
(2017) 08 AP CK 0043
In the Andhra Pradesh High Court
Case No : 227 of 2008

Senior Regional Manager

APPELLANT

Vs

Y. Thirupalu and another

RESPONDENT

Date of Decision : 30-08-2017

Acts Referred:

Constitution of India, Article 226 -
Andhra Pradesh Muttah, Jattu, Hamal and other Manual Workers (Regulation of
Employment and Welfare) Act, 1976, Section 19, Section 2(4), Section 2(16)

Citation : (2017) 08 AP CK 0043

Hon'ble Judges : Ramesh Ranganathan, J. Uma Devi

Bench : DIVISON BENCH

Advocate : Meherchand Nori, G. Vidyasagar, K. Udaya Sri

Judgement

1. This appeal, under clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No.33167 of 1997, which was disposed of along with W.P. Nos.33139 of 1997 and batch dated 10.10.2007. W.P. No.33139 of 1997 and batch was filed by the workmen aggrieved by the awards passed by the Industrial Tribunal-I, Hyderabad, in separate I.Ds. The parties shall, hereinafter, be referred to as they are arrayed in W.P. No.33167 of 1997 which was filed questioning the award passed by the Industrial Tribunal, Hyderabad in I.D. No.59 of 1996 dated 26.06.1997.

2. The petitioner, along with others, had hitherto invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking regularisation of his services. On the ground that they had an alternate remedy under the provisions of the Industrial Disputes Act, 1947 (for short the Act), the petitioners were relegated to avail the remedy under the Act. Thereafter the Union, representing the petitioners, raised an Industrial Dispute. On the Central Government referring the dispute for adjudication to the Industrial Tribunal, the awards in I.D. Nos.46 of 1996 and batch dated 26.06.1997 were passed.

3. The dispute, referred for adjudication to the Industrial Tribunal in I.D. No.59 of

1996, was whether the person, who claimed to be a workman was the employee of the Food Corporation of India (FCI) at the Modern Rice Mill, Sathenapalli, Guntur District during the period of six years from 1975-81; If so, whether the action of the management of the FCI, Regional Office, Hyderabad, in terminating his services in 1981, and denying him the benefit of regularisation of his services, in accordance with the Circulars dated 06.05.1987 and dated 24.08.1992, was legal and justified?; and, if not, what relief was the workman entitled to?

4. It was contended by the petitioner, before the Industrial Tribunal, that he was originally engaged in 1974 by a contractor, by name Sri D.V. Subba Rao, who was awarded the contract by the FCI at the Modern Rice Mill; the contractor absconded in the year 1975; thereafter, officers of the FCI had engaged the services of the petitioner, as a labourer, directly; the FCI had selected one Sri Subbayya as the Mutta Maistry to distribute wages to 25 workmen; he used to collect wages in a lumpsum from the management, and distribute it among the workers; Sri Subbayya was the contractor and the petitioner a contract labourer; the FCI had collected his provident fund contribution, and had deposited the same with the provident fund authorities; the contract labour system was again introduced by the FCI in 1981, and the petitioner was made to work as a contract labourer, which was an unfair labour practice; the FCI had issued Circular dated 06.05.1987 for regularisation of the services of Casual employees who had put in three months of service; the case of the petitioner, along with others, was recommended by the District Manager; the FCI had issued another Circular dated 24.08.1992 calling for, among others, the particulars of casual labourers; and as the FCI had denied him, and other workmen, the benefit of regularisation, they had raised the Industrial dispute.

5. In their counter, filed in reply to the claim statement filed on behalf of the petitioner, FCI admitted that, after Sri D.V.Subba Rao absconded from 15.07.1975, the work of handling and transporting food grains was entrusted to Sri Subbayya, Mutta Maistry, on a contract basis on the same terms and conditions; Sri Subbayya, the contractor though called a Mutta Maistry, was receiving money till 1981, and had paid wages to the labourers engaged by him; as the Provident Fund Commissioner demanded payment, the FCI had paid the provident fund contributions, and had deducted the amount from the bills of the contractor; and this did not create any relationship of master and servant.

