
(1995) 11 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10757 of 1995

Central Co-operative Consumer's Stores (Super Bazar)	APPELLANT
Vs	
Home Secretary, Chandigarh Administration and Others	RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1997) 3 LLJ 219 : (1996) 112 PLR 309

Hon'ble Judges : V.S. Aggarwal, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Ramesh Chopra, for the Appellant; Jaskirat Singh Sidhu, for Respondent Nos. 1 to 3 and S.P. Thukral, for the Respondent

Final Decision : Allowed

Judgement

Jawaharalal Gupta, J.—The Central Cooperative Consumer's Store, Chandigarh, is the petitioner. It is aggrieved by the order dated November 16, 1994 published in the Chandigarh Administration Gazette by which the following question has been referred to the Labour Court/Industrial Tribunal, Union Territory, Chandigarh:-

"Whether the claim of Asha Rani for granting pay scale of Rs. 570-1080 w.e.f. May 4, 1992 on the principle of equal pay for equal work is justified or not? If so, to what effect and to what relief she is entitled to, if any ?"

The petitioner challenges this order primarily on the ground that the cause already stands adjudicated and cannot be re-decided. A few facts may be noticed.

2-3. On December 17, 1990, Asha Rani, Respondent No. 4 was appointed on daily wages for 89 days. On March 18, 1991, she was again appointed for 89 days. This appointment was extended. While she was working as such, she was offered an appointment as a Computer Operator in the pay scale of Rs. 570-1080 plus usual allowances vide order dated April 13, 1992. This appointment was on purely ad hoc basis and could be terminated without assigning any reason. The

petitioner alleges that Respondent No. 4 failed to report for duty within the stipulated time of one week. As a result, the offer of appointment stood cancelled. Thereafter, vide order dated June 3, 1992, she was offered the post of Helper on ad hoc basis in the pay scale of Rs. 325-495. It was also mentioned in this order that the petitioner had not installed any computer and as such it did not require the services of a computer operator. Respondent No. 4 challenged the order dated June 3, 1992 by filing Civil Writ Petition No. 8167 of 1992 in this Court. A copy of the writ petition filed by the fourth respondent has been produced as Annexure P-3 to the present petition. A perusal thereof shows that besides challenging the order dated June 3, 1992, the respondent had specifically prayed for the issue of a direction to "pay her in the pay scale of regular computer operator i.e. 570-15-600/20-700/25-850/30-1000/40-1080 with effect from the date she joined". She also prayed for the consequential relief of arrears of salary. The Court directed the issue of notice of motion to the respondents which included the present petitioner. It filed a written statement averring inter-alia that the petitioner had not submitted a joining report within one week as stipulated in the appointment order. It was further averred that there was no proposal to fill up the post in the scale of Rs. 570-1080. In fact, nobody had been appointed in this pay scale. It was categorically stated that the management after taking into consideration the financial complications (sic) dropped the idea of installation of Computer and, therefore, the post is not going to be filled up in the near future."

The petitioner left the store abruptly on June 3, 1992 without handing over the master key of the Registrex Machine to the Management. She remained on medical leave for a number of days. The master key was obtained from her with great difficulty on June 12, 1992 and it was found out of order. While leaving office on June 3, 1992 she had washed out the entire memory regarding sales. The machine had to be got repaired. Various averments made by the petitioner were controverted. The Bench after hearing the counsel for the parties, passed the following order:-

" Dismissed.

Counsel for the respondents, however, clarifies that it will be open to the petitioner even now to join the lower post of helper provided she joins within one week from today".

Feeling aggrieved by this order, the petitioner filed SLP (Civil) No. 12047 of 1992. In this petition she besides challenging the order of the High Court on various grounds, specifically pleaded that she had been "operating Registrex computer cash machine since her appointment" and that the High Court had "failed to appreciate that the post of Helper offered by Respondent No. 2 was lower in rank."

It appears that their Lordships were pleased to direct the issue of notice to the respondents. Thereafter, their Lordships were pleased to pass the following order

on January 25, 1993:-

"CORAM

Kuldip Singh, Hon"ble Mr. Justice K. Jayachandra Reddy. For the petitioner: Mr. S.K. Bagga, Sr. Advocate. Mr. Seeraj Bagga & Mrs. Shwresthev Bagga Advocates, for the respondents: Mr. Kapil Sibal, Sr. Advocate Ms. Kanwaljit Kochar and Mr. JD Jain, Advocates. UPON hearing Counsel the Court made the following

ORDER

We see no ground to interfere. The SLP is dismissed. We however observe that if and when the respondents Management decides to instal a computer the case of the petitioner shall be considered sympathetically.

sd/- (R. Moorjani) Court Master".

4. After the dismissal of the Special Leave Petition, Respondent No. 3 issued a demand notice dated August 17, 1993 alleging that she was entitled to receive her salary in the scale of Rs. 570-1080. The petitioner controverted this claim on the ground that it was barred by the principle of res judicata. It referred to the decision of this Court as well as of Hon"ble the Supreme Court. However, the matter having been referred to the Labour Court through the impugned order, the petitioner has approached this Court through the present writ petition.

