

(2012) 08 CHH CK 0021
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 507 of 2012

Abhinavkant Singh and Another

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : (2012) 4 CGLJ 22

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Abhishek Pandey, for the Petitioner No. 2, for the Appellant; Sanjay K. Agrawal, Advocate General, Shri Pravin Das, Dy. G.A. and Shri B.D. Guru, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Shri Pritinker Diwaker, J.—Present petition has been filed by the petitioners praying that the report of the Expert Committee dated 4.11.2011 (Annexure P-1) in relation to five questions pertaining to Chhattisgarh Public Service Commission (Preliminary) Examination, 2008 conducted on 1.2.2009 for various posts, be set aside. According to the petitioners as many as 1, 28, 152 candidates participated in the examination and on 5.2.2009 model answers of 98 questions were published in the website of Chhattisgarh Public Service Commission in which, it was mentioned that two questions and answers have been deleted by the Public Service Commission. On 5.2.2009 itself, a notice was published by the Chhattisgarh Public Service Commission inviting objections in respect of the model answers within 15 days there-from. On 6.5.2009, the result was declared by the Chhattisgarh Public Service Commission (for short the "PSC") on the basis of evaluation of 94 questions because according to the PSC after receiving objections from various candidates it has further decided to delete four more questions. Further undisputed facts are that in respect of these questions pro rata marks were awarded to the candidates and in the preliminary

examination the candidates were required to answer all the questions 100 in number, each carrying 03 marks and preliminary examination was merely a screening test for the main examination followed by the interview. It is not disputed that the marks obtained by the candidates in the preliminary examination were not to be counted for the further examination and that preliminary examination was related to general knowledge and mental ability of the candidates.

2. Earlier, various petitions were filed by the candidates challenging the legality and validity of certain questions and answers which were asked to the candidates and according to those petitioners some of the questions have wrongly been deleted by the PSC though they were correct and in respect of some of the questions though objections were raised by the candidates, they were not correctly deleted by the PSC as either the questions or questions and answers both are wrong and that way final outcome would carry variation. In different sets of writ petitions candidates have challenged the legality and validity of various questions. However, while hearing those petitions, counsel for the respective parties after due deliberation had submitted that they were confining their arguments to five questions only. They had also given gist of these questions contained in various sets. Petitioner No. 2 herein had also filed W.P.(S) No. 4141/2009 which was decided on 7.12.2011 along with other petitions. During hearing of the said petitions, on 17.10.2011 this Court had directed for constitution of a committee of three senior experts in each subject and giving their opinion with respect to the correctness of five disputed questions along with detailed explanatory in support thereof. Operative portion of the order dated 17.10.2011 reads thus :

Thus considering the facts and circumstances of the case, looking to the opinion sought by the PSC which was given by the expert of the subject concerned in relation to some of the disputed questions referred to in the preceding paragraphs and also keeping in mind the legal position in the matter of Subhash Chandra Verma and others v. State of Bihar and others (supra) where emphasis has been laid by the Apex Court on appointment of the expert body to ascertain the correctness of the confusing or controversial nature of questions, this Court thinks it proper that before deciding the points argued by the counsel for the parties on merit and giving any comment on the five disputed questions, respondent/PSC may be asked to constitute a committee of three senior experts in the subject concerned and take their opinion with respect to the correctness of the five disputed questions along with detailed explanatory in support thereof. Order accordingly. Let the respondent/PSC constitute a committee of experts as aforesaid, obtain their opinion and then submit a report to this Court within a period of fifteen days from today.

Pursuant to the direction given by this Court, expert committee submitted its report on 4.11.2011 (Annexure P-1). After receiving the said report of the Expert Committee, all the petitions including that of the petitioner No. 2 herein were

heard finally and decided by order dated 7.12.2011 (Annexure P-7).

3. Contention of the petitioners herein is that report of the Expert Committee is not correct because in relevant books of those subjects the answer is different from that of the Expert Committee and thus they have assailed the validity of the report of Expert Committee.

