

(1995) 01 PAT CK 0008

In the Patna High Court

Case No : Second Appeal No. 135 of 1991

Bihar State Road Transport Corporation and 2 Ors.

APPELLANT

Vs

Raghubansh Singh

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Citation : (1995) 01 PAT CK 0008

Final Decision : Dismissed

Judgement

1. Today by itself, we have passed the (sic) order, in this case, to the following (sic).

24. 3.1.1995-This appeal by the fendants-Appellants has come up fore this Division Bench pursuant to (sic) order of reference dated, 30th July, 1992. Concluding portion of the order (sic) as follows.

Accordingly, I refer this case to vision Bench for hearing on the question as to whether the suit for correction date of birth of an employee governed the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 is maintainable.

While admitting this second appeal, the (sic)ion of law was formulated by the (sic) Judge of this Court which reads as follows-

Whether the Court below has jurisdiction to entertain the suit for a declaration that the date of birth as recorded in service (sic) book was incorrect and to (sic) the consequential decree that the Appllant will superannuate on the basis his date of birth as said by him in the year 1938.

We answer this question in affirmative. The reasons will follow later.

Sd/-Choudhary S.N. Mishra Sd/-A.K. Ganguly.

Hence, the reasons.

2. In order to appreciate the rival contentions raised by the learned Counsel for

the parties either in support or against the reference aforesaid, certain facts and the relevant dates may be stated hereinbelow.

The Plaintiff, who was the employee of the Defendants-Appellants at the relevant time, filed a suit on 23.9.86 for declaration of his date of birth as 15.2.1941 as also for a direction to the Defendants, to make necessary correction in his service book. During the pendency of the suit, the Plaintiff's services were terminated on 10.1.1989 and, accordingly, a petition was filed for amendment of the relief sought for in the plaint to the effect that he may be allowed to continue in service. The said amendment was allowed by order, dated 14.6.1989. The Plaintiff had joined the services of the Corporation, namely, the Bihar State Road Transport Corporation (hereinafter to be referred to as "the Corporation") in 1964 when his date of birth was mentioned as 1.1.1929 in his service book, although he alleged the date of his birth as 25.12.1938. On 26.6.1980, he applied for correction of his date of birth in the service book as 15.2.1941, which was rejected by the Respondent Corporation by order, dated 3.10.1980. On the basis of the school leaving certificate, the Plaintiff claimed his date of birth as 12.10.1938. As stated above, during the pendency of the suit, the Plaintiff was allowed to retire from the services of the Corporation with effect from 10.1.1991 treating his date of birth as 1.1.1929. The suit was resisted by the Defendant-Corporation by filing a written statement. At the very threshold of the commencement of the trial of the suit in the Court below underlying this proceeding, several issues were framed on the basis of the cases of the respective parties, which were answered in favour of the Plaintiff after threadbare discussions of all the evidence-both oral and documentary.

3. In order to sustain the challenge to the jurisdiction of the civil Court, learned Counsel for the Appellants submitted, firstly, that the Plaintiff admittedly being a workman within the meaning of Section 2K of the Industrial Disputes Act and the dispute including the relief sought for by the Plaintiff being an industrial dispute can only be raised before the Courts constituted under the Industrial Disputes Act and not before the civil Court. Learned Counsel for the Appellants, elaborating his argument, has referred to Section 2A of the Act and submits that the Plaintiff could have approached the authority under the Act for the relief sought for. Learned Counsel also faintly argued that the suit is also barred under the provisions of the Specific Relief Act. In support of his contention, learned Counsel for the Appellants relied upon the ratio of the decision of the Supreme Court in the case of Jitendra Nath Biswas v. Empire of India reported in 1990 L.I.C. (S.C.) 308. The short question that arose for consideration before their Lordships was with respect to the jurisdiction of the civil Court in a suit in somehow a similar matter although the facts and the nature of the relief sought were entirely different. The Plaintiff was the Appellant before the Court and was an employee of the Defendant-Respondent. The Plaintiff was to explain regarding certain charges of misconduct levelled against him for which he was found guilty during the domestic inquiry and he was ultimately dismissed. The order of dismissal being wholly contrary to the provisions of the Standing Order and the

Plaintiff, accordingly, filed a suit before the civil Court for a declaration that the order of his dismissal from service is ab initio void and cannot be given effect to, as he was not guilty of any misconduct. It was alleged that the order of dismissal was bad in law as no inquiry was conducted in accordance with the Standing Orders. The Plaintiff also sought the relief of injunction, back wages and further prayed not to give effect to the order of dismissal. One of the points raised by the Defendants in the suit was that in view of Section 2A of the Act, the suit was not maintainable for such reliefs, which could be granted only by the Industrial Courts.

