

**R.A No.70/2018**

**Present: Mr. Justice Nazar Akbar**

**Versus**

Decided on : **27.05.2019**

## JUDGMENT

2. Briefly stated the facts are that appellant/plaintiff has filed a suit against respondent/defendants for declaration, rectification and permanent injunction stating therein that plaintiff joined the defendant M/s.Sui Southern Gas Company on **24.6.1990**. He was promoted as Superintendent on the basis of seniority and serving on the said post under the control and command of defendants No.2 &

3. It is further averred that the date of birth of plaintiff is **01.03.1957**

which is duly supported by old NIC. The retirement of plaintiff on attaining the age of 60 years was due on **01.03.2017**. It is further stated that all of sudden the plaintiff was served with retirement notice by respondents No.2 & 3 stating that plaintiff shall stand retired from SSGCL Service on attaining the age of 60 years on **28.2.2014**. The plaintiff requested Respondents No.2 & 3 to withdraw/cancel/recall the impugned retirement notice dated **31.01.2014**. It is further averred that during service in **August 2003** the Management had invited application from all employees whose date of birth was wrongly recorded in the office record. The plaintiff applied for correction but the Management till date has neither corrected the date of birth of the plaintiff in official record nor communicated any reply to the plaintiff. It is further stated that plaintiff filed CP No.D-812/2014 before Hon'ble High Court and it was held in said petition that the matter pertains to factual controversy which can only be resolved by the civil suit and seven days' time was given for presenting the suit for resolving the factual controversy in respect of date of birth mentioned in secondary school certificate, NIC, CNIC and birth certificate of plaintiff. It is further averred that educational institution (defendant No.4) is bound to maintain the correct database and to print correct information of the students in respect of date of birth and if date of birth is not corrected the plaintiff shall be deprived of three years salaries/remuneration in addition to various other related fringe benefits including bonus medical treatment which the plaintiff could avail till **01.3.2017** as per his date of birth. Therefore, appellant/plaintiff filed the suit for declaration, rectification and permanent injunction.

3. Learned counsel for Respondents No.2 contended that suit was not maintainable for many reasons as main relief of plaintiff for declaration of date of birth as 01.03.1957 was hit by the law of limitation. The date of birth as **01.3.1954** was in his knowledge since year 1975 when he was awarded Secondary School Certificate and the plaintiff has already been retired from the services on **01.03.2014** after 60 days prior notice of retirement on **31.01.2014**. He further contended that there is no reason to believe that he was not aware of his actual date of birth which is incorporated in the record of Board of Intermediate and Secondary Education / defendant No.5 nor it could be believed that plaintiff was not in knowledge of his incorrect date of birth mentioned in his service record. It is further averred that his actual date of birth was in his active knowledge as he himself has filed an application on **25.08.2003** to the General Manager HR Head office of the SSGCL Karachi on the subject. Learned counsel further averred that when plaintiff was aware of his date of birth in the year 2003 then why he has approached the Court in the 2016 after lapse of about 13 years which is much beyond the period of limitation provided under **Article 120** of the Schedule annexed with the Limitation Act.

4. After hearing the parties the plaint of suit was rejected. Then appeal **No.129/2017** filed by Appellant was also dismissed by the learned appellate Court. Therefore, the applicant has filed the instant revision to assail the finding of the two Courts below.

5. I have heard the learned counsel for the applicant and perused the record.

6. Learned counsel for the applicant was unable to refer any improper exercise of the jurisdiction by the trial Court while allowing

application under **Order VII Rule 11 CPC** on the ground of limitation. The two Courts below have very comprehensively examined the limitation on the question of determination of date of birth of the applicant. The applicant in the plaint has failed to explain the delay in filing the suit since 2003 until he received notice of retirement on **31.1.2014** when he was unable to get his date of birth corrected as required. The plaintiff himself has stated in the plaint that in **2003** he made such a request to the respondents but such request was not made to the relevant authorities i.e. Secretary Board of Secondary Education Karachi, whose record was determining factor to ascertain date of birth. His date of birth as **01.3.1954** was mentioned in the metric certificate issued to him on **01.2.1975**. He has entered the service of respondent while relying on the date of birth mentioned on the metric certificate in 1990. He claimed to have made such application in 2003 and till 2016 he remained silent. He did not file any suit, therefore, from any of the dates which could be considered as started point of limitation for filing the suit for declaration and correction of date of birth, the suit was hopelessly time barred as held by the two Courts below concurrently.

7. In view of the above discussion, no case for interference in the judgments of two courts below was made out since there was no illegality or irregularity in the judgments of the Courts below nor the decisions were contrary to law, therefore, instant revision was dismissed by short order dated **27.05.2019** and these are the reasons for the same.

Karachi  
Dated:31.7.2019

JUDGE

SM