

Ishar Singh

Vs

National Fertilizers and another

Civil Appeal No. 2186 of 1991, (arising out of SLP (C) No. 2202 of 1991)

(CJI Ranganath Misra, M. H. Kania, Kuldeep Singh JJ)

26.04.1991

JUDGMENT

1. Special leave granted.

2. Appellant was a workman under the respondent and in his service record his date of birth was initially shown as 1-7-1930 and later changed to 23-10-1933. On the basis of the original entry, he was about to be superannuated. It is not in dispute that under the Respondent's Standing Orders, a workman is liable to be superannuated at the age of 58. On 7-1-1988, quite some time before the apprehended superannuation was to work out, the appellant approached the Civil Court by filing the suit on 7-1-1988 where he prayed for correction of his date of birth and asked for injunction against superannuation and claimed other ancillary reliefs. The employer joined issue, inter alia, on the question of the Civil Court's jurisdiction to maintain an action of this type. Ultimately in Second Appeal, as the stand of the employer has been upheld; this civil appeal has been carried by the employee questioning the law of the High Court.

3. Law is settled that matters which come within the purview of S. 9 of the Code of Civil Procedure 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 2-A of the Industrial Disputes Act. On a reference to that provision, we find that on the happening of certain eventualities, the reliefs available under that provision can be asked for. On 7-1-1988, none of the situations contemplated under S. 2-A 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 S. 2-A 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. It is unnecessary to go into the other aspect, namely, whether the residuary reliefs were available in the Civil Court inasmuch as the appellant has by now superannuated, even on the basis of the corrected record the only relief to which he is entitled is one of backwages. We do not think that is a relief which the Civil Court could have granted. Under the basis of the rectification of the date of birth granted by the Civil Court, the appellant is entitled to work out his remedy in a different forum prescribed by law, but we find that the respondent is Public Sector Undertaking and it would do well in settling the claim of the appellant instead of driving him to a proceeding under Section 33-C(2) of the Industrial Disputes Act. The appeal is allowed. We award no costs.

Appeal allowed.

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