

(2014) 11 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 368/2014

Deepak Kumar Khinvasara

APPELLANT

Vs

Oil India Limited

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 311

Citation : (2014) 11 RAJ CK 0126

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Prakash Gupta, J

Bench : Division Bench

Advocate : M.S. Singhvi, Senior Advocate and Sanjay Nahar, Advocate for the Respondent

Judgement

Sunil Ambwani, Actg. C.J.

1. We have heard appellant appearing in-person and learned counsel appearing for the respondents.

2. This Special Appeal arises out of the order dated 4th February, 2014 passed by learned Single Judge, by which he has dismissed S.B. Civil Writ Petition No. 2705/2002 Deepak Kumar Khinvasara V/s Oil (India) Limited and ors. filed with the prayers to direct the respondents-Company to maintain correct continuity and seniority of the petitioner from time to time when the persons admittedly junior to him were promoted. The petitioner has also prayed for directions to grant him the benefit of long service award, computation of leave and crediting in account etc., as prayed in the writ petition, and not to implement the disciplinary advice No. RP/DRLG/PLG-33/923 dated 13.8.1998 in totality by maintaining seniority and continuity of the petitioner in the service of the respondents-Department.

3. Learned Single Judge dismissed the writ petition on the ground that the validity of the order dated 13.8.1998 was already upheld by the Supreme Court. The principles of res judicata will apply, on which no relief claimed on the basis of

the judgments cited by the petitioner, could be granted. Learned Single Judge also observed that whereas on the one hand, the petitioner is challenging the jurisdiction of the authority, who had passed the order dated 13.8.1998, on the other hand, in the prayer clause-(iv), the petitioner has himself made a prayer to implement the order dated 13.8.1998 in totality by maintaining seniority and continuity of the petitioner in service, for which the matter was finally adjudicated by the Hon''ble Supreme Court.

4. Brief facts giving rise to the writ petition are that disciplinary proceedings were initiated against the petitioner when he was serving in the clerical grade in the respondents-Company. The disciplinary proceedings culminated into an order of dismissal dated 23.1.1990. The petitioner challenged the order of dismissal as well as the order by which his departmental appeal was dismissed on 19.4.1990 in S.B. Civil Writ Petition No. 3310/1990. Learned Single Judge allowed the writ petition and quashed the dismissal order dated 23.1.1990 and appellate order dated 19.4.1990, with directions to the respondents to reinstate the petitioner with back wages and all consequential benefits. The writ petition was allowed with the findings that the dismissal order was passed by the Superintending Engineer (Drilling), who is an authority subordinate to the Appointing Authority i.e. the General Manager. In the absence of powers delegated to the Superintending Engineer (Drilling), the orders of dismissal passed by him were illegal and without jurisdiction. Learned Single Judge further held that the principles of service jurisprudence to the effect that the Disciplinary Authority itself could not become Appellate Authority was also violated with impunity.

5. The Oil India Limited filed D.B. Civil Special Appeal No. 73/97, which was dismissed on 7.5.1997. In paragraph 39 of the judgment, the Division Bench did not agree with the contention of learned counsel appearing for the Oil Company that the Management has lost confidence in the employee as he is a man of very quarrelsome nature and that it would not be in the fitness of things to direct his reinstatement. The Division Bench held that the respondent was working on the post of Clerk-cum-Typist and that a person working on such a petty post cannot adversely affect the atmosphere of the Company. The Division Bench also found that a fresh enquiry will not be justified as the occurrence had taken place on 6.9.1989 and almost eight years had elapsed since then.

6. The Oil India Limited filed a Civil Appeal No. 8803/1997, which was disposed of by the Hon''ble Supreme Court on 1st December, 1997 with the following order:--

"Leave granted.

Heard learned counsel for the appellant and also the respondent appearing-in-person. It appears to us that even if the appellant-Oil India Limited is a "State" within the meaning of Article 12 of the Constitution, the employee who is not a government servant, is not entitled to protection under Article 311. It also appears that under the Standing Orders the power of dismissal has been

delegated to the Head of the Department as a Disciplinary Authority. Therefore, order passed by such Disciplinary Authority cannot be sustained. Although the authority which had passed the order of termination was competent to pass such order, it however, appears to us that the disciplinary proceedings had not been conducted consistent with the principle of natural justice. The impugned order of termination therefore cannot be sustained. The disciplinary proceeding requires reconsideration from the stage of show cause notice. It is, therefore, directed that the order of termination stands set aside and the disciplinary proceedings from the stage of show cause notice should be taken and completed within a period of three months from today. The respondent, however, will cooperate with the disciplinary authority and the enquiry officer so that within the time frame the proceeding is completed. The respondent is already in employment. Therefore, we are not inclined to give any further direction regarding the employment of the respondent. The question of back wages will ultimately abide by the result of the disciplinary proceedings. The appeal is accordingly disposed of without any order as to costs."