4. Preliminary objection has been filed by the PSC regarding maintainability of the present petition. It has been argued by Shri Sanjay K. Agrawal learned Advocate General that so far as petitioner No. 1 is concerned, this petition on his behalf is not maintainable because there is no pleading to the effect that he had ever participated in PSC examination for 2008 pursuant to the advertisement issued by it. He submits that petitioner No. 1 is a stranger so far as the present subject matter is concerned and when he has not participated in the examination he has no locus to file the present petition. In support of this contention, he placed reliance on the decision of the Supreme Court in the matter of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,

5. In respect of petitioner No. 2 it is submitted by Shri Sanjay K. Agrawal learned Advocate General that after hearing various petitions including that of petitioner No. 2 on 17.10.2011, a direction was issued for constitution of Expert Committee in relation to five questions and answers and the said Committee submitted its report on 4.11.2011. He submits that at the time of final hearing of all the writ petitions including that of the petitioner No. 2, this petitioner has accepted the report of the Expert Committee which is evident from paragraph No. 24 of Annexure P-12. He submits that in relation to questions No. 52, 58 and 64 of set "D" all the petitioners have accepted the report of the Expert Committee whereas in relation to question No. 16 this Court had directed to award pro rata marks to all the unsuccessful candidates including the petitioners and then to prepare the merit list. It is argued that in relation to question No. 21 a categorical finding was given by this Court in paragraph No. 26 of the said order that the stand taken by the PSC in respect of said question appears to be correct. Shri Sanjay K. Agrawal learned Advocate General submits that having accepted the report of the Expert Committee it does not lie in the mouth of the petitioners to say that the said report is not correct. In support of this submission, reliance is placed on the decisions of the Supreme Court in the matter of M. Nagabhushana Vs. State of Karnataka and Others, and in the matter of Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, Shri Sanjay K. Agrawal learned Advocate General further argued that order dated 7.12.2011 passed by this Court in various petitions was also challenged in two Writ Appeals i.e. (WA 102/2012 and 103/2012) and both these appeals have been dismissed by the Writ Appellate Court vide order dated 12.3.2012 and order passed by the Single Judge was affirmed and to his knowledge there is no challenge to the order of learned Writ Appellate Court in the Apex Court. He submits that preliminary examination was conducted on 1.2.2009 and ultimately the matter has to attain finality. He submits that once the findings given by the

Single Judge accepting the report of the Expert Committee have been duly confirmed by the Division Bench in Writ Appeals, this Court again cannot look into the said matter which has already been decided as it would be barred by the principle analogous to constructive res judicata. Shri Sanjay K. Agrawal learned Advocate General submits that after the order of Single Judge and the Writ Appellate Court, main examination has already been conducted, results have been declared and interviews are to be held very soon and therefore, no interference is required in this petition and the same is liable to be dismissed at the motion stage itself. Relying on the Division Bench decision of this Court in the matter of Chhattisgarh Public Service Commission Vs. State of C.G. and Others, Shri Sanjay K. Agrawal learned Advocate General argued that it is desirable in the public interest that result of the State Civil Service Examination should attain finality as any belated alteration/amendment in the select list would not only affect the petitioners and the selected candidates but it may also affect the candidates of all the categories as selection and appointment. In respect of preliminary objection, reliance has been placed by Shri Sanjay K. Agrawal learned Advocate General on the decisions of the Supreme Court in the matter of Union of India and Another Vs. S.P. Anand and Others, and in the matter of Union of India (UOI) and Others Vs. Ranbir Singh Rathaur and Others etc. etc.,

6. Replying to the preliminary objections raised by the PSC, petitioner No. 2 submits that as the petitioner No. 1 had lost his admission card, he could not file the same but had appeared in the PSC examination. He submits that present writ petition has been filed on 30.1.2012 i.e. within less than two months of the order passed by this Court on 7.12.2011. He submits that as soon as they came to know about the report of the Expert Committee, same has been challenged by them before this Court and therefore the preliminary objection of the PSC is liable to be dismissed. Petitioner No. 2 further submits that once the present petition has been filed, instead of filing preliminary objection, the Public Service Commission should have filed reply to the petition and therefore, after rejecting the preliminary objection of PSC, respondents may be directed to file detailed reply to the petition and then petition be decided on merit and it cannot be dismissed at preliminary stage.

