

(2001) 09 PAT CK 0069
In the Patna High Court
Case No : C.W.J.C. No. 11998 of 1999

Bnupendra Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0069

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Petitioners are office bearers of the Unions. They have filed writ petition for issuance of a writ in the nature of mandamus commanding upon the authorities of the State to absorb/adjust the services of the officers/workmen and other employees of the Bihar State Agro Industries Corporation Ltd. who are likely to be retrenched after disposal of winding up petition filed by the State of Bihar, Department of Agricultural and also for commanding the authorities of the State to make sufficient fund available to meet the liability of the outstanding arrears of salary/allowances of the employees of the aforesaid Corporation till the date their services are absorbed/adjusted.

2. The Bihar State Agro Industries Development Corporation Ltd. was incorporated u/s 617 of the Indian Companies Act, 1956 on 30th March, 1966. The Board of Directors on its first meeting held on 20.7.1966 had resolved that the service conditions of the employees of the Corporation be governed by Bihar Service Code and the Bihar T.A. Rules approved by the Governor of Bihar and presently the service conditions are governed under the provisions of the Industrial Employment (Standing Orders) Act, 1946. The employees of the Corporation were not being paid their salaries with effect from May, 1993 as the Corporation pleaded its inability to meet the liability on the ground of financial stringency. The Petitioners filed C.W.J.C. No. 5015/96 for issue of direction to the Respondents to pay their salaries etc. and also for direction to the State Government to make sufficient fund available to facilitate the payment. The said writ petition and C.W.J.C. No. 1718/94 in which similar question was involved

were taken up for hearing by a Full Bench of this Court. The Full Bench taking into consideration the distinction between the Corporation created by the Statute and the Corporation/Company incorporated under the Indian Companies Act and different decisions of the Apex Court came to a conclusion that the Corporation created by the Statute may be called an agent of the State but the Corporation/Company engaged in trade or business, acting on its own, cannot be called agent of the State irrespective of the nature or degree or control by the Government department and its employees cannot be called employees of the State so as to bind the State Government to make it liable for payment of salary and accordingly held that the Petitioners cannot maintain their claim against the State of Bihar. They are entitled to reliefs only against the respective Corporation and direction was issued to the State Government to file winding up petition in the Court if the two Corporations are not able to pay salary to their employees and dismissed the writ petitions vide judgment and order dated 19.3.1997, Annexure-2. Against the said judgment and order of the Court the Petitioner filed SLP before the Apex Court and SLP was dismissed on 30.7.1997, Annexure-3.

3. The Petitioners now have filed writ petition for issue of direction to the authorities of the State to absorb/adjust the services of the officers/workmen and other employees of the Corporation and also for direction to the authorities of the State to make sufficient fund available to meet the liabilities for payment of arrears of salary and allowances etc. to the employees of the aforesaid Corporation on the ground that dismissal of SLP in limine by the Apex Court by non-speaking order cannot be treated judgment of the Supreme Court on the merit of the case. The employees of the Corporation are facing hardship. The Corporation no doubt was incorporated under the Indian Companies Act, 1956, but it was never allowed to function independently, rather it has been functioning throughout according to executive direction of the State Government in the matter of its administration, financial and managerial control. The Addl. Secretary of the Department of Agriculture, Government of Bihar wrote to the Commissioner-cum-Secretary, Public Bureau of Enterprise, Department of Finance, Government of Bihar vide its letter dated 15.9.1993 that since the Corporation has reached at the verge of closure and the employees have not been paid their salary, services of the officers and other employees of the Corporation be adjusted and absorbed on the vacant post of the State Government. There was some correspondence between the different authorities of the Government and the Corporation on the point of absorption/adjustment of the employees. These letters have been annexed as Annexures-4, 5, 6, 7, 8, 9 & 10 the writ petition.

4. A counter-affidavit has been filed on behalf of Respondent Nos. 5, 6 & 7, officers of the Corporation stating therein that petition u/s 433 of the Indian Companies Act has been filed and Company Petition No. 16/99 has already been registered. A separate counter-affidavit has been filed on behalf of Respondent No. 3 stating therein that this Court has already held that the Petitioners cannot maintain their claim against the State of Bihar. Winding up petition has already

been filed and Company Petition No. 16/99 has already been registered. However, on the direction of this Court with regard to present policy decision of the Government with respect to the claim of Petitioners a supplementary counter-affidavit has been filed stating therein that State Government is neither liable nor willing to absorb the services of the employees of the Bihar State Agro Industries Development Corporation Ltd.

