

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2585/2011

STATE OF ORISSA

Appellant(s)

VERSUS

BATAKRISHNA SAMAL & ANR.

Respondent(s)

WITH

C.A. No. 2586/2011 (XI-A)

O R D E R

Civil Appeal No.2585/2011

The dispute pertains to the endeavour of respondent No.1 to change his date of birth for the purpose of employment on the basis of a judicial pronouncement in a suit to which respondent No.1, his brother and respondent No.2 were party though respondent No.1 is an employee of the appellant.

Respondent No.1 joined the services of the appellant in the financial Department in the year 1982 and after a gap of 13 years he sought to change his date of birth in the year 1994. The request was rejected by the appellant vide its communication dated 31.3.1995 relying on Rule 65 of the Orissa General Financial Rules. The relevant Rule reads as under:

“65. Every person on entering Government service shall declare his/her date of birth which shall not differ from any such declaration expressed or implied for any public purpose before entering service. The date of birth shall be supported by documentary evidence such as Matriculation Certificate, Municipal Birth Certificate and entered in his/her service record. No alteration of the date of birth

of Government servant shall be made except in case of clerical error without prior approval of the State Government. An application for effecting a change in the date of birth shall be summarily rejected if -

(a) filled after five years of entry into Government service, or

(b) the change would so lower the applicants age that he/she would have been ineligible to appear in any of the academic or recruitment examinations in which he/she had appeared or for consideration for appointment to any service or post under the Government.

(F.D.O.M. No.Pen-65/92-42151/F., dated the 28th September, 1992)."

In terms of the aforesaid Rules, any application for change of date of birth filed after five years of entry into Government service was liable to be summarily rejected.

It appears that thereafter a suit was filed in 1995 by the stated elder brother of respondent No.1 impleading him and respondent No.2 as a party.

A declaration was sought in very peculiar terms - not about the date of birth of the plaintiff (elder brother of respondent No.1) but of the defendant No.1 while stating that he was one year and eleven months younger to the plaintiff and thus the plaintiff has a right, title, interest and possession over the suit land as his father's eldest son.

The declaration sought by the plaintiff was that he is the elder son, not for declaration of his date of birth. Respondent No.2 before us was called upon to be directed to correct the date of birth of respondent No.1. To say the least, reliefs in the suit

are very peculiarly worded to sub-serve the oblique motive.

The trial Court vide a decree dated 20.3.1999 partly granted relief as prayed for in the suit declaring the plaintiff therein as the eldest son of his father and defendant No.1 (respondent No.1 before us) as younger to plaintiff. It also sought to declare the date of birth of respondent No.1 before us has not been correctly reflected in the High school certificate issued by the Board of Secondary Education. It appears that no appeal was filed against this order.

Respondent No.1 sought to take advantage of this decree by making a second representation on 5.9.1999 to the appellant seeking change of date of birth relying on the said declaratory decree to which the appellant was not a party. The request was, however, rejected on 25.06.2001. Respondent No.1 aggrieved by the said rejection filed OA No.304/2002 before the Orissa Administrative Tribunal, Bhubneshwar. The matter was contested and, *inter alia*, it was pleaded that no decree has been granted against the Board for change of date of birth of respondent No.1 nor was any date of birth of respondent No.1 specified much less as 28.12.1954, as claimed by the said respondent.

The respondent No.1 being aggrieved by the same preferred a Writ Petition [C] No.3556/2009. The High Court vide impugned judgment dated 02.09.2009 allowed the Writ Petition directing change of date of birth to be recorded as 28.12.1954 in place of 12.06.1952 as had been earlier recorded. The State of Orissa-appellant preferred a Special Leave Petition. Notice was issued and the operation of the impugned judgment was stayed.

Subsequently, leave has been granted.

We have heard learned counsel for the parties.

We are unimpressed by the arguments sought to be advanced by counsel for the respondent seeking to support the judgment.

There are two broad aspects on which respondent No.1 was disentitled to the relief.

Firstly, the Rule governing the services of respondent No.1 with the appellant specifically prescribed and called for summarily rejection of any application to change date of birth on expiry of five years from the date of employment. Rule 65 is explicit in this behalf and indisputably respondent No.1 applied after twelve years for change of date of birth. Secondly, a decree obtained by the elder brother of the respondent No.1 qua status of elder brother seeking some rights in the property for declaration of respondent No.1 as a younger brother by a period of one year eleven months cannot have the effect of change of date of birth of respondent No.1. In fact no specific date of birth was recorded in terms of the said judgment nor was any direction issued to respondent No.2 in that behalf. That appears to be the reason even the Board did not prefer the appeal. It was a matter pertaining to two brothers.

The aforesaid being the position respondent No.1 cannot be permitted to take advantage of the family decree to get his date of birth changed contrary to the Rules qua his employment with the appellant.

We may notice that respondent No.1 is stated to have retired. In the meantime, no monetary benefits have accrued to him on

account of impugned order having been stayed. We are not able to accede to learned counsel for respondent No.1's request that since the matter pertains to a small amount of extra pension which he will be getting, the impugned order should not be disturbed. The judgment being contrary to Rules, we cannot permit it to stand.

We thus, set aside the impugned order and restore the order of the Tribunal dismissing the application filed by respondent NO.1.

The appeal is accordingly allowed.

Parties to bear their own costs.

Civil Appeal No.2586/2011

The appeal is allowed in terms of the above order.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[K.M. JOSEPH]

NEW DELHI;
AUGUST 07, 2019

ITEM NO.106

COURT NO.11

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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C.A. No. 2586/2011 (XI-A)

Date : 07-08-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mrs. Kirti Renu Mishra, AOR
 Ms. Apurva Upmanyu, Adv.

For Respondent(s) Mr. Shibashish Misra, AOR
 Mr. Chandan Kumar Mandal, Adv.
 Mr. Ompal Singh, Adv.
 Mr. Ashish Kumar Sinha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(BEENA JOLLY)
BRANCH OFFICER

[Signed order is placed on the file]