7. Heard counsel for the parties and perused the documents available on record.

8. From the pleadings made in the petition it is not clear as in what capacity the petitioner No. 1 has filed the present petition. In paragraph 8.1 of the petition it has only been mentioned that the petitioners are citizens of India and are entitled to all the fundamental rights guaranteed in the Constitution. It is not clear from the petition whether petitioner No. 1 had participated in the Chhattisgarh (Preliminary) examination for the year 2008. Nowhere in the petition he has stated as to what rights have been affected by the report of the Expert Committee. Considering the pleadings and arguments advanced, he appears to be a stranger to the present subject matter. In the matter of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, it has been held by the

Apex Court as under :

58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but judicially harm of this description is called *damnum sine injuria*.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party. (Vide *Adi Pheroazshah Gandhi v. Advocate General of Maharashtra*, *Jashbhai Motibhai Desai v. Roshan Kumar*, *Maharaj Singh v. State of U.P.*, *Ghulam Quadir v. Special Tribunal and Kabushiki Kaisha Toshiba v. Toshiba Appliances Co.*) The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in the correct perspective at all.

Thus, this petition on behalf of petitioner No. 1 is not maintainable because there is no pleading to the effect that he had ever participated in PSC examination for 2008 pursuant to the advertisement issued by it and as such he being a stranger to the present subject matter has no *locus* to file the present petition.

9. In Writ Petition No. 4141/2009 filed by petitioner No. 2 he had challenged the validity of questions No. 2, 9, 17, 20, 24, 32 & 96 of set "C". However, during the argument of the said petition and other connected matters after due deliberation the petitioners including petitioner No. 2 had is confined their relief only in respect of five questions and gist of those five questions contained in various sets was also given. Challenge was also confined to five common questions as taken from set "D" i.e. 16, 21, 52, 58 and 64. All those questions were dealt with by this Court in order dated 17.10.2011 (Annexure P-11) and considering the nature of the questions and model answers the Expert

Committee was constituted with the consent of the parties to submit its report within 15 days from the date of said order. Pursuant to the order dated 17.10.2011 Expert Committee submitted its report copy of which was directed to be given to all the petitioners and then after hearing the parties the final order was passed by this Court on 7.12.2011. During the hearing of those petitions, the petitioners including petitioner No. 2 herein had accepted the report given by the Expert Committee and have not put-forth any further claim in respect thereof. This finding was recorded by this Court in paragraph 24 of the said order. Thus out of five questions, in relation to questions No. 52, 58 and 64 of set "D" the petitioner No. 2 had not put-forth any claim. In relation to question No. 21 this Court had declined to interfere by holding the stand of the PSC as correct and in respect of question No. 16, it was directed to allot pro rata marks to all the un-successful candidates including the petitioners. It is thus quite apparent that petitioner No. 2 had accepted the report of the Expert Committee at an earlier occasion when Writ Petition No. 4141/2009 was heard and decided by this Court. It is a settled legal position that when the issues between the parties have been decided in an earlier litigation, the same issue being against the principles of res judicata as well as principles of constructive res judicata and principles analogous thereto, cannot be agitated subsequently. In the matter of M. Nagabhushana Vs. State of Karnataka and Others, it has been held by the Apex Court as under :

11. We find that disregarding the aforesaid clear finding of this Court, the appellant, on identical issues, further filed a new writ petition out of which the present appeal arises. That writ petition, as noted above, was rejected both by the learned Single Judge and by the Division Bench in clear terms. It is obvious that such a litigative adventure by the present appellant is clearly against the principles of res judicata as well as principles of constructive res judicata and principles analogous thereto.

12. The principles of res judicata are of universal application as they are based on two age-old principles, interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The

doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties.

