
(2010) 08 AHC CK 0504

In the Allahabad High Court

Case No : Special Appeal No. 1205 of 2010 With 4 Other Special Appeals

Chanchal Kumar Tiwari, Principal Secretary, Forest
Department and Others

APPELLANT

Vs

Hari Shankar

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 141, 215, 226, 32

Citation : (2010) 6 AWC 6000 : (2011) 1 LLJ 581

Hon'ble Judges : Ferdino I. Rebello, C.J.;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ferdino I. Rebello, C.J.—These special appeals against a common order dated 1.7.2010 arise out of proceedings in contempt for nonpayment of wages to daily wage workers engaged in the Forest Department of the State of Uttar Pradesh. The learned Judge, after noting the order passed by this Court in State of U.P. and Ors. v. Putti Lal (1998) 1 UPLBEC 313: 1998 (1) AWC 236 (NOC), judgment of the Supreme Court dated 21.2.2002 in State of U.P. and Ors. v. Putti Lal, (2002) 2 UPLBEC 1595: 2002 (3) AWC 2375 (SC). and after being prima facie satisfied that there has been wilful and deliberate disobedience/non-compliance on the part of the opposite parties in the proceedings before him, of the directions of this Court, as contained in the judgments in Putti Lal (supra), as modified by the Supreme Court, issued various directions and, at the same time, observed that it would be open to the Principal Secretary, Department of Forest, Government of U. P. and the Principal Chief Conservator of Forest, State of U. P. to consider the matter in the light of the observations made in the said order and take necessary steps in that regard.

2. Before considering the arguments raised, we may gainfully refer to the judgments of this Court in Putti Lal (supra). Two issues arose-- (1)

Regularisation/absorption of the employees working in the Forest Department under the Scheme undertaken by the said Department in respect of daily wage/muster roll employees, and (2) minimum payment of wages to such employees. We are not concerned, in the present, with the issue of regularization. We are" only concerned with the issue, as to what is the minimum pay that should be paid to the employees engaged as daily rated labourers/muster roll employees. The learned Judge noted that in Writ Petition No. 15627 of 1988, Kumaun Van Shramik Sangh Centre and Anr. v. State of U.P, decided on 25.2.1993, the Court had issued directions to frame a Scheme for regularisation, and to pay the Petitioner No. 2 therein and other similarly placed employees, the wages at the rates equivalent to minimum pay in the pay scales of the regularly employed workers in the corresponding cadres. The learned Judge has further noted that the learned Judge, while allowing the said writ petition, did not confine his judgment to the Petitioners" members only but issued general directions to the Respondents therein for payment of wages/salary and for framing the Scheme for regularization of such employees. We may gainfully reproduce the relevant portion extracted from the judgment of learned Judge, as quoted in paragraph 14 of the judgment of this Court in Putti Lal (supra), which reads as under :

...but the Petitioners have certainly made out a case for issuance of a direction to the Respondents to pay to the Petitioner No. 2 and other similarly circumstance Daily Rated Labourers/Workers under the control of the Respondents, the wages at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from 19.8.1988 on which date the writ petition was filed in this Court together with corresponding dearness allowances and additional dearness allowances, if any payable therein, with a further direction to the Respondents to frame a scheme within a period of six months from the date of presentation of a certified copy of this order before the Secretary, Forest Department, Government of Uttar Pradesh and the Chief Conservator of Forest Department, U.P., Lucknow.

3. The learned Bench, then, noted the contentions raised by the Additional Advocate General that the directions given in Kumaun Van Shramik Sangh Centre (supra) should be confined to the members of that Association, and rejected the same for the reasons set out therein, and held that the benefits of the said judgment of the learned Judge have to go to all the daily wagers/muster roll employees. The learned Bench further noted, which is admitted by the Respondents (State), that the pay at the rate, as directed by the learned Judge in the said case, was being paid to those daily wagers, who are members of Kumaun Van Shramik Sangh Centre and, as such, payment is not being made to any other daily wager working in the State, including Kumaun Hills. The Court, then, observed as under :

... They are, therefore, bound to pay in terms of the said judgment to every daily rated labourers/muster roll employees and the Government is also bound to frame Scheme for regularization of their service.

Certain other directions came to be issued thereafter.

