

(2018) 01 JH CK 0001
In the Jharkhand High Court
Case No : 288 of 2015

M/s ISSCO Ltd. & Ors

APPELLANT

Vs

Tulshi Choudhary, S/o Late Kishun Choudhary

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 9](#) -
Courts to try all civil suits unless barred
[Industrial Disputes Act, 1947](#), [Section 33](#) -
[Section 33-C\(2\)](#) - C

Citation : (2018) 01 JH CK 0001

Hon'ble Judges : Anant Bijay Singh

Bench : Single Bench

Advocate : Indrajit Sinha, Kautav Panda, Mahesh Tewari, D.K. Maltiyar

Final Decision : Allowed

Judgement

1. The instant second appeal has been preferred by the appellants / respondents / defendants, seven in numbers, being aggrieved and dissatisfied with the judgment dated 03.01.2015 and decree signed on 07.01.2015 passed by Sri Ambuj Nath, learned Principal District Judge, Dhanbad in Title Appeal No. 74 of 2011, whereby the learned Principal District Judge has allowed the title appeal after reversing the judgment passed in Title Suit No. 166 / 2005 by Sri. Rajesh Sharan Singh, learned Additional Munsif-I, Dhanbad, whereby the learned Munsif under judgment dated 03.02.2010 (decree signed on 09.02.2010) has dismissed the suit filed on behalf of the respondent / appellant / plaintiff.
2. The learned first appellate court decided Issue No. V holding that the date of birth of Tulshi Choudhary was recorded in the matriculation certificate as 03.10.1949 and further held that wrong entry was made in the of respondent / appellant / plaintiff and set aside the finding of the learned trial court.
3. The learned first appellate court further decided the Issue No. IV in favour of the plaintiff and set aside the judgment and decree passed by learned Additional

Munsif-I, Dhanbad dated 03.02.2010 and date of birth of plaintiff has been declared to be 03.10.1949 and as the plaintiff has already retired from the service, the defendants have been directed to give retiral benefits which he would have been entitled to if he would have retired as per the actual date of birth i.e. 03.10.1949. The appeal was allowed on contest with cost on the plaintiff.

4. The second appeal was filed on 18.06.2015 and on 18.03.2017, a substantial question of law was framed, which is reproduced below:-

"Whether granting of the back wages and the retiral benefits to the respondent / workman was within the jurisdiction of the first appellate court in terms of Section 9 of C.P.C. in view of the decision reported in 1991 Supp. (2) SCC 649 (Ishar Singh Vs. National Fertilizers and Anr.)."

5. After hearing the parties, the second appeal was admitted for final hearing and further following operational order was passed:-

"However, the appellant shall deposit the dues not disputed by the appellants to be paid to the respondent / workman by 28.04.2017 before the Executing Court, if not already paid or deposited. If the aforesaid dues is deposited or proof of payment thereof is produced before the executing court further proceedings in Execution Case No. 15 of 2015 pending in the court of Civil Judge (Jr. Division-I), Dhanbad, shall remain stayed."

6. The matter was heard finally on 14.12.2017 and after hearing the parties, the judgment was reserved.

7. The case of the respondent / appellant / plaintiff - Tulshi Choudhary in Title Suit No. 166 of 2005 filed before the court of learned Rajesh Sharan Singh, Additional Munsif-I, Dhanbad, inter alia making averments in the suit was as follows:-

(i) The plaintiff was working in Jitpur Colliery as permanent employee and appointed as a "Welder" and at the time of appointment and interview, matriculation certificate dated 12.06.1966 and School Leaving Certificate of 1966 issued by the Kanhai Singh High School, Gaya and National Trade Certificate dated 29.09.1967 issued by Industrial Institute, Gaya were produced before the Company, appellant herein.

(ii) Thereupon the plaintiff was appointed on 08.09.1971 on the post of "Welder". It is further averred that in the year 1998, the appellant herein gave a letter bearing no. 1121 dated 07.08.1988 to the plaintiff, whereby he came to know that the date of birth has been recorded as 14.09.1947. Thereafter the plaintiff gave a letter to the respondent Company, appellant herein, on 02.09.1998 for making necessary correction in the date of birth as per the matriculation certificate wherein it was recorded as 03.10.1949. All the documents were produced, but the date of birth of plaintiff was not corrected.

(iii) Thereafter plaintiff filed a writ petition bearing W.P. (C) No. 3980 of 2005 before the Jharkhand High Court. It is further averred that the High Court did not interfere in the writ petition and thereafter the respondent / appellant / plaintiff filed Title Suit No. 166 of 2005 before the learned Additional Munsif-I, Dhanbad, in which the appellants / respondents / defendants filed show cause denying the date of birth of plaintiff in the matriculation certificate to be 03.10.1949 and it was categorically stated that his date of birth is 14.09.1947 as per the Service Book and the Form-B register, wherein the date of birth is mentioned as 14.09.1947 and it bears the signature of the plaintiff.

8. The Court of Munsif in order to adjudicate the issues, altogether formulated 7 issues, out of which Issue No. V and VI are relevant. It appears that so far Issue No. V is concerned, the plaintiff has produced the Exhibit-1, Certificate issued by Bihar School Examination Board, wherein it has been stated that date of birth of Tulshi Choudhary, son of Kishun Choudhary is 03.10.1949. The matriculation certificate was issued in 1966 and further he also produced Ext.-2 which is certificate issued by Industrial Training Institute, Gaya and Ext.-7 School Leaving Certificate wherein his date of birth is mentioned as 03.10.1949.