In the facts and circumstances of the case, their Lordships of the Supreme Court accepted the contention raised on behalf of the Defendants and held that in the circumstances, the jurisdiction of the civil Court is excluded by implication with respect to the remedies available under the Act.

4. At the outset it may be stated here that the point of jurisdiction of the civil Court, which is being raised in this second appeal, has neither been taken in the written statement nor does it seem to have been argued before the Courts below, but for the first time, this question is being agitated in this second appeal, which is the basis of the reference to the Division Bench, but since the question raised is a pure question of jurisdiction this Court has allowed the Appellants to raise it although in absence of such a pleading on behalf of the Defendants-Appellants and the point raised in the Courts below.

5. In opposition to the aforesaid submissions, learned Counsel appearing on behalf of the Plaintiff Respondent has submitted that the Plaintiff filed the suit for a simple relief of correction in the date of his birth, which was wrongly mentioned in the service book and during the pendency of the suit, the services of the Plaintiff were terminated by the Defendant-Corporation. Accordingly, an amendment was sought for in the relief only to the extent that he should be allowed to continue in service, which was ultimately allowed by order, dated 14.6.1989 and in that view of the matter, the learned Counsel for the Plaintiff Respondent has submitted that in the facts and circumstances of the case, it cannot be said that the jurisdiction of the civil Court is ousted for the relief sought for by the Plaintiff. In support of his contention, learned Counsel for the Plaintiff has relied upon a decision of the Supreme Court in the case of Isha Singh Vs. National Fertilizers and another, wherein a similar question, arose for consideration before their Lordships. A similar objection was raised in the suit by the Defendant regarding jurisdiction of the civil Court in entertaining the suit. Their Lordships, after having heard the learned Counsel for the parties and taking into consideration the question raised, have held as follows.

3. Law is settled that matters which come within the purview of Section 9 of the CPC are maintainable in the Civil Court. Section 9 provides:

The Courts shall subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either

expressly or impliedly barred.

The scope of Section 9 has been the subject matter of a long series of decisions and it is difficult to contend and Mr. Ashwini Kumar has, therefore, fairly accepted the position-that a suit for correcting the date of birth in the record would be maintainable. In fact, asking for a correction of that type may be for various purposes and need not necessarily be confined to the question of claiming the relief available under the Industrial Disputes Act.

4. The main challenge to the Civil Court's jurisdiction is by placing reliance on Section 2A of the Industrial Disputes Act. On a reference to that provision, we find that on the happening on certain eventualities, the reliefs available under that provision can be asked for. On 7.1.1988, none of the situations contemplated u/s 2A had happened so as to give the Appellant a cause of action to approach the Industrial Court. It cannot be doubted that the maintainability of the suit has to be decided with reference to the date of institution of the proceeding and since on 7.1.1988 when the civil suit was filed none of the eventualities covered by Section 2A had happened, the Appellant could not have approached the forum under the 1947 Act for relief.

5. The other question which Mr. Ashwini Kumar has raised is as to whether the civil Court would have jurisdiction to give injunction against superannuation or the other ancillary reliefs contemplated to a workman against his employer. Law is equally settled that if for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor. In that view of the matter, so far as the relief of rectification of the record relating to date of birth is concerned, the Civil Court had jurisdiction and the High Court was not right in saying that the suit was not maintainable at all.

6. The learned Counsel for the Plaintiff-Respondent has relied upon Anr. Division Bench decision of this Court in Indian Oil Corporation and Others Vs. Md. Sohail and others, . In the aforesaid case, a similar question in the similar circumstances came up before their Lordships for consideration and after taking into consideration various decisions of the Supreme Court, it has been held as follows.