6. Before the Labour Court, the petitioner examined himself as W.W.1 and filed Exs.W.1 to W.5. The Unit Manager of the Modern Rice Mill of F.C.I. was examined as M.W.1 and the clerk as M.W.2, and they filed Exs.M.1 to M.17. Four points were framed, by the Industrial Tribunal, for consideration.

7. On the first point, (whether the petitioner was employed in the Modern Rice Mill, Sathenapalli, owned by the Food Corporation of India from 1975 to 1981?) the Tribunal observed that the circumstances disclosed that the petitioner was directly employed by the FCI; the FCI had set up Sri Subbayya as a contractor;

in his evidence, M.W.1 had deposed that appointment of a contractor, for handling and transporting, was entrusted by the Regional Office on tenders being called for; no such tenders had been called for in so far as Sri Subbayya was concerned; the contractor was not paid directly by the FCI; in Exs.M.3 and M.4, submitted by Sri Subbayya, he was described only as the Mutta Maistry and the Hamali Maistry; the correspondence disclosed that he was only set up as a contractor; Ex.W.1, the weekly attendance register, disclosed that Sri Subbayya was working in the Mill; the number of days he worked was also noted therein; Ex.W.2 letter was signed by M.W.1 wherein he noted that the petitioner and others were Mutta workers; in Ex.W.3 letter dated 16.12.1977, the District Manager noted that Sri Subbayya and 16 others were Mutta workers who had completed 180 days for coverage under the Employees Provident Fund Act; the same was repeated in Ex.W.4- letter dated 13.09.1997; M.W.1 had himself admitted that the petitioner, other workers and Sri Subbayya were handling the work without any intermediary; in the documents filed by FCI, Sri Subbayya was described as a Mutta Maistry who was receiving money from the management, and was distributing the same to the workers; he was described as a contractor in Ex.M.4-bills; even, as per the certificates appended to Exs.M.3 and M.4- bills, Sri Subbayya was shown only as the Mutta Maistry or the Head Man; there was no evidence to show that Sri Subbayya was making any profits; and, on the other hand, he was only working along with other workmen and was receiving wages. Relying on the judgment of the Supreme Court, in D.C. Dewan Mohideen Saheb & Sons v. United Bidi Workers Union, Salem , the Industrial Tribunal held that Sri Subbayya was set up by the F.C.I. management only to deny the rights of the workman; and the workman could not be held to be a contract labourer.

8. On point No.2 (i.e., whether the action of the management in terminating the services of the workmen in 1981 was justified) the Industrial Tribunal held that there was technical termination of the services of the petitioner from 01.11.1981 as they were contract employees of the FCI, and were converted into contract labourers.

9. On point No.3 (i.e., whether denial of the respondents, to regularise the services of the petitioner, was justified?), the Tribunal held that, in view of the circular dated 06.05.1987 wherein daily wage labourers, who had put in three months service, were held entitled for regularisation, the petitioners were also entitled for regularisation.

10. On point No.4 (i.e whether the claim of the petitioner was barred by res-judicata?), the Tribunal held that the order passed by the Authority under the Payment of Wages Act in Ex.M.10 dated 31.07.1978, dismissing the claims of the petitioner and other workmen for leave, wages etc under the Payment of Wages Act, on the ground that they were not direct employees of the FCI, was an order which had attained finality; the said order operated as res judicata; and the petitioners could not agitate the same claim in a different forum. The Tribunal held that payment of provident fund contribution by the FCI was under protest as

the Principal Employer. An award was passed holding that the petitioner was not entitled to any relief because of operation of the principles of res judicata.

11. Thereafter the Tribunal observed that the subject Rice Mill was closed on 06.08.1992 and was sold away in 1996; while the FCI was maintaining the godowns, it was not known whether the petitioner and other workmen continued to work in the godowns; in the event of the Court coming to the conclusion that res judicata did not apply to this case, and in the event of the petitioner continuing to work in the godowns, they were entitled to regularisation and consequential benefits as per the Circular dated 06.05.1987; and, if the petitioners were not working in the godowns, they could be paid two years wages as compensation for their wrongful termination in 1981.

