
(2009) 08 MP CK 0071
In the Madhya Pradesh High Court

Abdul Rahim

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Citation : (2009) 4 MPHT 439 : (2009) 4 MPJR 10 : (2009) 4 MPLJ 360

Hon'ble Judges : Sushma Shrivastava, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sushma Shrivastava, J.

The writ petition has been filed against the order (Annexure P-16), dated 2-8-2005 passed by the Central Administrative Tribunal, Jabalpur.

The applicant has prayed for the relief before the Tribunal in Original Application No. 675/2005 to quash termination of order dated 23-7-2004 as illegal and without jurisdiction because petitioner's husband is mentally unsound and handicapped, therefore, entire proceeding is void and against the principles of natural justice. It was also prayed that respondent No. 3 be directed to ensure medical treatment to the husband of the petitioner and financial help to the family. All the documents be ordered to be supplied. Similar relief was prayed by the petitioner's wife in Original Application No. 642/2004 and the same was dismissed by the Central Administrative Tribunal on the ground that the original application was barred by limitation and no application for condonation of delay was filed. No supporting evidence of medical sickness was submitted. The original application was dismissed in view of the decision of the Apex Court in Ramesh Chand Sharma v. Udham Singh Kamal and Ors. 2000 (1) ATJ 178. Aggrieved by the order (Annexure P-16), dated 2-8-2005, the present writ petition has been preferred as the Tribunal has dismissed the original application as barred by res judicata.

Shri Bhoop Singh, learned Counsel for the petitioner relying upon the decisions in the matters of Jaswant Singh and Another Vs. Custodian of Evacuee Property, New Delhi, , Haryana State Co-operative Land Development Bank v. Neelam 2005 AIR SCW 1439, Jagjeet Singh Vs. Bhopal Vikas Pradhikaran and Another, , has submitted that the Tribunal was not right in dismissing the fresh original application as barred by res judicata. Previously, the matter was not adjudicated on merits.

Shri S.P. Singh, learned Counsel for the respondents has supported the order and has relied upon the decision of this Court in the matter of Jagjeet Singh v. Bhopal Vikas Pradhikaran (supra).

It is not in dispute that in the previous original application and the instant original application filed before the Central Administrative Tribunal, Jabalpur, the same relief was claimed by the petitioner. The previous Original Application No. 642/2004 was dismissed by the Central Administrative Tribunal, Jabalpur on 18-8-2004. The relevant portion of the order of dismissal is quoted below:

2. Earlier the applicant has filed an O.A. No. 107 of 2004 which was disposed of by this Court on 26-3-2004 by directing the respondents to dispose of the representation. The respondents by their order dated 23-7-2004 have disposed of the representation, and rejected the claim of the applicant. The respondents have categorically stated that there is no material evidence of injury on head that has taken place while he was on duty at any time. Learned Counsel for the applicant is taking the plea that the applicant was unsound mind and he had got head injury, therefore, he could not file the original application earlier when the penalty of removal from service was imposed on him on 3-8-1994. He has also not filed any application for condonation of delay in filing the original application. Therefore, in view of the judgment of Hon"ble Supreme Court in Ramesh Chand Sharma v. Udham Singh Kamal and Ors. 2000 (1) ATJ 178 , the Tribunal cannot entertain any application unless the application for condonation of delay has been filed by the applicant. In this case, no such application has been filed. In view of the fact that there is no supporting evidence of the mental sickness of the applicant and also in view of the judgment of Ramesh Chand Sharma (supra), the original application is not maintainable, hence dismissed. No order as to costs.

It is apparent from the order passed on 18-8-2004 that the application was dismissed on the ground of delay and also on the ground that no support evidence of the mental sickness of the applicant was submitted. Mental sickness is in issue in the instant case also and similar reliefs have been prayed by the petitioner.

Consequently, we have no hesitation to hold that fresh original application could not have been entertained by the Central Administrative Tribunal. Remedy of the petitioner was to assail the order dated 18-8-2004, which had attained finality and came in the way of the petitioner in filing fresh Original Application No.

675/2005. Thus, we find that the order passed by the Tribunal to be in accordance with law.

The Apex Court in the matter of Jaswant Singh (*supra*), has laid down that in order to decide the question whether a subsequent proceeding is barred by *res judicata*, it is necessary to examine the question with reference to the (i) Forum or the competence of the Court, (ii) parties and their representatives, (iii) matters in issue, (iv) matters which ought to have been made ground for defence or attack in the former suit, and (v) the final decision.

Applying all the aforesaid tests, there is no dispute as to competence of the Central Administrative Tribunal to adjudicate upon the previous original application. Parties and their representatives were the same. The matter in issue was identical. The same grounds have been raised and final decision indicates that on merits, the previous original application was dismissed. Consequently, fresh application could not be said to be maintainable.

In the matter of Haryana State Co-operative Land Development Bank v. Neelam (*supra*), the Apex Court dealt with the matter for withdrawal of the writ petition by workman without permission to file fresh petition. Withdrawal was sought to pursue alternative efficacious remedy before the Labour Court. The writ petition was not adjudicated on merits. The Apex Court laid down that withdrawal would not operate as *res judicata* and the principles embodied in Order 23 Rule 1 of the CPC would not be applicable in case of this nature. The decision is distinguishable on facts as withdrawal was to pursue the alternative remedy. Withdrawal was permitted. Consequently, there was no question of applicability of principles of *res judicata* or that of principles embodied in Order 23 Rule 1 of the Code of Civil Procedure.

In the matter of Jagjeet Singh v. Bhopal Vikas Pradhikaran and Anr. (*supra*), the Division Bench of this Court has laid down that once the question of limitation has been decided in the same proceedings, it could not be reopened by the same Court. The decision is of no help to the petitioner.

Resultantly, we hold that the Central Administrative Tribunal, Jabalpur has rightly dismissed the original application filed on behalf of the petitioner. We find no merit in the writ petition. The same is hereby dismissed. No costs.