(emphasis supplied)

The Hon"ble Supreme Court, by the aforesaid order, affirmed the findings of Division Bench of the High Court and while upholding the directions to set aside the termination, directed the disciplinary proceedings to be held from the stage of show cause notice. It observed that the respondent is already in employment and therefore, it was not inclined to give any further direction regarding the employment of the respondent. The question of back wages was to abide by the result of the disciplinary proceedings.

7. In pursuance of the directions of the Supreme Court, the disciplinary proceedings were started with a show cause notice dated 6.7.1989 under section 14(3)(h) of the Model Standing Order and accordingly, an in-house domestic enquiry was conducted. The Chief Engineer (DRLG), Oil India Limited in the Disciplinary Advice dated 13th August, 1998 found that the appellant had not cross-examined any Company witnesses nor produced any witness from his side for defending his case and resigned himself to the Chief Engineer (DRLG) to decide the matter. Thereafter, it was observed in the disciplinary advice as follows:--

"In view of your submission we have taken an lenient view and decided that you will be reinstated from date of suspension i.e. 6-7-89 to the service without effecting your job continuity and seniority. Further more company will pay you a lump-sum of Rs. 60,000/- only for the interregnum period (i.e. from the date of suspension till you have reinstated on 27-11-96 as per the Hon"ble High Court of Rajasthan) of the service which will be considered full and final settlement in this case."

8. It is useful to quote the undertaking given by the appellant to the Chief Engineer (Drilling) on 13.8.1998:--

Jodhpur 13-8-98

"Chief Engineer (Drilling)

Oil India Limited

Rajasthan Project

Jodhpur.

Sub:- Under taking.

Ref:- Domestic enquiry held against Shri Deepak Kumar Khinvasara-RP/DRLG/Est/03-08 dated 6-7-89 & RP/Drlg/Est/03-08/716 dated 13.1.98.

Reference to above, I do hereby submit an undertaking that I will not contest the Disciplinary advice given to me by the Chief Engg(Drilling) of Oil India Limited Rajasthan Project, Jodhpur in any court of Law or agency in connection with the above enquiry by awarding compensation of Rs. 60,000/- with continuity of Service and seniority.

Hence forth the above enquiry is to be treated as closed and I will not take any action regarding the above from my side.

I also declare that I have submitted above undertaking at my own free will and without any subrogation from any guarantee.

I also give an undertaking that in future I will always discharge my duties with best of my ability solemn sincerity and utmost integrity.

(DEEPAK)

DRILLING D."

9. The appellant thereafter challenged the disciplinary advice by filing S.B. Civil Writ Petition No. 2808/1998, which was dismissed on 26th August, 1998 with the findings that the undertaking was not given under any mis-representation or playing fraud upon him. The appellant had also not stated that he had given the undertaking without understanding the contents thereof and thus, his grievance, which was confined to the back wages, was not justified. He was estopped by application of principles of acquiescence, to challenge the order.

10. The appellant filed Special Appeal against the judgment, which was dismissed by the Division Bench on 9.2.2000. He, thereafter, filed a Special Leave Petition against the judgment of the Division Bench, which was also dismissed.

11. After the conclusion of the proceedings against the disciplinary advice dated 13.8.1998 upto the Hon"ble Supreme Court, the appellant again preferred S.B. Civil Writ Petition No. 2705/2002, which was dismissed giving rise to this Special

Appeal.

12. In the writ petition, the appellant had filed amendment application, by which he had challenged the Disciplinary Advice dated 13.8.1998. The amendment application was dismissed on 5.9.2006 on the ground that the challenge against the order dated 13.8.1998 had been taken unsuccessfully to the Hon"ble Supreme Court and having lost the matter upto the Supreme Court, it was not open to the appellant to re-agitate the matter again.

13. Learned Single Judge has dismissed the writ petition on the ground of res-judicata and did not find it appropriate to meet each and every judgment cited by the appellant.

14. It is submitted by the appellant appearing in-person that the authority, which had held disciplinary proceedings, on the re-opening of the enquiry, as per the directions of the Hon"ble Courts, had no jurisdiction or competence to hold enquiry afresh. According to the appellant, the re-enquiry, as directed by the Hon"ble Supreme Court, has remained undecided till date, as it was not conducted by a competent authority. He submits that this is a pure question of law, which can be raised at any stage and even after the subsequent judgments of learned Single Judge, Division Bench and Supreme Court challenging the orders passed after the enquiry was re-initiated, by which the proceedings were dropped and in lieu of back wages, he was given only Rs. 60,000/- as per his undertaking.

15. It is further submitted that in the earlier proceedings, the Court had acted in ignorance of the previous decisions of the Court of coordinate jurisdiction, namely, that the Superintending Engineer (Drilling) had no authority and was not competent to hold the disciplinary proceedings and thus, all subsequent orders of the High Court and the Supreme Court are per incuriam. He submits that when binding legal precedents are discarded, the judgments delivered have to be ignored in the eye of law as per incuriam. The law of precedent is enacted for safeguarding the opinion on the question of law.