19. A Constitution Bench of this Court in *Devilal Modi v. STO*, has explained this principle in very clear terms : (AIR p. 1152, para 7)

7....But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide *Daryao v. State of U.P.*)

20. This Court in *AIMO* case explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in *AIMO* case relied on the following formulation of Somervell, L.J. in *Greenhalgh v. Mallard* (All ER p. 257 H) : (*AIMO* case, SCC p. 700, para 39)

39...."I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly would have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

(emphasis supplied in *AIMO* case)

The Bench in *AIMO* case also noted that the judgment of the Court of Appeal in *Greenhalgh* was approved by this Court in *State of U.P. v. Nawab Hussain*, SCC at p. 809, para 4.

21. Following all these principles a Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers" Assn. v. State of Maharashtra* laid down the following principle: (SCC p. 741, para 35)

35.... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essential connected with subject-matter of the litigation and every matter coming into the litigative purview of the original action both in respect of the matters of claim and

defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly, hold that the writ case is fit to be dismissed on the ground of res judicata.

Further, in the matter of Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, the Apex Court has held as under :

86. The learned counsel Shri Mukund submits that the respondents herein for the first time in the writ petition filed in the year 1990 had raised a contention that the procedure prescribed under the Evacuee Property Act and the Rules framed thereunder were not followed before notifying the lands in question as evacuee property. Though this ground was available, the same was not raised. Therefore, it is contended that a ground, though opened to be raised, but not raised in earlier writ petition, cannot be allowed to be raised in a subsequent writ petition.

87. Shri Ranjit Kumar, learned Senior Counsel, would contend that the judgment and order in WP No. 1051 of 1966 was not dismissed on merits but only on the ground of delay and laches and therefore, principles of constructive res judicata would not apply. Our attention is invited to the v. decisions of this Court in Daryao v. State of U.P. and in Hoshank Singh v. Union of India.

88. In our view, this issue need not detain us for long. This Court in Devilal Modi v. STO, has observed that : (AIR p. 1152, para 8)

8.... the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy....

89. In the present case, it is admitted that when the contesting respondents filed WP No. 1051 of 1966, the ground of non-compliance with statutory provision was very much available to them, but for the reasons best known to them, they did not raise it as one of the grounds while challenging the Notification dated 11-12-1952 issued under the Evacuee Property Act. In the subsequent writ petition filed in the year 1990, initially, they had not questioned the legality of the notification, but raised it by filing an application, which is no doubt true, allowed by the High Court. In our view, the High Court was not justified in permitting the petitioners therein to raise that ground and answer the same since the same is hit by the principles analogous to constructive res judicata.

10. Most important aspect of the case is that against the order dated 7.12.2011 passed by this Court two aforementioned writ appeals were also filed by the

aggrieved persons whereby the order passed by this Court was affirmed by the Division Bench categorically holding that the learned Single Judge has respected the Expert Committee's report and had upheld the correctness of the said report in the above manner.

11. As informed by the petitioner No. 2 and the counsel for the respondents, till date the order of the Division Bench has not been assailed before the Apex Court. Thus the order dated 7.12.2011 passed by this Court on the basis of report of the Expert Committee has attained finality and therefore, it is not open for any forum to ignore the same.

12. As regards petitioner No. 2, after hearing various petition including that his own on 17.10.2011, a direction was issued for constitution of Expert Committee in relation to five questions and answers and the said Committee submitted its report on 4.11.2011. At the time of final hearing of those writ petitions including that of the petitioners, this petitioner has accepted the report of the Expert Committee and having accepted the report of the Expert Committee it does not lie in the mouth of the petitioners to say that the said report is not correct. Thereafter, order dated 7.12.2011 passed by this Court in various petitions was also challenged in two Writ Appeals i.e. (WA 102/2012 and 103/2012) and both these appeals have been dismissed by the Writ Appellate Court vide order dated 12.3.2012 and order passed by the Single Judge was affirmed and as has been informed by Shri Sanjay K. Agrawal learned Advocate General no challenge has been made to the order of learned Writ Appellate Court in the Apex Court. Once the findings given by the Single Judge accepting the report of the Expert Committee have been duly confirmed by the Division Bench in Writ Appeals, this Court again cannot look into the said matter which has already been decided as it would be barred by the principle analogous to constructive res judicata. In view of above, the petition being not maintainable is dismissed at the motion stage itself.