12. Aggrieved by the order passed by the Industrial Tribunal, the petitioners invoked the jurisdiction of this Court filing W.P. No.33139 of 1997 and batch. In the order under appeal, the learned Single Judge noted that, against the order passed by the Authority under the Payment of Wages Act in P.W.Case No.28 of 1977 dated 31.07.1978 holding that there was no relationship of employer and employee between the parties, the petitioner had filed C.M.A. No.48 of 1978 before the I Additional District Judge, Guntur; the appellate Court had concurred with the findings recorded by the Authority under the Payment of Wages Act, and had negated the claim of the petitioner on the ground that there was no relationship of master and servant between the parties; challenging the said order, the petitioner had filed C.R.P.No.3654 of 1982, which was disposed of on 09.07.1986, remanding the matter to the appellate authority for deciding it on merits; the appeal was dismissed as the petitioner did not pursue the matter after it was remanded; but the finding in C.R.P. No.3654 of 1982 dated 09.07.1986, that there was no relationship of master and servant, had attained finality as the Corporation had not questioned the findings recorded in the C.R.P. The learned Single Judge held that the Tribunal had erred in holding that the claim was hit by the doctrine of res judicata. After referring to Sections 2(4), 2(16) and 19 of the Andhra Pradesh Muttah, Jattu, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1976, (hereinafter called the 1976 Act), the learned Single Judge held that, from these three Sections, it was clear that the word employer included a principal employer, and a workman included the petitioners herein; the Payment of Wages Act was also applicable apart from any scheme that was notified by the Government in this regard; there was a relationship of master and servant between the parties; and the petition, under the Payment of Wages Act, was maintainable. The finding recorded by the Tribunal on point No.4 was set aside, and the Writ Petition was allowed in view of the findings recorded on point Nos.1 to 3 in the I.D.

13. Before us Sri Meharchand Nori, learned counsel for the appellant-FCI, would submit that the learned Single Judge had erred in holding that the doctrine of res judicata did not apply; the authority, under the Payment of Wages Act, had held that there was no master and servant relationship between the FCI and the

petitioner; the 1976 Act is a State enactment, and does not apply to the FCI which is a statutory body constituted by an Act of Parliament; in the light of Explanation VIII to Section 11 of the Code of Civil Procedure, and in the light of several judgments of the Supreme Court, the doctrine of res judicata would apply to Industrial adjudication also; as the Authority, under the Payment of Wages Act, had held that there was absence of master and servant relationship between FCI and the petitioner, and even though the Tribunal had agreed with the contention of the appellant that the doctrine of res judicata was applicable, the learned Single Judge had erred in holding otherwise. Learned Counsel would rely on *Rajendra Kumar v. Kalyan* ; *Executive Engineer, ZP Engg. Divn. v. Digambara Rao* ; *Pondicherry Khadi & Village Industries Board v. P. Kulothangan* ; *The Punjab Co- Operative Bank Ltd. v. R.S. Bhatia* ; *Saroja v. Chinnusamy* and *Zonal Manager, Central Bank of India, Hyderabad v. D. Anjaiah* .

14. On the other hand, Sri G. Vidya Sagar, learned Senior Counsel appearing on behalf of the first respondent-writ petitioner, would submit that the findings recorded by this Court, in its order in C.R.P. No.3654 of 1982 dated 09.07.1986, was that a jural relationship existed between the FCI and the petitioner; while the doctrine of res judicata may apply in case any finding had been recorded in proceedings under the Payment of Wages Act, that there was no master and servant relationship, the said doctrine had no application since this Court, in its order in C.R.P.No.3654 of 1982 dated 09.07.1986, had held that there was a master and servant relationship between the parties; and the Industrial Tribunal erred in relying on the findings recorded in the order passed by the Authority under the Payment of Wages Act which was affirmed by the appellate Court in its order in C.M.A. No.48 of 1978, as those findings were set aside by this Court in C.R.P. No.3654 of 1982 dated 09.07.1986.

