(2009) 03 UK CK 0006

In the Uttarakhand High Court

Man Bahadur Bhandari APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 35A
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 114, 68

Citation : (2009) 3 UC 1488 : (2009) 1 UD 344

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 100 of CPC (herein after referred as C.P.C.), is directed against the judgment and decree dated 14.08.1997, passed by Ist appellate court (District Judge, Pauri Garhwal) in civil appeal No. 13 of 1997, whereby said court has set aside the judgment and decree dated 07.07.1997, passed by trial court in original suit No. 28 of 1995.

2. Heard learned Counsel for the parties and perused the record.

3. Brief facts of the case are that the plaintiff/appellant instituted a suit for declaration that his date of birth is 11.08.1947 and not 11.08.1937, as mentioned in the records of the defendant bank. A permanent prohibitory injunction is also sought directing the defendant not to superannuate the plaintiff, treating his date of birth 11.08.1937. In the plaint, it is pleaded by the plaintiff that he was employed with the defendant bank in its Kotdwar branch on 24.01.1967, as a Security Guard. He was confirmed on said post on 24.10.1975. According to the plaintiff, he disclosed his date of birth to the defendant bank as 11.08.1947. However, on 22.09.1976, the Branch Manager of the bank lodged allegedly false First Information Report against the plaintiff that he got himself employed as Security Guard by providing false information to the bank. Later, the services of the plaintiff were dispensed with. Said order terminating the

services of the plaintiff was challenged by him before Central Industrial Tribunal, Kanpur. Said authority, vide its order dated 09.10.1986, directed the defendant bank to reinstate the plaintiff in service. In pursuance thereof on 21.05.1987, the plaintiff was taken back in the service. However, his date of birth was recorded by the defendant bank as 11.08.1937. It is further pleaded that the plaintiff is an illiterate person and he was not aware of the documents prepared by the defendant bank. When he came to know that defendant bank has recorded his date of birth as 11.08.1937, he made a representation to the authorities concerned, which rejected the same and decided to retire him on 11.08.1995. Hence the suit.

4. Defendants contested the suit before the trial court and filed written statement stating that the plaintiff got employed himself with the bank disclosing his name as Man Bahadur Bhandari, son of Tulsi Ram with a discharge certificate from Army in which his date of birth was recorded as 11.08.1937. When the bank came to know that the plaintiff Man Bahadur Bhandari, who is son of Tula Ram has got job by disclosing his name Man Bahadur Bhandari, son of Tulsi Ram, it lodged First Information Report against the plaintiff for committing forgery with the bank. Though the Chief Judicial Magistrate, who tried the case found the plaintiff guilty of 4 the charge but vide order dated 11.09.1980, the plaintiff''s appeal was allowed and he was acquitted. Thereafter, the plaintiff challenged order terminating his services before the Industrial Tribunal. It is admitted that in pursuance to the order, passed by the tribunal, the plaintiff was taken back in the service. However, as to the date of birth of the plaintiff, it is pleaded in the written statement that plaintiff himself in the memorandum of particulars prepared on 24.10.1975, (after his confirmation in service) got recorded his date of birth as 11.08.1937. The Medical Officer, who examined the plaintiff also found him of the age of 39 years, in the year 1975. As such, there is no error in the date of birth, recorded in the service record with the defendant bank. It is pleaded by the defendants that the suit has been instituted for wrongful gain.

5. The trial court on perusal of the pleadings, framed following issues:

1. Whether the plaintiff''s date of birth is 11.08.1947, as alleged in the plaint?

2. Whether the suit is barred by time, as alleged in the written statement?

3. Whether the defendants are entitled to special costs u/s 35A of C.P.C.?

4. To what relief, if any, the plaintiff is entitled?

5. Whether the plaintiff is barred by principle of estoppel in getting changed his date of birth as 11.08.1937?

6. After recording the evidence and hearing the parties, the trial court decreed the suit holding that the plaintiff''s actual date of birth is 11.08.1947, as mentioned in his horoscope and not 11.08.1937, as recorded with the defendant bank. The trial court decreed the suit vide its judgment and decree dated 07.07.1997. Aggrieved by said judgment and decree, defendants preferred an

appeal before the Ist appellate court (District Judge, Pauri Garhwal), which was registered as civil appeal No. 13 of 1997. After hearing the parties, the Ist appellate court found that the trial court has erred in law in arriving to the conclusion that the plaintiff''s date of birth is 11.08.1947 and not 11.08.1937. And the Ist appellate court consequently dismissed the suit. Hence this appeal filed by the plaintiff before Allahabad High Court, where it was admitted on 29.08.1997 without framing any substantial questions of law. However, it is mentioned in the order, passed by Allahabad High Court on 29.08.1997 that the appeal is admitted on the substantial questions of law, marked as A, B and E in the memorandum of appeal. The said questions of law in the memorandum of appeal, read as under:

1. Whether in view of Section 68 and 101 of Indian Evidence Act merely proof of signature on a document by an illiterate person is not enough and onus lies on the person who wants to rely on such document that the contents of the document has also been readover to the executant and thus the document filed by defendants-respondents could not have been relied upon by the lower appellate court?

