

A

STATE OF ORISSA AND ORS.

v.

SHRI RAMANATH PATNAIK

APRIL 2, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

C

*Service Law—Employee—Date of birth—Correction of—Date of birth recorded on the basis of school certificate—Superannuation—Suit filed subsequently for declaration of correct date of birth—Dismissal of suit by Trial Court—Suit decreed by First Appellate Court—Second appeal preferred by State dismissed by High Court—Appeal before Supreme Court—Held no attempt was made by employee to have the record corrected while he was in service—Any amount of evidence produced subsequently would be of no avail—The High Court, therefore, has committed manifest error of law in refusing to entertain the second appeal.*

D

*State of Tamil Nadu v. T.V. Venugopalan*, [1994] 6 SCC 302, referred to.

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2673 of 1986.

From the Judgment and Order dated 21.2.86 of the Orissa High Court in S.A. No. 295 of 1985.

F

P.N. Misra for the Appellants.

N.R. Choudhary for the Respondent.

The following Order of the Court was delivered :

G

This appeal by special leave arises from the Judgment of the learned single Judge of the Orissa High Court, made on February 21, 1986 in Second Appeal No. 767/81, dismissing the second appeal *in limine*.

H

Admittedly, the respondent joined the State service as a Clerk on 21.3.1944. According to the Matriculation Certificate produced at the time of the entry into the service, his date of birth is January 1, 1921. On attaining the superannuation, he retired from service on 31.12.1976. He

filed a suit in the year 1981 on the basis of the rejection of his representation for declaration that his correct date of birth is January 1, 1925 and not January 1, 1921. The trial Court dismissed the suit, but on appeal, the Additional District Judge, Bhubaneswar decreed the suit. As stated earlier, the second appeal was dismissed by the High Court. Thus, this appeal by special leave. A

The controversy is no longer *res integra*. This Court has considered the entire case law on this point in *State of Tamil Nadu v. T.V. Venugopalan*, [1994] 6 SCC 302. Therein, this Court, has held thus : B

"It is well known that the service record would be opened after the government servant enters the service record would be countersigned by the government servant. The date of birth as entered in the school record is the source of material for making entry in the service record." C

When entry was made in the service record and when he was in service, he did not make any attempt to have the service record corrected. Therefore, any amount of evidence produced subsequently would be of no avail. The High Court, therefore, has committed manifest error of law in refusing to entertain the second appeal. D

The appeal is accordingly allowed. The judgment of the High Court stands set aside. The judgment and decree of the appellate Court stands reversed and that of the trial Court stands confirmed. No Costs. E

T.N.A.

Appeal allowed.