15. It is no doubt true that the doctrine of res judicata is applicable to industrial adjudication also. (*D. Anjaiah*⁷; *Digambara Rao*³). A decision given by a competent Industrial Tribunal/Labour Court is a bar, on the principles of res judicata, in the trial of the same issue in a subsequent proceeding under the Industrial Disputes Act. (*R.S.Bhatia*⁵). Although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata, laid down under Section 11 of the Code, are applicable, including the principles of constructive res judicata. (*P. Kulothangan*⁴; *State of U.P. v. Nawab Hussain*). As the findings recorded by the Payment of Wages Authority, (on such findings having attained finality), would be binding on it, in subsequent proceedings between the same parties, the Tribunal was justified in examining the question whether the claim of the petitioner- workman, in the dispute raised before it, was barred by the principles of res-judicata.

16. Before examining the rival contentions on question No.4, it is useful to briefly consider the scope of this doctrine, and the conditions to be satisfied for its application. Any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a

Court competent to decide it, will operate as *res judicata* in a subsequent Suit. It is not necessary that the Court, which decided the matter formerly, should be competent to decide the subsequent Suit or that the former proceeding and the subsequent Suit should have the same subject-matter. The nature of the former proceeding is immaterial. (*Gulabchand Chhotalal Parikh v. State of Gujarat ; Rajendra Kumar*2).

17. The doctrine of *res judicata*, or constructive *res judicata*, predominantly is a principle of equity, good conscience and justice. It would neither be equitable nor fair, nor in accordance with the principles of justice, that the issue concluded earlier ought to be permitted to be raised later in a different proceeding. (*Rajendra Kumar*2). The doctrine of *res-judicata* is applied to give efficacy to a finding of the Court, rather than permit parties to go to trial on, more or less, the same issues, thereby resulting in the possibility of a conflict of views. Judicial verdict has special sanctity, and cannot be the subject-matter of discussion at a future point of time involving identical or similar issues. (*Rajendra Kumar*2).

18. It may be that the same set of facts may give rise to two or more causes of action. If, in such a case, a person is allowed to choose and sue upon one cause of action at one time, and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have, therefore, treated such a course of action as an abuse of its process. (*P. Kulothangan*4; *Nawab Hussain*8). Merely because the Court, which decided the earlier Suit, could not have entertained the subsequent Suit, the finding recorded by them would not cease to operate as *res judicata*, in view of the introduction of Explanation VIII to Section 11 of the Code of Civil Procedure. (*Rajendra Kumar*2).

19. The principles of *res judicata* operate on the Court. It is the Court which is prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the Court, trying the subsequent proceeding, is satisfied that the earlier Court was competent to dispose of the earlier proceedings, and that the matter had been heard and finally decided by such Court. (*Digambara Rao*3; *P. Kulothangan*4). In order to constitute *res judicata*, the following, among other, conditions must be satisfied (a) there must be two Suits one former Suit and the other subsequent Suit; (b) the matter, directly and substantially in issue, must be the same either actually or constructively in both the Suits; (c) the matter, directly and substantially in issue in the subsequent Suit, must have been heard and finally decided by the Court in the former Suit; (d) the parties to the Suits, or the parties under whom they or any of them claim, must be the same in both the Suits; and (e) the parties, in both the Suits, must have litigated under the same title. (*Saroja*6).

20. The only question, which we are called upon to examine in this appeal, is whether or not the finding recorded by the authority under the Payment of Wages Act, that there is no jural relationship of master and servant between the FCI and the petitioners, has attained finality for it is only then can the Industrial Tribunal, while deciding the subsequent Industrial Dispute, be said to be barred, by

the principles of res judicata, from holding to the contrary. It is necessary, in this context, to refer to the order passed by this Court in C.R.P. No.3654 of 1982 dated 09.07.1986. As noted hereinabove, against the order passed by the authority under the Payment of Wages Act, in P.W.Case No.28 of 1977 dated 31.07.1978 holding that there was no relationship of employer and employee between the FCI and him, the petitioner had preferred an appeal in C.M.A. No.48 of 1978 which was dismissed by the I Additional District Judge, Guntur. Aggrieved thereby, the petitioners filed C.R.P. No.3654 of 1982. The relevant portion of the order passed by this Court, in C.R.P. No.3654 of 1982 dated 09.07.1986, reads thus: This revision arises under the Payment of Wages Act (Act No.4 of 1936). The petitioners filed an application under Section 15 of the Act claiming certain emoluments as employees in the respondent Corporation. Both the courts below held that there is no jural relationship of employer and employee.