4. The State, aggrieved by the aforesaid judgment, preferred appeals before the Supreme Court, in the case reported as State of U. P. and Ors. v. Putti Lal (supra). The Supreme Court, after considering various contentions raised on behalf of the State, in paragraph 5 of the judgment, held as under :

5. In several cases this Court applying the principle of equal pay for equal work has held that a daily wager, if he is discharging the similar duties as these in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart, in the Government. In our opinion that would be the correct position and we therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counterpart in the Government and would not be entitled to any other allowances or increment so long as they continue on daily wager. The question of their regular absorption will obviously be dealt with in accordance with the statutory rule already referred to.

5. It would, thus, be clear that the Supreme Court has held that daily wagers would be entitled to draw at the minimum of the pay scale being received by their counterparts in the Government but would not be entitled to any other allowances or increment so long as they continue as daily wagers.

6. Another matter came to be considered by a Division Bench of this Court in Special Appeal No. 974 of 2004, Ram Yadav v. State of U.P., wherein, interim directions came to be issued on 22.3.2005, of which Direction No. 2 reads as under :

(II) They shall be paid minimum of pay scale which is applicable to their regular Counterparts but without any benefit of allowances but shall not be entitled to claim wages for the period they have not worked.

7. From the above judgments and interim direction, it would be clear that the law as declared in terms of Article 141 of the Constitution of India, is that the daily wagers, as long as they continue on daily wage basis, are entitled to draw at the minimum of the pay scale being received by their counterparts in Government and would not be entitled to any other allowances or increment so long as they continue as daily wagers. In spite of these judgments, the State Government has not been paying to employees, engaged as daily labour, the wages In terms of the judgment of this Court, as upheld by the Supreme Court.

8. At the hearing of these appeals, on behalf of the Appellants, Mr. M.C. Chaturvedi, learned Chief standing counsel, has raised three points before us - firstly, he has contended that the payment at the minimum of the pay scale is given only to those employees who were considered for regularization or found eligible to be regularized and not to those who are taking the minimum wages ; secondly, placing reliance on paragraph 35 of the judgment of the Supreme

Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, he has contended that the daily wagers cannot claim equality of pay with regularly appointed employees: and thirdly, he has submitted that the contempt was barred by limitation and, hence, the learned Judge ought not to have granted the relief claimed.

9. The first question that arises for consideration would be, whether after the issue has been answered by the Supreme Court and more specifically in respect of the daily wage employees, working in the State of U. P., is it still open to the State to contend that the Supreme Court in its judgment has not held that those who are not entitled to regularization, are also to be paid at the minimum of the pay scale being received by their counterparts in Government?

10. At the outset, we may note that the principles of *res judicata* are also applicable in proceedings under Articles 32 and 226 of the Constitution. A Constitution Bench of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, observed as under :

(11) The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., Vol. 22, p. 780 paragraph 1660. Similar is the statement of the law in *Corpus Juris*: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. The rule is subject to the limitation that the judgment in the former action must have been rendered by a court or Tribunal of competent jurisdiction", *Corpus Juris Secundum*. Vol. 50 (Judgments), p. 603. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon", *Ibid.* p. 608. In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little

doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.

11. The above judgment was referred to by a Bench of three Judges of the Supreme Court in U.P. State Road Transport Corporation Vs. State of U.P. and Another, We may gainfully refer to paragraphs 10 and 11 of the judgment, which read as under :

10. In Daryao and Others Vs. The State of U.P. and Others, a Constitution Bench considered the application of rule of res judicata in writ petitions. It was held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. Similarly, in Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, which is also a decision by a Constitution Bench, it was held that it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. It was further held that considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by the Supreme Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration. In The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, the Constitution Bench emphasized that the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.

11. The principle of res Judicata is based on the need of giving a finality to

judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of CPC in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. (See Satyadhyam Ghosal and Others Vs. Sm. Deorajin Debi and Another,

12. Thus, the law as settled is that even in the proceedings under Article 226 of the Constitution, principles of res judicata would apply.

13. Another Constitution Bench of the Supreme Court in the case of Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, was also pleased to hold that the principles of constructive res judicata are also applicable to writ petitions. We may gainfully refer to paragraph 10 of the judgment, which reads as under :

(10) As we have already mentioned, though the Courts dealing with the questions of the infringement of fundamental rights must consistently endeavour to sustain the said rights and should strike down their unconstitutional invasion, it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention-of their fundamental rights.

Considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by this Court are binding and must be regarded as final between the parties in respect of matters covered by them, must receive due consideration.

The Court then further proceeded to observe as under :

... That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the Appellant in the present case is barred by constructive res judicata.

15. These Constitution Bench judgments, both on the aspect of res judicata and constructive res judicata, continue to hold the field. Thus, these principles would be applicable to proceedings under Article 226 of the Constitution of India. With that, we will now consider the contentions raised on behalf of the State.

16. On consideration of the judgments in Putti Lal (supra), both of this Court and of the Supreme Court, there is nothing in the said judgments to differentiate employees into those who are eligible for regularization and those who are not eligible for regularization. The principle on which they are paid being, that all such daily wagers are doing similar work and are similarly placed persons and as

such between them, there can be no mini-classification. The fact that under the rules framed, one may be eligible for regularization considering qualification, like educational qualification, experience, age etc. and the others may not be eligible, cannot result in holding that it is open to the State to pay different wages to similarly situated employees and to treat such persons differently, though they are similarly placed and do the same work. This will be abhorrent to our constitutional values of equality as enshrined in Article 14 of the Constitution of India. The State had not raised such a plea before the Supreme Court against the judgment in appeal in Putti Lal (supra). The observations by the Supreme Court are also not restricted to those who are eligible for regularization. The Supreme Court itself has, while applying the principle of "equal pay for equal work", held that a daily wager, if he is discharging similar duties with those in the regular employment of the Government should at least be entitled to receive the minimum at the pay scale, though they may not be entitled to any other increment or allowances as permissible to their counterparts in the Government employment. That, they are doing similar work as regular employees is not disputed, as the State Government itself is paying the minimum in the pay scale to those who are eligible for regularization. All daily rated employees were being paid the same minimum wage before the direction to pay them at the minimum of the pay scale. The State has nowhere disputed that they are doing similar work. This classification between those who are eligible for regularization and those who are not eligible for regularization, was sought to be made for the first time before this Court in the contempt proceedings. Such a plea was not raised earlier, and such a plea would be barred by the principles of constructive res judicata. Even otherwise, such a plea would not be permissible considering the principle of "equal pay for equal work". The contention advanced by the State, which would result in departing from the principle of "equal pay for equal work", has to be rejected.

17. Coming to the second contention, based on the Constitution Bench judgment of the Supreme Court in Uma Devi (supra), firstly we may note that the issue framed for consideration in Uma Devi (supra), is Secretary, State of Karnataka and Ors. v. Umadevi and Ors., (2004) 7 SCC 132 which reads as under :

Looking to the position as it stands under the law regarding regularization, namely, different views expressed in different decisions of this Court, we feel that it would be appropriate that the matter may be heard by a three-Judge Bench, so as to appropriately appreciate the legal position and decide the matter accordingly.

18. The learned Bench of three Hon''ble Judges of the Supreme Court thereafter, in Secretary, State of Karnataka and Ors. v. Uma Devi (2) and Ors.. (2006) 4 SCC 44, thought it proper that the matter be placed before a Bench of five learned Judges. The reference, therefore, was only in respect of regularization of employees. The reference was not in respect of "equal pay for equal work". It, therefore, cannot be held that the principle of "equal pay for equal work", has

been departed from by the Constitution Bench of the Supreme Court in Uma Devi (supra). The following observations of the Constitution Bench in paragraph 18 are relevant :

... While it might be one thing to say that the daily-rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment....

19. On the issue of "equal pay for equal work", we may gainfully refer to relevant portion of paragraph 44 of the said judgment, which reads as under :

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principles of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent....

20. Thus, it would be clear that the Constitution Bench itself has recognized and accepted the principle of "equal pay for equal work". In our opinion, therefore, the second contention must also to be rejected.

21. The last contention raised on behalf of the State, is that the contempt petitions were barred by limitation. It will not be possible to accept the said contention, as considering the judgment in Putti Lal (supra), the cause of action is recurring insofar as the employees are concerned, and once that be the case, there is no merit in this submission also. Even otherwise, considering that the law laid down by this Court as upheld by the Supreme Court would be binding on the State in view of Article 141 of the Constitution, it is always open to this Court to consider the contempt petition under Article 215 of the Constitution.

22. Considering the above, we find no merit in these appeals and they are, accordingly, dismissed.