13. Thus, in view of the authoritative pronouncements of the Apex Court it is clear that if any dispute raised by the workman falls u/s 2(K) or u/s 2(A) of the Industrial Dispute Act then the remedy of the aggrieved person is to approach the authorities under the provisions of the Industrial Disputes Act. However, if the dispute is not an industrial dispute within the meaning of the aforesaid two provisions, then the jurisdiction of the civil Court is not barred and the civil Court is proper forum for redressal of the grievance.

14. There is no dispute with regard to the aforesaid proposition of law but the question in the present case is as to whether the dispute raised by the Plaintiff at the time of the filing of a suit was an industrial dispute or not. Section 2(K) of the Industrial Disputes Act defines the Industrial Dispute, which runs as follows:

"Industrial dispute" means any dispute or difference between employees and employers and between employee and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person.

It is well settled that a industrial dispute, prior to insertion of Section 2A could be raised only by a group of workmen against their employer or by a union and an individual workman had no right to raise industrial dispute. Section 2A was inserted by Industrial Disputes Amendment Act, 1965 with effect from 1st December, 1965, which runs as follows:

Dismissal, etc. of an individual workman to be deemed to be an industrial dispute, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.

According to the aforesaid definition any dispute between individual workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination is an industrial dispute, notwithstanding that no other workman nor any union of workmen is a party to the aforesaid dispute. In other words, an individual dispute has also been treated as an industrial dispute by the aforesaid provision.

15. In the present case, as mentioned above, the Plaintiff, while in service, filed a suit for correction of his date of birth and for declaration that the orders issued in the year 1978 superannuating him with effect from 10.1.1979 were illegal and arbitrary. The question falling for determination is as to whether the dispute raised by him before the civil Court was an industrial dispute within the meaning of Section 2A of the Act or not. A bare reading of the provision of Section 2A shows that this section is attracted only where the employer discharges, dismisses, retrenches or otherwise terminates the employee. If any of the eventualities, as mentioned above, has not happened, Section 2A is not attracted and the dispute is not an industrial dispute and the remedy of the aggrieved workman to approach the civil Court is not barred. This question is no longer res integra and has been decided by the Apex Court in the case of Ishar Singh Vs. National Fertilizers and another, . In the said case a workman whose date of birth was initially shown as 1.7.1930 and later on changed to 23.10.1933 was sought to be superannuated at the age of 58 years on the basis of the original entry. He filed a suit before the apprehended superannuation was to work out for correction of his date of birth and for injunction against superannuation. The employer challenged the maintainability of the suit in the civil Court on the ground that the suit for the relief prayed for was not cognizable by the civil Court. The High Court upheld the objection raised by the employer. The Apex Court, dealing with the said matter, held that the suit for correction of the date of

birth is maintainable in the civil Court. It was further held in paragraph 4 of the judgment as follows:

The main challenge to the Civil Court's jurisdiction is by placing reliance on Section 2A of the Industrial Disputes Act. On a reference to that provision, we find that on the happening of certain eventualities, the reliefs "available under the provision can be" asked for. On 7.1.1988, none of the situations contemplated u/s 2A had happened so as to give the Appellant a cause of action to approach the Industrial Court. It cannot be doubted that the attainability of the suit has to be decided with reference to the date of institution of the proceeding and since on 7.1.1988 when the civil suit was filed none of the eventualities covered by Section 2A has happened, the Appellant could not have approached the forum under the 1947 Act for relief.

Thus, it is evident that if an employer approaches the civil Court before happening of any of the eventualities as mentioned in Section 2A of the Act, the suit is maintainable.

7. The decision, which has been relied upon by the learned Counsel for the Appellants is not applicable to the facts and circumstances of this case for many reasons than one. Facts and the reliefs sought in that case were entirely different from that of the present one inasmuch as the Plaintiff of that case was dismissed on the charge of misconduct and contrary to the provisions of the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 and in that view of the matter, their Lordships held that the relief sought for by the Plaintiff could have been available to him u/s 2A of the Act. Accordingly, in our considered opinion, the reliance placed by the learned Counsel for the Appellants in support of his contention, upon the decision in the case of Ishar Singh (*supra*) has no substance, which is consequently rejected. The reference is, therefore, answered in the affirmative. Now, let the second appeal be placed before the appropriate Bench hearing the second appeals, for a decision on merits.