

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.26 of 2011**

1. Managing Director Bhilai Steel Plant Ispat Bhavan,
Bhilai Durg (CG)
2. Asstt. General Manager Jharan Dalli Mines, Dalli
Rajhara, Balod, Tahsil Durg (CG)
3. Junior Manager (Personnel), Mahamaya Mines, Dalli
Rajhara, Balod Tahsil Durg (CG)

---- Appellants/Defendants**Versus**

Kailash Nath Yadav, S/o Bindeshwari Yadav, Resident
of 02/F,2-B Type Quarter South Avenue Road, Dalli
Rajhara, Balod Tahsil Durg (CG) P.No.212002, Senior
Operator, Jharan Dalli

---- Respondent/Plaintiff

For Appellants/Defendants:

Mr.Sandeep Dubey, Advocate

For Respondent/Plaintiff:

Ms Pragya Pandey, Advocate appears on
behalf of Mr.Prateek Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****20/01/2021**

1. The substantial questions of law involved, formulated
and to be answered in this second appeal preferred by
the appellants/defendants are as under:-

"1. Whether the court below was justified in
holding that the Civil Court has jurisdiction
to entertain the suit despite the dispute
raised by the plaintiff u/s 12 of the
Industrial Disputes Act, 1947 as the
resolution process had not come to an end ?

2. Whether even after the reference having

been made by the Central Government to CGIT under Section 12(5) of the Act, the Civil Court could still be justified in exercising the jurisdiction to decide the dispute ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The respondent/plaintiff was recruited to service of the Bhilai Steel Plant in which he declared in Form 'B' on 29.9.1978 stating the age to be 29 years and thereafter on 4.8.1987 his services were regularized in which his date of birth was recorded as 6.2.1952. On 27.6.1995, request was made by the respondent/plaintiff for change/correction of his date of birth, which was rejected holding to be not admissible. Thereafter, the plaintiff made an application to the Assistant Labour Commissioner under the provisions contained in Industrial Disputes Act, 1947 (hereinafter called as 'ID Act') for issuing direction to the appellants/defendants to correct his date of birth, in which comments were called from the appellants, thereafter it was considered and thereafter conciliation proceeding failed and failure report was sent to the Ministry of Labour, Government of India for making reference to the CGIT on 29.5.2009.

3. The respondent/plaintiff filed a suit for declaration on 4.8.2009 that his date of birth is 6.2.1952 and not 29.9.1949, it be duly corrected in service records and he be not superannuated on the basis of his date of birth recorded as 29.9.1949 and permanent injunction be granted in his favour.
4. The trial Court by its judgment and decree dated 17.9.2009 decreed the suit of the plaintiff declaring his date of birth as 6.2.1952 and issued permanent injunction against his retirement against the appellants/defendants. Thereafter on 22.10.2009, the Ministry of Labour, Govt. of India made reference of dispute to the CGIT for adjudication. Against the judgment and decree of the trial Court, the appellants/defendants filed first appeal before the first appellate Court. The first appellate Court by its judgment dated 25.11.2009 remitted the matter to the trial Court by framing additional issue regarding maintainability of civil suit, which was ultimately decided by the trial Court on 25.1.2010 holding that civil suit is maintainable and jurisdiction of the Civil Court is not barred by the provisions contained in Section 9 of the CPC, against which, first appeal was filed, which was dismissed by the first appellate Court by impugned judgment and decree dated 28.9.2010.

5. The instant second appeal under Section 100 of the CPC has been filed by the appellants/defendants against the judgment and decree of the first appellate Court, in which substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment for sake of completeness.

6. Mr. Sandeep Dubey, learned counsel for the appellants/defendants, would submit that in view of the fact that dispute is pending before the CGIT, the jurisdiction of the Civil Court was barred. He would further submit that in the light of standing order, civil suit could not have been entertained by the trial Court. He would rely upon the judgment of the Supreme Court in the matter of Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa (2)¹, as such, the judgment and decree of both the Courts below deserve to be set aside and the suit be dismissed.

7. On the other hand, Ms Pragya Pandey, learned counsel for the respondent/plaintiff, would submit that the dispute regarding the date of birth is purely a civil dispute as held by the Supreme Court in the matter of Ishar Singh v. National Fertilizers and another², as such, the second appeal deserves to be dismissed. She

1 (2009) 4 SCC 299

2 AIR 1991 SC 1546

would further submit that on the basis of decree granted by the trial Court, the plaintiff has retired from Bhilai Steel Plant in the month of February, 2012 and retiral dues have been directed to be paid by this Court.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. The question for consideration in this second appeal is with regard to the dispute as to the date of birth of the respondent/plaintiff, for which conciliation proceeding was initiated and failed under Section 12(3) of the ID Act before the Assistant Labour Commissioner and thereafter the matter could not be proceeded further and ultimately, the plaintiff filed a suit on 4.8.2009 seeking declaration that his date of birth is 6.2.1952 and also for permanent injunction restraining of his original date of birth, which was granted by the trial Court on 17.9.2009, an appeal was also preferred by the appellants/defendants on 24.9.2009 and only thereafter on 22.10.2009 the Ministry of Labour, Government of India made reference to the CGIT for adjudication, as such, civil suit was filed prior in time and only after the judgment and

decree of civil suit, reference was made by the Ministry of Labour, Government of India to the CGIT on 22.10.2009 and ultimately in second round, the trial Court has held that the suit is not barred by the provisions of the ID Act.

10. Section 9 of the CPC provides as under:-

"9. Courts to try all civil suits unless barred.-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred."

As such, in all types of civil disputes, the Civil Court has inherent jurisdiction as per Section 9 of the CPC unless a part of that jurisdiction curbed out from such jurisdiction expressly or by necessary implication and conferred upon any other tribunal or authority.

11. In the matter of Ishar Singh (supra), the Supreme Court has held that a suit for correcting the date of birth in the record would be maintainable before the Civil Court, but claim for back-wages would not be maintainable. It was observed as under:-

"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.

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."

12. Similarly, in the judgment cited by Mr.Sandeep Dubey i.e. Bal Munkund Bairwa (supra), it has been held by the Supreme Court that ouster of Civil Court's jurisdiction is not to be readily inferred unless the jurisdiction is expressly barred or impliedly by a statute.

13. Reverting to the facts of the present case in the light of judgment of the Supreme Court in Ishar Singh

(supra), it is quite vivid that the suit filed by the respondent/plaintiff for change/correction of his date of birth was held to be maintainable by the trial Court in the light of the judgment of the Supreme Court in Ishar Singh (supra) particularly when it is not the case that during pendency of matter before the Government of India for making reference to the CGIT, the suit came to be filed as civil suit was filed on 4.8.2009 and decree was passed by the trial Court in favour of the plaintiff on 17.9.2009, first appeal was preferred by the defendants on 24.9.2009 and only thereafter on 22.10.2009, reference was made by the Ministry of Labour, Government of India to the CGIT for adjudication, as such, two Courts below have rightly concluded that civil suit as framed and filed for correction of date of birth is maintainable and rightly turned down the objection raised by the appellants/defendants. The finding recorded by two Courts below that the Civil Court has jurisdiction to entertain the suit as framed and filed is finding of fact based on correct legal position. It is neither perverse nor contrary to record. I do not find any perversity or illegality in said finding. The substantial questions of law are answered in favour of the plaintiff and against the defendants.

14. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-