16. The appellant submits that the facts may not be binding, but the legal proposition in the judgment is binding on the Coordinate Benches. The proper course for learned Single Judge in the previous proceedings was to refer the matter to the Chief Justice for making a reference to the Larger Bench for taking an authoritative decision. He submits that all the orders of the High Court, after issuance of the second enquiry, including the final order dated 13.8.1998, are illegal and void in law.

17. It is submitted by the appellant that in the second round of litigation, the Special Leave Petition was dismissed in limine and that mere dismissal of SLP does not preclude the appellant to re-approach the Court, if the question of law has remained undecided. There is apparent error of law and serious legal infirmities in the order of learned Single Judge and thus, his order is not sustainable.

18. It is further submitted by the appellant that the order of learned Single Judge has wrongly applied the principles of res-judicata in adjudicating the competence of respondent No. 3, who had passed the final order. The proceedings must have all essentials of valid proceedings and if the competency is missing, everything is nullity and non est.

19. Learned counsel appearing for the respondent-Oil India submits that the appellant is a quarrelsome person and a compulsive litigant. Having secured the advantage of his undertaking to take a lenient view and to close the matter and further that he will accept Rs. 60,000/- as lump-sum payment in lieu of back wages, the appellant has turned around and challenged the orders on the ground that the Disciplinary Authority was not a competent authority. The disciplinary proceedings were dropped on his undertaking and having secured the advantage, he is trying to reprobate accusing the Disciplinary Authority for having conducted enquiry on the ground that it was not competent to do so.

20. It is submitted that the question as to whether the Chief Engineer (DRLG) was competent to re-initiate the enquiry was decided by the Supreme Court in the order dated 1.12.1997, in which it was observed and held that the authority which had passed the order of termination was competent to pass such order and has in any case, after the directions of the Supreme Court, paled into insignificance, after the enquiry was dropped, despite the fact that the appellant had not produced any witness to defend his case or cross-examined any of the witnesses of the Department. He had given an undertaking not to re-agitate the matter and not to take any action regarding the disciplinary enquiry. He has himself prayed that if the enquiry is treated to be closed, he will not take any action regarding the above, namely, the compensation which he himself demanded at Rs. 60,000/- and which was paid to him. It is not denied that the appellant has accepted Rs. 60,000/- towards the compensation and thereafter, he is estopped from raising the issue all over again. Learned Single Judge had in S.B. Civil Writ Petition No. 2808/1998 decided on 26th August, 1998 clearly held that having reaped the benefit of undertaking, which was not alleged to be given under any mis-representation or fraud, the appellant cannot be permitted to blow hot and cold in the same breath and that it was not permissible for him to dispute only what does not suite to him now after accepting the offer and giving undertaking.

21. We have considered the arguments of the appellant and do not find any substance in revisiting the matter all over again. The Disciplinary Advice dated 13.8.1998 was challenged by the appellant by way of writ petition, which was dismissed. The Special Appeal and the Special Leave Petition filed by the appellant were also dismissed. He cannot be allowed to re-open the matter or to keep the matter alive indefinitely. Once he received adjudication in a writ petition against the order dated 13.8.1998 in which he could have raised all the pleas including the plea of competence of the Disciplinary Authority, it is not open to the appellant to re-agitate the matter. The principles of res judicata are derived

from the principles of estoppel, which are firmly established in Indian law for arriving at a finality of any issue, which was raised or could be raised by the petitioner. It was open to the appellant to challenge the competence of the Disciplinary Authority before whom he had given undertaking with open eyes. He did not choose to challenge the competence of the Disciplinary Authority, which had passed the order dated 13.8.1998, in the earlier round of litigation.

22. We may further observe here that the order dated 13.8.1998 was passed to drop the proceedings and not to punish the appellant in any manner. He cannot thereafter, having failed in the attempt to challenge the order upto the Supreme Court, re-agitate the matter. The settlement of the matter for back wages on payment of Rs. 60,000/- was on an undertaking given by the appellant, which was found in the earlier proceedings to be voluntary.

23. In view of the aforesaid discussion, we do not propose to discuss the judgments referred to by the appellant, as none of these judgments have any bearing on the facts and circumstances of the case. The principles of the orders being non-est and the judgment of the Court to be ignored as per incuriam are not attracted to be discussed in any detail.

24. The Special Appeal is dismissed, with costs of Rs. 10,000/- (Rs. Ten thousand only) for having re-agitated the matter, which was decided and closed upto the Hon"ble Supreme Court in the previous round of litigation. We are imposing the costs, to dissuade the appellant from taking any further legal proceedings and for wasting the time of the Court. The appellant may be better advised, to treat the matter as closed, and not to agitate it any further.