9. The appellant / respondent / defendant produced documents. According to Form-B register, date of birth of plaintiff is 14.09.1947 which bears the signature of plaintiff and averment was also made that in between 1971 to 02.09.1998 the plaintiff has not filed any application for making correction in the date of birth. The trial court has taken note of the fact that the matriculation certificate issued by Bihar State Examination Board bears the name of the father of the plaintiff as "Kishun Choudhary", but the other documents produced by the plaintiff, including Form-B register and other requisite documents, his name is referred as "Krishna Choudhary" and further trial court has taken note of the fact that no suggestion was given to the plaintiff as to whether "Kishun Choudhary" and "Krishna Choudhary" refer the same person and the trial court disbelieved the documents and decided that date of birth of plaintiff is 14.09.1947 as agreed in the Form-B register and so decided the issue against him and dismissed the suit.

10. The respondent / appellant / plaintiff preferred Title Appeal No. 74 of 2011 before the court of Principal District Judge, Dhanbad, who under judgment dated 03.01.2015 after hearing the parties, so far Issue No. V, date of birth recorded as 03.10.1949 in the matriculation certificate is concerned and after going through the evidence of P.W.-1 Nunulal Prasad, P.W.-3 Shiv Kumar Pandey and P.W.-4 Tulshi Choudhary, plaintiff himself, has held that the matriculation certificate is holy grail and Kishun Choudhary and Krishna Choudhary are the same person and so set aside the finding of the learned Munsif and held that date of birth of the plaintiff is 03.10.1949 and allowed the appeal and as the plaintiff has already retired, he is entitled for retiral benefits.

11. Learned counsel for the appellant while pressing the appeal submitted that the learned District Judge has failed to appreciate that there is no evidence brought on record which establishes that Kishun Choudhary and Krishna

Choudhary refer to the same person. Further he has failed to take into account the judgment laid down by Hon^{ble} Supreme Court in AIR 2006 SC 2157 (Ravinder Singh Gorkhi V. State of U.P.) particularly provisions of Section 35 of the Indian Evidence Act, as to how the public document matriculation certificate is to be proved, wherein Supreme Court has held as follows:-

23. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specifically enjoined by the law of the country in which, inter alia, such register is kept would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder: (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (iv) all persons concerned indisputably must have an access thereto.

12. So it was submitted that the finding recorded by the learned first appellate court is not sustainable in law and is fit to be set aside.

13. Further, so far the order given by the learned first appellate court regarding the payment of all consequential retirement benefits is concerned, the learned counsel for the appellant relied on the judgment of Hon^{ble} Supreme Court reported in 1991 Supp (2) SCC 649 (Ishar Singh V. National Fertilizers and Another), and submitted that admittedly there is industrial dispute between the parties in terms of 2(A) of the Industrial Disputes Act, which should have been referred to under Section 33 for raising industrial dispute before the Industrial Dispute Labour Court, who is competent to pass order. It was further submitted that in terms of Section 9 of the C.P.C. jurisdiction of the Civil Court is barred in adjudicating any Industrial Dispute. So the finding of the learned first appellate court cannot be sustained and is liable to be set aside.

14. Learned counsel for the respondent / appellant / plaintiff ? Tulshi Choudhary, on the other hand, during course of argument submitted that the learned Principal District Judge, Dhanbad in Title Appeal No. 74 of 2011 under judgment dated 03.01.2015 has rightly recorded the finding that the date of birth of plaintiff / respondent, in view of matriculation certificate, which is a public document, is 03.10.1949 and has set aside the finding of the learned Munsif and has also rightly held that as the respondent / appellant / plaintiff retired, he is entitled for all consequential benefits. So, there is no merit in the second appeal and is fit to be dismissed. It is further submitted that as the respondent / appellant / plaintiff has retired from the service, so provision of Section 33-C(2) of the Industrial Disputes Act is not attracted.

15. After hearing the parties and after going through the judgment cited on behalf of the appellant, it appears that admittedly the respondent / appellant / plaintiff has produced the matriculation certificate, Ext.-1, wherein the date of birth is recorded as 03.10.1949, but in view of the judgment of Hon''ble Supreme Court passed in the case of Ravinder Singh Gorkhi (Supra), although matriculation certificate is a public document, but it has not been proved in accordance with the provision under Section 35 of the Indian Evidence Act. This fact has been overlooked by both the courts below i.e. court of learned Munsif in Title Suit and learned Principal District Judge in Title Appeal. So, the finding recorded by the learned Principal District Judge on this account is hereby set aside. As the respondent / appellant / plaintiff has failed to prove his date of birth to be 03.10.1949 on the basis of Exhibit-1, the finding of the learned Munsif is hereby affirmed.

16. Further, in view of the question of law formulated, admittedly the respondent / appellant / plaintiff is a workman under the appellant herein and suit was only for declaration of the date of birth as per the matriculation certificate and even if the respondent / appellant / plaintiff has retired, it has to be adjudicated under section 33-C(2) of the Industrial Disputes Act, so the finding of the learned first appellate court is also erroneous and the learned first appellate court has failed to consider the judgment passed by Hon''ble Supreme Court in the case of Ishar Singh (Supra).

17. In view of the discussions above, the second appeal stands allowed. No order as to costs. Office is directed to prepare decree accordingly.

18. Further, in terms of order dated 18.03.2017 passed by this Court, whereby the appellants were directed to deposit the amount not disputed by them to be paid to the respondent / workman by 28.04.2017 before the Executing Court, the respondent herein is directed to file an application before the learned Executing Court for release of the amount deposited by the appellants and the Executing Court is directed to release the aforesaid amount after proper verification in favour of the respondent.