Sitting in revision against the appellate order, I am examining the findings of the appellate court. Within the scope of the revision. The appellate court took the view that there is no relationship of employer and employee and hence the application filed by the petitioners is not maintainable. The findings recorded by the appellate court are not and could not be seriously disputed by the learned counsel for the respondent. But the only contention raised by him is that the petitioners are appointed through a contractor for some time and a maistry for some other time and the wages were paid to the contractor or the maistry and hence there is no direct relationship of employer and employee. It is true there is no direct jural relationship of employer and employee. But the law does not require that such relationship must be established. It is enough if the petitioners services are utilised by the respondent-

Corporation and they are working in the unit. An identical question was examined by the Supreme Court in HUSSAIN BHAI VS. THE ALATH FACTORY TEZHILALI UNION AND OTHERS: AIR 1978 SC 1410. The principles laid down in that case are clearly applicable to the facts of the present case. Once the petitioners are employed by the respondent unit whether directly or indirectly and the unit is liable to pay wages to the petitioners and in fact paid them, it is difficult to say that the application filed by them is not maintainable.

I am not going into the merits of the case that is whether the payments were already made through a third party, say the contractor or the maistry, shall be taken into account. Whether such payment absolves the liability of the Corporation is quite a different question which the authorities are bound to enquire into and give a finding thereon on the evidence available on record. Since the appellate court dismissed the appeal on the ground that the application of the petitioners is not maintainable, I set aside the impugned order and direct the appellate authority to make an enquiry afresh and pass orders on merits.

The counsel for the respondent urged that some of the petitioners died and some of them are not working in the unit. It is also urged by him that some of the

claims made by the petitioners are not maintainable and are not cognizable by the authorities sitting under payment of Wages Act. The said questions can be raised before the appellate authority and I am sure they are bound to make the necessary enquiry and give a finding whether the said claims are sustainable before them under the provisions of the Act (emphasis supplied)

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21. Among the conditions which must be satisfied, for the doctrine of res-judicata to apply, is that the matter, directly and substantially in issue in the subsequent proceedings, must have been heard and finally decided by the Court/Tribunal in the former proceedings. It is only if the question, regarding absence of a master and servant relationship between the FCI and the petitioner, had been heard and finally decided by the Court in proceedings under the Payment of Wages Act would such a matter constitute res-judicata in the Industrial Dispute raised subsequently before the Industrial Tribunal.

22. It is evident from a plain reading of the order in C.R.P. No.3654 of 1982 dated 09.07.1986, that this Court had observed that there was no direct jural relationship of employer and employee, but the law did not require that such relationship should be established; and it was enough if the petitioners services were utilised by the FCI and they were working in the Unit. Following the principles laid down by the Supreme Court in Hussain Bhai v. The Alath Factory Tezhilali Union , this Court had held that once the petitioners were employed by the respondent Unit, whether directly or indirectly, and the Unit was liable to pay wages to the petitioners and had in fact paid them, it was difficult to hold that the application, filed under the Payment of Wages Act, was not maintainable. The matter was remanded to the appellate Court to examine whether payment was made through a third party i.e., either the contractor or the maistry and whether such payment absolved the liability of the Corporation. The order of the appellate Court was set aside, as the appeal had been dismissed on the ground of maintainability, and the appellate authority was directed to make an enquiry and pass an order afresh.

23. While the petitioners did not subsequently pursue the appeal which resulted in its being dismissed for non-prosecution, the fact remains that the order of the appellate Court in C.M.A. No.48 of 1978, dismissing the appeal on the ground that it was not maintainable, was set aside. In its order in C.R.P. No.3654 of 1982 dated 09.07.1986, this Court held that the petitioners were employed by the respondent unit and since they were employed, whether directly or indirectly, the FCI was liable to pay wages to them. While accepting that there was no direct jural relationship of employer and employee between the FCI and the petitioners, this Court however held that the petitioners were employed by the FCI, and it mattered little whether such employment was direct or indirect. While both the authority under the Payment of Wages Act and the appellate Court had held that there was no master and servant relationship between FCI and the petitioners, these findings were set aside by this Court in its order in C.R.P.