2. Whether in view of the Section 114(g) of Indian Evidence Act, lower appellate court ought to have drawn an adverse inference against defendants-respondents for not filing the best evidence which would have thrown light on the issue about the date of birth of appellant?

3. Whether lower appellate court erred in law in holding that the suit was barred by limitation and is it the date when the representation was rejected from which the limitation would start?

7. Answers to substantial questions of law: Perusal of lower court record shows that memorandum of particulars - Ext. A-3 (paper No. 58), which is signed by the plaintiff himself and which is part of service record with the defendant bank shows that in said document, which is dated 24.10.1975, date of birth of the plaintiff is recorded as 11.08.1937. This document is being challenged by the plaintiff in the year 1995 i.e. the year of institution of suit, after almost 20 years. Not only this, perusal of the trial court record further shows that paper No. 57, which is dated 20.10.1975, signed by plaintiff and Dr. Vijay Pal Singh, a Medical Officer on the penal of the defendant bank, clearly shows that after medical examination, age of the plaintiff was recorded as 39 years, which suggests the year of birth of the plaintiff as 1937 (and not 1947). This document is also being denied by the plaintiff after 20 years by stating that he is an illiterate person. Both the papers show that instead of putting the thumb impression, the plaintiff has signed these documents. The plaintiff has based his case entirely on horoscope, prepared by one Pandit. Having heard learned Counsel for the parties and after going through the record, this Court does not find any error of law committed by first appellate court in setting aside the judgment, passed by the trial court and dismissing the suit of the plaintiff.

8. In State of U.P. and Others Vs. Smt. Gulaichi, , the Apex Court has held that "normally, in public service, with entering into the service, even the date of exit, which is said to be the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service having fixed the age of retirement, it is necessary to maintain the date of birth in the service records." It is further held that "of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not...unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible."

9. Section 101 of Indian Evidence Act, 1872, clearly provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. In the present case, it is plaintiff, who has come up with a case that his date of birth is 11.08.1947 as against the one recorded in the service record. Mere filing of horoscope with the pleading that plaintiff is an illiterate person is not sufficient to nullify the entries made in the service record at the time of entry in the service or thereafter particularly when such entries are being challenged by the employee after a period of almost 19-20 years. On the other hand the statements of D.W. 1 S. Ganpati, D.W. 2 Harshvardhan Raturi, D.W. 3 Satish Chandra Agarwal and D.W. 4 K.K. Agarwal, show that the documents relied by the defendants are proved as per the provisions contained in Section 68 of the Act.

10. Learned Counsel for the appellant argued that the defendants have not filed the application of the plaintiff by which he sought job as such, an adverse inference should have been drawn against the defendant for concealing such document. In this connection, reliance has been placed in Section 114(g) of Indian Evidence Act, 1872. Having gone through the record and after hearing the parties, this Court does not find that illustration ''g'' with Section 114 in anyway helps the plaintiff. Unless and until it is brought on record that date of birth was mentioned in the application and such document is withheld by the authority, no adverse inference can be drawn against it. Plaintiff has nowhere pleaded in the plaint that in the application form, he had mentioned his date of birth as 11.08.1947.

11. Lastly, it is contended that the lower appellate court has wrongly held that the suit was barred by limitation, as the limitation to file the suit, starts from the

date the representation of the plaintiff is rejected by the defendant authorities. It is settled principle of law that the period of limitation to institute this kind of declaration suit starts from the date when the cause of action has arisen to the plaintiff. Article 58 of Schedule of Limitation Act 1963 provides three years of limitation from the date fight to sue first accrues. In the present case, cause of action arose to the plaintiff when he first came to know that his date of birth was recorded in the record as 11.08.1937. Document Ext. A-3, which is memorandum of particulars, signed in October 1975 by the plaintiff himself shows that plaintiff had the knowledge of date of birth, recorded by the defendant bank (11.08.1937) in 1975, as such, it cannot be said that he came to know of the recorded date of birth when the representation of the plaintiff was rejected at the time of his superannuation. That being so, the plaintiff cannot take benefit of date of rejection of the representation for the purposes of limitation.

12. For the reasons, as discussed above, all the three substantial questions of law stand answered accordingly, and the appeal is liable to be dismissed. The Second Appeal is dismissed. However, costs easy.

