

SUPREME COURT OF INDIA

Pondicherry Khadi and Village Industries Board

Vs.

P. Kulothangan

C.A.Nos.8537 with 8538 of 2003

(Mrs. Ruma Pal and P. Venkatarama Reddi JJ.)

31.10.2003

JUDGEMENT

Ruma Pal, J.

1. Leave granted.
2. The respondent was appointed in 1983 as an Instructor on a temporary basis by the appellant. Between 19th May, 1986 to 16th June, 1986, the respondent failed to turn up for duty. According to the respondent this was because of communal clashes which had broken out in the respondent's village. According to the appellant, the respondent had merely absconded because of a complaint filed by one of the ladies working in the appellant's units against the respondent. Whatever the truth, the fact remains that when, after the period of absence, the respondent sought to rejoin his duties, he was not allowed to do so by the appellant.
3. The respondent then filed a writ petition before the High Court at Madras on 16th September, 1986 in which he claimed inter alia that he had been wrongfully refused employment by the appellant when he sought to rejoin. By way of interim relief, he prayed that he should be permitted to continue to work on the same terms and conditions. The substantive prayer in the writ petition was for a direction on the appellant to regularise the respondent's service. The writ petition which was contested by the appellant, was dismissed by an order dated 1st December, 1986. However, since 18 posts for permanent Instructors had been advertised, leave was granted to the respondent to approach the appellant for appointment on the basis of his earlier temporary service.
4. The respondent applied for such appointment and also preferred an appeal from the order of the single Judge dismissing his writ petition. It was contended before the Appellate Court that the respondent's service could not be terminated without a disciplinary enquiry. A grievance was also made that the single Judge should have at least directed the appellant to permit the respondent to continue in his temporary appointment.

5. The writ appeal was dismissed by the Division Bench of the High Court which held that the respondent was neither entitled to regularisation nor to reinstatement as the appointment of the respondent was a temporary one pending sanction of permanent posts and that the appellant-Board could make recruitments only in accordance with the statutory rules. While dismissing the appeal, the Appellate Court recorded the statement of the counsel for the appellant that the respondent's application for appointment pursuant to the advertisement issued by the appellant for permanent appointment would be considered on its own merits. The respondent's application for appointment was, however, rejected by the appellant.

6. The respondent then raised a dispute under the *Industrial Disputes Act, 1947* challenging the termination of his service. In the counter-statement filed by the appellant before the Labour Court, apart from countering the respondent's claim, the facts relating to the previous litigation initiated by the respondent were set out in detail. Despite noting the filing of the writ petition by the respondent and its dismissal, the Labour Court allowed the respondent's complaint holding that the respondent's services had been wrongfully terminated. The Labour Court accordingly directed the reinstatement of the respondent in service with full back wages and other attendant benefits.

7. The appellant challenged the Award of the Labour Court by way of a writ petition before the Madras High Court, inter alia, on the ground that the decision of the High Court in the previous litigation between the parties was final and binding and that the second respondent could not raise the same dispute before the labour Court, such fresh adjudication being barred by the principles of *res judicata*. This submission was in addition to the submission that the Award was otherwise incorrect since the respondent held a temporary post, that the permanent post had since been advertised and filled by duly appointed selectees and that there was no question of the respondent being either reinstated or directed to be paid any back wages. The writ petition was dismissed by the learned single Judge without advertent to any of the contentions of the appellant and for no decipherable reason. The learned single Judge also directed the appellant to create a supernumerary post to accommodate the respondent within 30 days within which period the respondent was to be paid all dues in terms of the Court's order. The appellant's appeal to the Division Bench was dismissed not only on merits but also by rejecting the appellant's submission that the proceedings before the Labour Court were barred by *res judicata*. The appellant filed an application for review of the decision of the Division Bench. This application was rejected by the High Court. The appellant has impugned the rejection of the writ appeal as well as the order rejecting its application for review by two separate special leave petitions.

8. Although the appellant had complied with the provisions of Section 17-B of the *Industrial Disputes Act, 1947* since the Award of the Labour Court, the respondent was not reinstated nor were the directions of the High Court complied with. The contempt proceedings initiated by the respondent by reason thereof have been stayed by this Court.

9. Before us, the appellant has reiterated its stand before the High Court both on the question of *res judicata* as well as on merits. The respondent has, on the other hand, submitted that even if he was a temporary employee, nevertheless the appellant's refusal to permit him to

join was based on allegations of alleged misconduct and that, therefore, the appellant could not have terminated his service without holding an enquiry and without giving the respondent an opportunity of being heard. On the question of res judicata, it is submitted that the principle will have no application since the issue raised in the earlier writ petition was one of regularisation and not of reinstatement.

10. In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subject-matter dealt with in the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the code, are applicable including the principles of constructive res judicata. Thus in *State of U.P. v. Nawab Hussain*², it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held:

(1) (*Workment v. Straw Board Mfg. Co.*)¹

".....it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have, therefore, treated such a course of action as an abuse of its process." (P. 808)

11. The principle of res judicata operates on the Court. It is the Courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the Court trying the subsequent proceeding is satisfied that the earlier Court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such Court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on the merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Anr.*³; *Smt. Pujari Bai v. Madan Gopal (dead) L.Rs.*⁴ The "lesser relief" of reinstatement which was the subject-matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and re-decide the matter in the face of the earlier decision of the High Court in the writ proceedings.

12. We are, therefore, of the opinion that the High Court erred in upholding the award of the Labour Court having regard to Section 11 of the Code of Civil Procedure. In this view of the matter, it is not necessary for us to consider the other contentions raised by the appellant. The appeals are accordingly allowed and the decision of the High Court as well as the Award of the Labour Court are set aside. However, the appellant will not recover any amount that may have been paid to the respondent under the provisions of S. 17-B of the Industrial Disputes Act, 1947. There will be no order as to costs.

Appeals allowed.

¹*AIR 1974 SC 1132*

²*(1977) 2 SCC 806*

³*(1978 (3) SCC 119)*

⁴*(AIR 1989 SC 1764)*