

(2023) 07 DEL CK 0249

In the Delhi High Court

Case No : Civil Writ Petition No. 9793 Of 2023, Civil Miscellaneous Application No. 37586, 37587 Of 2023

Ex-CPL Beer Pal Singh Bhati

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 11

Citation : (2023) 07 DEL CK 0249

Hon'ble Judges : Sanjeev Sachdeva, J;Manoj Jain, J

Bench : Division Bench

Advocate : Dr. D.K. Sharma, S.K. Pathak, Aakanksha Kaul, Digvijay Prasad

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns judgment dated 31.01.2023 whereby petition filed by petitioner challenging his dismissal/discharge from the Indian Air Force w.e.f. 09.01.1998 and claim for pro rata pension has been dismissed applying the principles of res judicata and also delay and laches.
2. Petitioner was dismissed/discharged from the Indian Air Force by order dated 12.12.1997 stating "his services no longer required –unsuitable for retention in the IAF" w.e.f. 09.01.1998. He was struck off strength on 09.01.1998 itself.
3. Petitioner thereafter filed a writ petition being Writ Petition (Civil) No. 14/1998 and WMP No. 7 & 8 of 1998 before the High Court of Judicature at Madras.
4. Thereafter, it is stated that petitioner moved to Delhi to his home town after being discharged from Indian Air Force. As per learned counsel for petitioner, petitioner instructed his counsel in Madras to withdraw the petition as he intended to challenge the order before the High Court of Delhi. Thereafter, petitioner filed a petition before this Court being WP (C) No. 7131/2000.

5. Learned counsel for respondent submits that Tribunal has noticed that the earlier petition filed by the petitioner before the Madras High Court was not withdrawn but was dismissed on merits and consequently, this Court also dismissed the Writ Petition (C) No. 7131/2000 holding that since petitioner had earlier filed a writ petition before the Madras High Court which petition had been dismissed, petition before this Court (WP (C) No. 7131/2000) was barred by the principles of constructive res judicata and also noticed that all the issues raised in the petition filed in Delhi were also the issues that had been raised in the writ petition filed earlier in the Madras High Court.

6. The Tribunal has noticed the order passed by this Court dismissing the petition of the petitioner and consequently held that after dismissal of two petitions, petitioner could not have approached the Tribunal and the petition before the Tribunal was barred by the principles of res judicata.

7. Learned counsel for petitioner submits that he does not have copy of the order passed by the Madras High Court and as per his instructions, said petition was withdrawn and thereafter petition was filed in Delhi.

8. Since copy of the order was not available with learned counsel for petitioner, we summoned the record of WP (C) No. 7131/2000 and find that the copy of the order passed by the Madras High Court dated 14.01.2000 was filed by the respondent in that petition along with an affidavit. Perusal of the order passed by the Madras High Court shows that the petition was not dismissed as withdrawn nor was any liberty sought for filing a fresh petition. Said petition had been dismissed after consideration on merits.

9. Since the Madras High Court had dismissed the writ petition of the petitioner on merits, petitioner could not have approached this Court by way of WP (C) No. 7131/2000 as said petition was barred on the principles of res judicata.

10. We may also note that petitioner approached the Tribunal not only after dismissal of the petition by the Madras High Court but also after dismissal of the WP (C) No. 7131/2000 by this Court, on both the counts, petitioner was precluded from approaching the Tribunal by way of a fresh petition seeking the same relief as petitioner had sought before the Madras High Court as well as this Court in the earlier round of litigation.

11. Reference may be had to the judgment of the Supreme Court in Bhanu Kumar Jain v. Archana Kumar & Anr. 2005 (1) SCC 787 wherein it has been held as under:-

29. There is a distinction between "issue estoppel" and "res judicata". (See Thoday v. Thoday [(1964) 1 All ER 341 : (1964) 2 WLR 371 : 1964 P 181 (CA)] .)

30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine

of res judicata creates a different kind of estoppel viz. estoppel by accord.

31. In a case of this nature, however, the doctrine of "issue estoppel" as also "cause of action estoppel" may arise. In *Thoday* [(1964) 1 All ER 341 : (1964) 2 WLR 371 : 1964 P 181 (CA)] Lord Diplock held: (All ER p. 352 B-D)

"... "cause of action estoppel", is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist i.e. judgment was given on it, it is said to be merged in the judgment.... If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam." [Ed.: The rest of the extract from *Thoday* [(1964) 1 All ER 341 : (1964)

2 WLR 371 : 1964 P 181 (CA)] may usefully be referred to (All ER p. 352, B-F)"Estoppel per rem judicatam is a generic term which in modern law includes two species. The first species, "cause of action estoppel", is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment, or for those who prefer Latin, transit in rem judicatam. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam. This is simply an application of the rule of public policy expressed in the Latin maxim, "nemo debet bis vexari pro una at eadem causa". In this application of the maxim, causa bears its literal Latin meaning. The second species, "issue estoppel", is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation on one such cause of action any of such separate issues whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either on evidence or on admission by a party to the litigation, neither party can, in subsequent litigation between them on any cause of action which depends on the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was."]

32. The said dicta was followed in *Barber v. Staffordshire County Council* [(1996) 2 All ER 748 (CA)] . A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings

between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See C. (A Minor) v. Hackney London Borough Council [(1996) 1 All ER 973 : (1996) 1 WLR 789 (CA)] .]

12. Reference may also be made to the judgment of the Supreme Court in Hope Plantations Ltd. V. Taluk Land Board, Peermade & Anr. (1999) 5 SCC 590, wherein it has been held as under:-

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

13. In view of the above, there is no infirmity in the order passed by the Tribunal holding that the petitioner is barred on the principles of res judicata as also issue estoppel from approaching the Tribunal by way of a fresh petition.

14. In view of the above, we find no infirmity in the view taken by the Tribunal in rejecting the petition of petitioner on the ground of res judicata as also on the ground of issue estoppel.

15. We find no merit in the contentions of learned counsel for petitioner that in the earlier round, petitioner had not claimed pensionary benefits and it was for the first time that he has raised the claim before the Tribunal. He points out that he had, earlier in the first instance, approached this Court by way of WP (C) No. 6042/2022 seeking grant of pension which was withdrawn on 06.05.2022 with liberty to file afresh petition in accordance with law and consequently, he

approached the Tribunal.

16. It is conceded by learned counsel for petitioner that unless petitioner was reinstated, he would not be entitled to any pensionary benefit because he had not put in the minimum qualifying service for grant of pension. On this count also, we are of the view that petitioner, not having put in qualifying service, is disentitled to grant of pension.

17. Accordingly, we find no merit in the petition. Petition is dismissed.