

## **Director Of Technical Education And ... vs Smt. K. Sitadevi on 8 November, 1990**

**Equivalent citations: AIR1991SC308, 1991LABLC212, 1991SUPP(2)SCC387, AIR 1991 SUPREME COURT 308, 1991 LAB. I. C. 212, 1991 (2) SCC(SUPP) 387, 1991 SCC (SUPP) 2 387, 1992 SCC (L&S) 78, (1991) 1 LAB LN 578**

### **JUDGMENT**

1. Appellant's challenge by special leave is to the correctness of the decision of the Andhra Pradesh Administrative Tribunal by which the respondent's application for alteration of her date of birth from 19-10-1929 to 21-8-1933 has been accepted.

2. Respondent, a lady engineer in the service of the State of Andhra Pradesh, entered into service in 1955. Admittedly she is an engineering graduate. The matriculation certificate which she had then produced while entering into service indicated her date of birth to be 19-10-1929. It appears that she filed Original Suit No. 309 of 1979 in the Civil Court for alteration of her date of birth from 19-10-1929 to 21-8-1933 impleading the Andhra University as defendant and obtained the decree on 21-10-1980. Pursuant to the decree of the Civil Court, the Andhra University issued a fresh matriculation certificate to her in which her date of birth was shown as 21-8-1933. On the basis of this new certificate respondent applied to the appropriate authority in the State for changing her date of birth from 19-10-1929 to 21-8-1933 in the service record. Such application was, however, rejected on 23-6-1983. Thereafter, the representation was filed before the Andhra Pradesh Administrative Tribunal and the same having been allowed the appeal has been brought to this Court.

3. It is not in dispute that in the suit the State of Andhra Pradesh was not impleaded and the only defendant was the Andhra University which had granted the certificate. The claim of the respondent for the alteration of date of birth was based upon a municipal certificate regarding date of birth. Though, the suit was contested, the State of Andhra Pradesh not being a defendant, the decree was not accepted by the State. The matter would have been certainly very different if the decree was obtained in the presence of the State of Andhra Pradesh. Mr. Madhava Reddy is, therefore, justified in his submissions that the decree and the municipal certificate on which reliance was placed in the suit were only pieces of evidence having no binding effect on the dispute. His submission is that the Tribunal has erred by relying upon them as binding on the State.

4. Mr. G. L. Sanghi, appearing for the respondent, has referred to a part of the judgment of the Tribunal where it is clearly mentioned that the municipal certificate was produced and shown to the Tribunal and that has been accepted in the absence of any objection from the Andhra Pradesh State which was represented before the Tribunal.

5. We Would have agreed with Mr. Madhava Reddy if the decree had been made the sole foundation for the relief granted by the Tribunal. But the additional fact that the original certificate was

produced and the Tribunal looked into the dates of birth of the other members of the family to find out the reasonableness of the claim of the respondent about her changed date of birth are features which make the dispute factual and the conclusion reached by the Tribunal must therefore, be taken to be one where on facts found the decision has been taken. What exactly is the date of birth of a person is undoubtedly a question of fact and, therefore, the objection raised by learned Counsel for the respondent has to be accepted.

6. We, therefore, clarify the legal position that a decree without the State being a party is not binding on the employer (The State) in the matter of determination of the date of birth. But in the present case the Tribunal, on the basis of materials placed before it, apart from the decree of the Civil Court, has come to its own conclusion on the question of fact. We, therefore, dismiss the appeal. The respondent, we are told, has not the basis of the original date of birth, already superannuated. She would on the basis of the relief granted to her by the Tribunal be entitled to be called back to service for the residue of the period on the basis of the changed date of birth and be treated to be continuing in service for all other purposes.

7. The Civil Appeal is dismissed accordingly. No costs.