

(2009) 04 JH CK 0070
In the Jharkhand High Court

Ganesh Lal Pathak

APPELLANT

Vs

Bharat Coking Coal Limited (B.C.C.L.) and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5

Citation : (2009) 04 JH CK 0070

Hon'ble Judges : Ramesh Kumar Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Merathia, J.—The plaintiff/appellant filed this suit for declaration that his date of birth as recoded in the service excerpts and Form B Register of Loharpatti Colliery, B.C.C.L showing 1.1.1942 is incorrect and it should be rectified as 3.2.1949.

2. The trial court decreed the suit. The defendants/ respondents filed appeal. Before the lower appellate court, the respondents raised a question of law that the suit was barred by limitation. It was accepted and the suit was dismissed.

3. This second appeal was admitted on the question-

whether the lower appellate Court was justified in dismissing the suit on the ground that it was barred by limitation?

4. Mr. Manjul Prasad, learned senior counsel, appearing for the appellant, submitted that the suit was filed on 1.1.2000 i.e. within three years from 25.5.1998 when in the I. D. Card (Identity Card), his date of birth was mentioned incorrectly. He further submitted that in Paragraph-31 of the plaint, the plaintiff asserted that the cause of action of the suit arose on 25.5.1998 but the respondents gave evasive reply to such statement and therefore it will be deemed that it was admitted by the respondents that the cause of action arose on 25.5.1998 and thus they cannot contend that the suit was barred by

limitation. He relied on the judgment of Mst. Rukhmabai Vs. Lala Laxminarayan and Others, and Order VIII, Rule 5 of the CPC (C.P.C.).

5. On the other hand, Mr. Mehta, appearing for the respondents, submitted that the suit was barred by limitation as admittedly the appellant got knowledge about the correction in his date of birth in the company records, in the month of January, 1992 itself, but he filed the suit at the fag end of his service. He relied on the judgment of Tata Iron & Steel Co. Ltd. v. Padala Appanna reported in 1984 B.L.J.R. 26.

6. In my opinion, the learned lower appellate court rightly held that the suit was barred by limitation for the following reasons:- Paragraph-17 of the plaint reads as follows:

17. That in the month of January 1992 to the utter surprise of the plaintiff he came to know that the authority of the Loharpatti Colliery has changed/manipulated the original date of birth of the plaintiff in the new "B" Form Register prepared at Loharpatti Colliery, and the date of birth of the plaintiff has been changed to 1.1.1942 from 3.2.1949, which was the original, genuine and recorded date of birth of the plaintiff in all service records as well as educational and trade certificates.

Paragraph-31 of the plaint reads as follows:

31. That the cause of action for the present suit arose on 11.3.1987 on the date of wrong entry of the date of birth of the plaintiff by the dealing Clerk in the service excerpt of the plaintiff and on 13.2.1992, 28.7.1994, 16.8.1994, 1.9.1994, 12.6. 1996 on which dates plaintiff represented continuously for necessary rectification of the wrong entry in his date of birth in the service records and thereafter continue day to day including 25.5.1998 on the date of issuance of the I.D. Card to the plaintiff deleting his date of birth from the I.D. Card No. 20911(Annexure-ix to xiii).

Paragraph-38 of the written statement reads as follows:

38. That the dates of cause of action for the suit indicated in para 31 of the plaint clearly indicates that the suit is hopelessly barred by limitation.

7. Admittedly, the appellant learnt in January, 1992 itself about the alleged change/manipulation of his date of birth in the original service records of the respondents-Statutory Form B register. According to the appellant, he went on making representation from 1992 up to 1996 and when his date of birth was changed in the I. D. Card on 25.5.1998 he filed the suit on 1.10.2000. The cause of action could not be based on the change of date of birth in the I.D. Card on 25.5.1998. The correction in the I.D. Card was simply consequence of the correction of the date of birth in the statutory Form B Register of the appellant. Date of birth is a vital entry for an employee. The submission of Mr. Manjul Prasad that there was evasive denial of Para-31 is misconceived. In Para-31, the appellant tried to indicate the cause of action for filing the suit. It was denied by

the respondents by saying that the suit was hopelessly barred by limitation. In view of the fact and circumstances of this case as noticed above, the judgments of Mst. Rukhmabai (supra) relied by Mr. Manjul Prasad are not at all applicable in the present case. Rather the judgment of Tata Iron and Steel Co. (supra) relied by Mr. Mehta supports the contention of the respondents. In this case, the said case of Mst. Rukhmabai (supra) was also considered. No other question could be raised by the appellant.

8. In the result, it is held that the lower appellate court was fully justified in holding that the suit was barred by limitation. The suit and this second appeal is, accordingly, dismissed. However, no costs.