5. In response to the notice of motion, Respondent No. 4 has appeared and filed a written statement. She avers that since the High Court as well as the Supreme Court have not decided the case on merits, the reference is not barred by the principles of res judicata. On merits, the pleas raised by her are akin to those raised in the writ petition as well as the Special Leave Petition.

6. We have heard Mr, Chopra, learned counsel for the petitioner and Mr. Thukral, appearing for Respondent No. 4.

7. The short question that arises for consideration is - Has the issue of pay scale admissible to Respondent No. 4 been heard and decided in CWP No. 8167 of 1992 and in SLP No. 12047 of 1992? In other words, the question is - Is the trial of the issue barred by the principles of res judicata ?

8. Section 11 of the CPC embodies a principle of public policy. It mandates that a Court shall not try any issue which has been directly and substantially in issue in an earlier proceeding between the same parties. It also provides that any matter which might and ought to have been made a ground of defence or attack in an earlier proceeding shall be deemed to be a matter directly and substantially in issue. Explanation V to Section 11 further provides that a relief which is claimed in the proceedings and which is not expressly granted shall be deemed to have been refused. The application of this provision is not confined to civil suits. The principle of res judicata can be invoked in all civil proceedings. It ensures that pronouncements of Courts should be treated as final so that no one is allowed to face the same litigation twice. If any matter in issue has been directly and

explicitly decided, the decision operates as *res judicata* and bars the re-trial of the same issue in a subsequent proceeding between the same parties. Still further, if a decision on a particular issue is "implicit" in an order, it "must be deemed to have been necessarily decided by implication..". It is true that dismissal of a writ petition in limine on the technical grounds of delay or alternative remedy without anything more, does not operate as *res judicata*. However, when notice of a petition is given to the respondents and they not only appear but even file a written statement, the dismissal of the writ petition even without passing a detailed order cannot mean that the matter has not been heard and decided. It is all the more so when even a SLP against the order is dismissed after hearing both the parties.

9. What is the position in the present case? Respondent No. 4 had filed CWP No. 8167 of 1992. She had not only challenged the order dated June 3, 1992 by which order of her appointment as a Computer Operator was cancelled and post of Helper was offered to her, but she had specifically claimed that she was entitled to the payment of her salary in the scale of Rs. 570-1080. She had categorically urged in Ground (iv) that the action of the respondents in not paying her salary in the said scale was violative of the rule enunciated by their Lordships of the Supreme Court in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, . She had also invoked the provision of Article 16 in this behalf. This claim was contested by the respondent and it was pleaded that on account of Financial constraints, the post of Computer Operator which was in the scale of 570-1080 was not being filled-up. Thereafter, the matter was heard. The writ petition was dismissed. It was, however, clarified that "it will be open to the petitioner even now to join the lower post of Helper provided she joins within one week from today." The fact that the Court dismissed the petition clearly shows that it found no ground to sustain the claim of Respondent No. 4 herein to the pay scale of Rs. 570-1080. The order further shows that she was held entitled only to the lower post of Helper. Whatever was implicit in the dismissal of the writ petition was made explicit by the clarification that she would be entitled to join the lower post of Helper. The matter did not rest here. The Respondent filed a Special Leave Petition. She challenged the order passed by the High Court. She further specifically indicated the contentions raised by the present petitioner in para 11 of her petition. The SLP was dismissed after hearing counsel for both sides. It was, however, observed that "if and when the respondent-management decides to instal a computer, the case of the petitioner shall be considered sympathetically." In this order, it was clearly implicit that her demand for the salary of a computer operator could not be sustained till the management actually installs (sic.) a computer. In the event of the installation of a computer, the management had to consider her claim for appointment as operator sympathetically.

10. On a consideration of the matter, it is clear that the claim of the fourth Respondent to the pay scale of Rs. 570-1080 was clearly negatived. That being

so, her effort to re-agitate the matter before the Labour Court cannot be sustained.

11. Mr. Thukral, learned counsel for respondent No. 4 submitted that the appropriate authority having made the reference after considering the objection raised by the petitioner, the matter should be left to the discretion of the Labour Court and this Court should not interfere under Article 226 of the Constitution.

12. It is undoubtedly correct that whenever a workman approaches the appropriate Government with a grievance, it has to be seen whether there is a dispute requiring adjudication. Normally, the appropriate Government does not go into the merits of the controversy. It can't adjudicate. It is also true that normally even this Court is reluctant to go into the validity of the reference. The matter has to be primarily considered by the Labour Court. However, in the facts and circumstances of this case, we have examined the matter only because a protracted trial before the Labour Court even on the question of res judicata would have only cost in terms of money and time to both the sides. We are by no stretch holding that it would be open to the management to initiate proceedings under Article 226 against every order of reference. For the present, we have only examined the limited question of res judicata in the context of the peculiar facts of this case.

13. In view of the above, we hold that the issue referred to the Labour Court by the impugned order has already been decided in the earlier proceedings between the same parties. It cannot be decided afresh by the Labour Court or the Industrial Tribunal. Consequently, we allow the writ petition and set aside the impugned order of reference. However, in the circumstances of the case, the parties are left to bear their own costs.