5. From the pleadings on the record it is obvious that Bihar State Agro Industries Development Corporation was incorporated under the Indian Companies Act, 1956. The employees of the Corporation were not being paid their salary with effect from May, 1993. The Petitioners filed C.W.J.C. 5015/96 in which prayer was made for issue of direction for payment of salary etc. and further direction to the State Government to make sufficient fund available to the Corporation to facilitate the payment. The said prayer was negatived, by a Full Bench of this Court and it was categorically held that Petitioners cannot maintain their claim against the State of Bihar. The judgment of the Full Bench was challenged before the Apex Court and SLP was dismissed on 30.7.1997. In the writ petition in hand a prayer has also been made for issue of direction to the State and its authorities to make sufficient fund available to the Corporation to meet the liability for payment of arrears/allowances to its employees and also for absorption/adjustment. Learned counsel for the Petitioners during course of argument pointed out that dismissal of SLP by non-speaking order against the judgment of the Full Bench of the High Court cannot be treated as judgment on merit by the Apex Court. There is no dispute with respect to the rule of law that dismissal of SLP by non-speaking order cannot be treated as judgment on merit by the Apex Court. There is no dispute with respect to the rule of law that dismissal of SLP by non-speaking order cannot be treated as law declared by the Supreme Court but it can certainly be treated that the Apex Court did not find any reason to interfere with the judgment passed by the High Court or to grant Special Leave with respect to the judgment delivered by the High Court. The Full Bench decision in the circumstances would be binding on Division Bench and Single Bench of the High Court. Before the Full Bench Petitioners were party. Similar facts were there and question was raised for issue of direction to the State and its authorities to make sufficient fund available for payment of arrears of salary which was negatived by the Full Bench after detailed deliberation. However, it appears that before Full Bench there was no question of absorption/adjustment of the employees of the Corporation. The Full Bench finding that Petitioners cannot maintain writ petition against the State with respect to direction to make sufficient fund available for payment of arrears of salary etc. still stands operative as the said finding was not disturbed by the Supreme Court. In such a situation, in my opinion, no writ can be issued to the State and its authorities for absorption/adjustment of the employees of the Corporation in different departments of the Government. It is obvious that question before the Full Bench was related to the facts in issue and the Full Bench has laid down law related to the similar facts and thus it would operate as res judicata in the case in hand. In

the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, , the Apex Court has held as follows:

A decision on an abstract question of law unrelated to facts which give rise to a right cannot operate as res judicata or also can a decision on the question of jurisdiction be res judicata in a subsequent suit or proceedings. But, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may-operate as res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same.

6. The Apex Court while considering the question of res judicata has further held:

The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution.

7. On consideration as discussed above, it appears to me that on similar set of facts the Full Bench held that the Petitioners cannot maintain their claim with respect to issue of direction to the State of Bihar to make sufficient fund available to the Corporation for payment of arrears of salary etc. The relief sought for absorption/adjustment of the employees of the Corporation in my opinion, cannot be granted. Learned counsel for the Petitioner, however, relied upon a decision in the case of G. Govinda Rajulu v. Andhra Pradesh State Construction Corporation Limited and Anr. 1986 (Suppl) Supreme Court Case-651, wherefrom it appears that the Apex Court directed that the employees of the Andhra Pradesh State Construction Corporation Ltd. whose services were to be terminated on account of closure of Corporation would continue in service on the same terms and conditions either in Government departments or in the Government Corporation. The Apex Court while issuing direction did not decide any question of law. It is well established rule of law that a decision of the Supreme Court if it decides the question of law shall be binding on all courts within the territory of India. The Supreme Court has also power under Article 142 of the Constitution of India to pass such decree or to make such order as is necessary for doing complete justice in the cause or matter pending before it but the said power is not available to the High Court. In the case of State of Punjab and others Vs. Surinder Kumar and others, the Apex Court has held:

It is, therefore, futile to suggest that if this Court has issued an Order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice, in any case or matter pending before it, which authority the High Court does not enjoy. The

jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

8. Therefore, on consideration as discussed above, I find myself unable to issue writ against the Respondents as claimed by the Petitioners. Accordingly, writ petition is dismissed but without cost.