

State of Punjab

Vs

Bua Das Kaushal

Civil Appeal Nos. 844 of 1966 and 336 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

13.10.1970

JUDGMENT

GROVER, J. -

1. The respondent was a Head Constable in the Punjab Police Force. At the material time he was holding the rank of Officiating Assistant Sub-Inspector of Police. A charge was levelled against him of having fabricated false evidence while investigating a criminal case. An enquiry was held by the Deputy Superintendent of Police who submitted a report on March 25, 1954 to the District Superintendent finding the respondent guilty of the charge. The Deputy Superintendent called upon the respondent to appear before him on March 27, 1954 to show cause why he should not be dismissed from service, The respondent asked for examination of some more witnesses. This was declined. Thereafter the District Superintendent passed an order dismissing him from service. His appeal was dismissed by the Deputy Inspector-General of Police of February 4, 1955. An appeal to the Inspector-general also failed on April 25, 1956.

2. The respondent filed a writ petition in the Punjab High Court challenging the order of the dismissal. This petition was dismissed by Bishan Narain, J., on August 19, 1957. The respondent preferred an appeal under Clause 10 of the letters Patent to a Division Bench which was dismissed on August 19, 1958. The bench decided the case not on merits and held that the respondent had been given a reasonable opportunity to show cause as required by Article 311(2) of the Constitution. The respondent applied for leave to appeal to this court which was refused on May 25, 1963.

3. On March 5, 1959, the respondent instituted a suit for a declaration that the order of dismissal was violative of Article 311 of the Constitution and that he still continued to be in service. The suit was contested by the appellant and it was dismissed by the Trial Court on May 19, 1960. The decree of the Trial Court was affirmed in appeal by the Addition District Judge on August 18, 1961. The matter was taken in second appeal to the High Court, D. K. Mahajan, J., who heard the appeal framed two additional issues on May 13, 1963 and called for a report of the Trial Court on those additional issues. These issues were :

(1) Whether the decision of the Letters Patent bench in C.W. 185 of 1956 operates as res judicata in the present suit ?

(2) Whether the plea of res judicata has been waived by the State ?

On September 13, 1963, the Trial Court submitted a report to the effect that the dismissal of the writ petition filed by the respondent did not operate as res judicata in

the subsequent civil suit brought on the same ground and that the appellant had waived the plea of res judicata. The appeal was finally heard by the Division Bench consisting on Dua J. and Mahajan, J. and was allowed on November 10, 1964. It was held that the appellant had waived the plea of res judicata and that the finding of the courts below was erroneous on the question of a reasonable opportunity having been given to the respondent in the departmental enquiry. The order of dismissal was declared to be illegal and wrongful.

4. The appellant asked for leave to appeal to this court which was refused. A petition for special leave was filed to this court against the order of the High Court refusing to give leave. That was granted on October 15, 1965. Another appeal was preferred by the appellant against the judgment of the Division Bench of the High Court, dated November 10, 1964. Special leave in this was granted and the delay was condoned. These appeals are Civil Appeals Nos. 844 of 1966 and 336 of 1969. The respondent also filed a petition for special leave against the judgment of the High Court in the writ petition which was decided as far back as August 19, 1958. Special leave has not been granted in that case so far. The two appeals and the aforesaid Special Leave Petition (Civil) No. 2203 of 1959, shall stand disposed of by this Judgment.

5. The question whether the decision in a writ petition operates as res judicata in a subsequent suit filed on the same cause of action has been settled by this court in *Union of India v. Nanak Singh* ((1968) 2 SCR 887 : AIR 1968 SC 1370 : (1968) 2 SCJ 881). It has been observed that there is no good reason to preclude decisions on matters in controversy in writ proceedings under Article 226 of Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of finality to decision after full contest.

6. The only point which remains for disposal is whether the principle of res judicata could be waived and was actually waived in the present case. In *Medapali Surayya and Others v. Tondapu Bala Gangadhara Ramakrishna Reddi and Others*, (AIR 1948 PC 3, 7 : 1947 ALJ 620 : 1947 (2) MLJ 511 : 1948 OWN 37 : 2 DLR 338) their Lordships observed "..... there was no issue on this point and the question of res judicata has to be specially pleaded. The record shows that this question was not argued before the High Court and before the trial Court, respondent 1's pleader argued exactly the contrary of his present argument, namely, that the decision in the previous suit could not operate as res judicata. That was obviously because two of the findings in that suit were in favour of the alienees. Their Lordships are therefore unable to accept this argument." The position in the present case is entirely different. Although no specific plea was taken in the written statement nor was any issue framed before the Trial Court but the necessary facts were present to the mind of the parties and were gone into by the court. It was stated in the judgment of the Trial Court that the plaintiff before seeking the remedy of filing a regular suit had moved the High Court in the writ petition. The Judgment in the writ petition had been placed on the record. After referring to a decision of the Orissa High Court in *Bhupinder Kumar Bose v. State of Orissa*, (AIR 1960 Ori 46 : ILR Cut 203) in which the view was expressed that a judgment in a writ petition was binding and conclusive between the parties, the Trial Court held that the previous judgment in the writ petition was binding on the parties in the present case. The judgment of the first Appellant Court was on similar lines. When the appeal came before D. K. Mahajan, J., on May 13, 1963, he particularly noticed the decision of the courts below in respect of the bar of res judicata but since it had been argued before him that in the absence of a specific issue prejudice had been caused to the present respondent he framed the two issues which have been mentioned before and called for a report on those issues from the Trial Court. There the respondent had ample opportunity to lead evidence

relevant to those issues. We are wholly unable to understand how in the above circumstance any question of waiver could arise when the point had throughout been under consideration and discussion and how the appellant could be precluded from pressing that point before the High Court. It has been urged on behalf of the respondent that in the interest of justice we should grant special leave against the judgment in the writ petition which was delivered in August, 1958. The delay which has been sought to be condoned is of nearly 10 years and we find no reason or justification for condoning the same. The petition for special leave is therefore dismissed.

7. Civil Appeal No. 336 of 1969 is hereby allowed and the judgment of the High Court is set aside. The suit of the respondent shall stand dismissed. Consequently Civil Appeal No. 844 of 1966 becomes infructuous and is dismissed on that account. In view of the previous orders, the appellant shall bear the cost of the respondent in both the appeals in this Court.

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