgment of the Division Bench reported in Director of Public Instruction v. Mohandas, 1955 (1) MLJ 488.

'We do not agree with him (Justice Bell) that it is incumbent on the Director of Public Instruction to make an alteration wherever a case of a clerical error or a bona fide mistake or manifest injustice is brought to his notice at a time long after the appellant has finished his school course, despite the Rules'.

Regarding the maintainability of the suit for declaration of his correct date of birth, the learned Senior Counsel for the appellant relied upon State v. T. Srinivas, : AIR1988 Kant67 . There is no dispute with regard to the proposition of law enunciated in the said judgment that 'a suit for declaration of the correct date of birth is maintainable in Civil Court and a decree could be passed rectifying the date of birth'.

Another decision referred to by the learned Senior Counsel is K.M. Sastry v. Director, Post Graduate Centre, Anantapur, : (1982)ILLJ66AP . wherein it is held that

'the defendant employer public authority cannot ignore decree on the ground of absence of direction for rectification of service record'.

The above principle of law is also acceptable and there is no dispute. The other decision referred to by him is Director of Technical Education v. K. Sitadevi, : AIR 1991 SC308 . which deals with only the binding nature of the decree of the Civil Court on the employer in the matter of determination of the date of birth.

15. At this juncture the learned Additional Government Pleader has brought to my notice the recent judgment of the Apex Court in Secretary and Commissioner, Home Department v. R. Kirubakaran, : (1994)ILLJ673SC . After referring to the Service Rules of the various States the Apex Court has explained the correct legal position in the following manner.

'An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his

immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by Rule or Order. If no Rule or Order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth, whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his Service Book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the Service Books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed under served benefit of extended service and merely caused injustice to his immediate junior.'

The abovesaid judgment came to be passed in a case where the entry in respect of date of birth in the service register sought to be corrected only in the year 1991, even though he has joined in the service in 1958. No doubt the observation and the principles laid down in the above referred case is not applicable to the facts of the present case, since only after filing of the present suit, the plaintiff joined the service in the Hindu Religious Endowment Department. However it is seen from Ex.A3 the plaintiff had completed his school course in 1964 itself and the marks

obtained by him in the S.S.L.C. were entered in the S.S.L.C. Book and the same was handed over to the appellant in the year 1964 itself. But he has filed the present suit only in 1978 nearly after 14 years to correct his date of birth and community. The relevant Article applicable to the present case is Article 113 of Limitation Act. As per the said provision, 'the suit has to be filed within 3 years from the time when the right to sue accrues'. Admittedly, in this case the plaintiff was aware of the wrong entry in the S.S.L.C. Book with regard to his date of birth and community even as early as in the year 1966. Therefore, the suit is filed beyond the period prescribed under Article 113.

16. No doubt, the learned Senior Counsel for the appellant very much relied on the recent judgment of this Court reported in Balachandran, G. v. State of Tamil Nadu and Anr., 1993 (2) LW 367. In that case the plaintiff/appellant filed a suit for declaration that he was born on 7.7.1957 and for a consequential mandatory injunction for correcting his date of birth as found in the S.S.L.C. Book, which showed the said date of birth as 7.7.1956. The suit was dismissed by the Trial Court, both on merits and on the ground that the suit itself was barred by limitation. But in the first appeal preferred by the plaintiff in A.S.51 of 1989, the lower Appellate Court accepted the case of the plaintiff that his date of birth was only 7.7.1957 and not 7.7.1956, but dismissed the suit on the ground that the suit was barred by limitation. Against the said dismissal, the second appeal has been filed by the plaintiff. After referring to Article 113, the learned Judge therein pointed out that pursuant to Ex.A4 dated 29.10.1979 the application made by the plaintiff to the defendant for making the necessary correction, the reply was sent by the defendant under Ex. A-5, dated 3.11.1979 rejecting the claim of the plaintiff. According to the learned Judge, the time would begin to run only from 3.11.1979 and held that the suit filed the plaintiff therein is well within the time. Referring to the above decision of this Court, the learned Senior Counsel for the appellant points out that here in this case under Ex.A4, dated 18.3.1978 notice has been sent by the plaintiff to the 1st defendant. Under Exs. A5 and A6 dated 18.5.1978 and 17.4.1978 respectively the 3rd and 2nd defendant sent a reply repudiating the claim of the plaintiff. In the light of Exs. A4, A5 and A6, the suit filed in the year 1979, according to the learned Senior Counsel is well within three years as per Article 113 as well as per decision referred to above. At this stage, the learned

Additional Government Pleader pointed out the distinction between the case reported in Balachandran, G. v. State of Tamil Nadu and Anr., 1993 (2) LW 367 and the present case. He pointed out the assertion of the plaintiff in the plaint that after knowing the mistake the plaintiff was repeatedly writing to the Education Department for the correction of his date of birth in the S.S.L.C.Book, but no favourable reply was given by the Education Department. The abovesaid pleading was strengthened by PW 2 (plaintiff) in his oral evidence. For this the learned Additional Government Pleader contended that after knowing the correct date of birth in the year 1966, according to the plaintiff, he made several representations to the defendants and no favourable reply was given by the Education Department. Hence as rightly pointed out by the learned Additional Government Pleader, in this case the cause of action arose even as early as in the year 1966 and subsequent reply by the defendants to the plaintiff, in view of Article 113, the present suit filed in the year 1979 is clearly barred by limitation. In the light of the above factual assertion as borne out by evidence, the decision relied on by the learned Senior Counsel for the appellant, i.e. Balachandran, G. v. State of Tamil Nadu and Anr., 1993 (2) LW 367 is distinguishable and not applicable to the facts of the present case.

17. I am unable to accept any of the contentions of the learned Senior Counsel for the appellant and I am in entire agreement with the findings of the Courts below.

18. For all the reasons stated above, there are no merits in the second appeal. Consequently the same is dismissed. No order as to costs.

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