No.3654 of 1982 dated 09.07.1986, and the said order has attained finality.

24. As the order passed by the Payment of Wages Authority, regarding maintainability of an application under the Payment of Wages Act, was finally heard and decided by this Court, in its order in C.R.P. No.3654 of 1982 dated 09.07.1986 (the said order having attained finality), it is only the order in C.R.P. No.3654 of 1982 which is the final decision on the matter directly and substantially in issue in the subsequent I.D. filed before the Industrial Tribunal. As this Court has held that the petitioner was employed by the FCI, whether directly or indirectly, the findings recorded, both by the Authority under the Payment of Wages Act and the appellate Court that there was no master and servant relationship, was not in force when the Industrial Tribunal heard and decided the I.D. The finding of this Court that the petitioner was employed by the FCI, albeit indirectly, has attained finality. The Industrial Tribunal erred in relying on the findings recorded by the authority under the Payment of Wages Act which, though affirmed in appeal, was set aside by this Court in C.R.P. No.3654 of 1982. As the principles of res-judicata had no application to the matters in issue before it, the Industrial Tribunal was neither barred from entertaining the I.D, nor was it disabled from giving effect to its finding that a Mutta Maistry was brought into existence, though he himself had worked along with the petitioner and other workers in the FCI, only to deny the existence of master and servant relationship between the FCI and the workers.

25. It is no doubt true that the learned Single Judge had relied on the provisions of the 1976 Act, in setting aside the award passed by the Industrial Tribunal in so far as Point No.4 is concerned. Even if the provisions of the 1976 Act are presumed not to apply to the FCI, the fact remains that this Court had, in its order in C.R.P. No.3654 of 1982 dated 09.07.1986, relying on Hussain bhai¹⁰, held that the petitioner was employed by the FCI, whether directly or indirectly. It was wholly unnecessary for the Learned Single Judge, therefore, to have relied on the provisions of the 1976 Act. To the extent the Industrial Tribunal held that the doctrine of res-judicata was attracted, the learned Single Judge has, in our view, rightly set aside the award impugned in the Writ Petition.

26. The award passed by the Industrial Tribunal, in so far as Point Nos.1 to 3 are concerned, has attained finality. It is the petitioner-workman who has invoked the jurisdiction of this Court, under Article 226 of the Constitution, questioning the award of the Industrial Tribunal to the limited extent it had, under Point No.4, held that the Industrial Dispute was barred on application of the doctrine of res-judicata. As the finding of the Industrial Tribunal on Point No.4 has been set aside by the Learned Single Judge in the order under appeal, and as we have now affirmed the said order, the award passed by the Industrial Tribunal, to the limited extent it held that the Industrial Dispute raised by the petitioner-workman was barred by the principles of res-judicata, is no longer valid. The award is affirmed in all other aspects. As the Tribunal has held in favour of the respondent-writ petitioner on point Nos.1 to 3, he is entitled to the relief granted

by Industrial Tribunal in its award. As a result the petitioner, in case he continued to work in the subject godown when the award was passed on 26.06.1997, would be entitled for regularisation of his services with consequential benefits as per the FCI circular dated 06.05.1987. If, on the other hand, he was not working in the godown when the award was passed on 26.06.1997, he would only be entitled to be paid two years wages as compensation for wrongful termination of his services in the year 1981.

27. While Sri Meharchand Nori, learned counsel for the appellant, would submit that the Modern Rice Mill, where the petitioner was hitherto employed, was closed on 06.08.1992 and was sold away in 1996, it would be wholly inappropriate for us to examine these questions of fact for the first time either in proceedings under Clause 15 of the Letters Patent or under Article 226 of the Constitution of India. Suffice it to make it clear that, in case the petitioner continued to work in the subject godown as on 26.06.1997, he would be entitled for regularisation of his services in the FCI, failing which to be paid two years wages as compensation, in terms of the award passed by the Industrial Tribunal. Subject to the afore-said observations, the appeal fails and is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, shall also stand dismissed.

There shall be no order as to costs.