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**(2019) 06 CAL CK 0036**

**In the Calcutta High Court**

**Case No : Writ Petitions (WP) No. 006 Of 2019**

|                                                             |            |
|-------------------------------------------------------------|------------|
| State Transport Workers' Union, Andaman And Nicobar Islands | APPELLANT  |
| Vs                                                          |            |
| Andaman And Nicobar Administration And Others               | RESPONDENT |

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**Date of Decision : 24-06-2019**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 12(4)  
Constitution Of India, 1950 — Article 32, 226

**Citation : (2019) 06 CAL CK 0036**

**Hon'ble Judges : Abhijit Gangopadhyay, J**

**Bench : Single Bench**

**Advocate : Bikashranjan Bhattacharyya, R. Guha Thakurta, K. Sabir, Md. Tabraiz**

**Final Decision : Disposed Off**

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## **Judgement**

Abhijit Gangopadhyay, J

1. This writ application has been filed, inter alia, for quashing, rescinding, recall and/or setting aside of the award dated 31th August, 2018 passed by the Labour Court in case No. 03 of 2017 published by the Andaman & Nicobar Administration on 25th September, 2018 and for a direction for regularization of 115 workmen in the services of respondent No. 4 within a specified time frame.

2. A conciliation proceeding initiated by the Conciliation Officer, Port Blair between the General Secretary, State Transport Workers Union (union, in short, hereafter) and Director of State Transport Services, Port Blair( respondent No. 4, in short, hereafter) had failed and the Conciliation Officer forwarded a failure report of the conciliation proceeding to the Government recommending to refer the case to the Labour Court for adjudication under sub-section (4) of Section 12 of the Industrial Disputes Act, 1947. The Secretary (labour) of Andaman & Nicobar (A & N, hereafter, in short) after consideration of the report referred the said dispute to the Labour Court, A & N for submission of award as per law. The terms of reference was:

"Whether the demand of State Transport Union, Port Blair in regard to regularization of service of 115 DRMs by the Directorate of State Transport Services is legal and justified, if not, what relief the concerned union is entitled to."

3. Before the Labour Court the first party workmen through the union filed their statement of demand stating, inter alia, that:-

"(i) They were engaged after due process of appointment as Daily Rated Mazdoor Highly Skilled, Semi-skilled & unskilled which include appointment on compassionate grounds. They were initially engaged for 6 months and thereafter their services were extended time to time without any break. The Workmen were called for written examination, Trade test and interview by open advertisement in the Daily Telegrams an organ of Andaman & Nicobar Admn. After written test, Trade test and interview merit list of successful candidates was prepared and displayed in the Notice Board. Thus the workmen were engaged after due process of appointment/recruitment and recommendation of Selection Committee.

(ii) The workmen are local youths.

(iii) They have been performing 8 hours duty per day and nature of work is regular/perennial.

(iv) There is precedence in the department for regularization of services of DRM who has been working for a long time."

4. The respondent No.4 being the second party filed its written objection wherein a very significant averment has been made in paragraph 2 thereof to the effect that the period of engagement of the Daily Rated Workers were extended from time to time without any break. (Emphasis mine).

However, it was the contention of the second party that claim for regularization in regular post cannot be considered for the following reasons:-

"1. The engagements of these employees were made purely on daily rated basis.

2. The employees were not engaged against any sanctioned post.

3. They were not engaged against any vacancies.

4. These employees were engaged to assist the technicians for repair and maintenance of buses.

5. Regular vacancies can only be filled following the provisions of prevailing RR at time of arising clear vacancies.

6. All the entitled benefits have already been extended to all the daily rated employees by the department and the regular vacancies would be filled as per approved/notified RR."

5. In the reference being ID case No. 03 of 2017, the first party adduced eleven witnesses and produced nine documents which were marked as exhibits. The second party did not produce any witness nor produced any document.

6. After hearing parties, the Presiding Officer of Labour Court answered the reference in the negative by holding that;

(i) The union filed ID case No. 31 of 2003 for payment of 1/30th of pay plus DA and in the said proceeding the issue of regularization was not raised and thus principle of res judicata applies; the principle applies to labour adjudication; no unnecessary litigation should be there; all claims and defences should have been put forward at the same time.

While holding as above the Labour Court actually held that the matter directly and substantially in issue in the former dispute (I.D. case No. 31 of 2003) was in respect of payment of 1/30th of pay plus DA while the present dispute relates to regularization of the DRMs. Therefore, the Labour Court knew that the matter directly and substantially in issue in the two cases i.e. I.D. case No. 31 of 2003 and the present case bearing I.D. case No. 03 of 2017 involve different issues.

In this case the union represents the workers who were appointed not before 2006. It is not understood how the present workers claim could be raised in the year 2003.

(ii) It appears that the Labour Court wanted to apply the principles of constructive res judicata. According to this principle any matter which might and ought to have been made ground of defence or attack in the former dispute shall be deemed to have been a matter directly and substantially in issue in the later dispute.

(iii) The Labour Court has relied on, in this regard, a judgment reported in (1975) 4 SCC 690 ( Bombay Gas Co. Ltd -vs- Jagannath Pandurang and others ) but has missed the point in the said referred case. The issue in the said dispute was identical issue which was directly and substantially involved in the later dispute: the issue was overtime wages. In the present case it is not so at all. Thus, the case relied upon by the Labour Court is not at all an appropriate one. The case law has been read superficially and has been applied to the present case mindlessly.

7. Considering the observation of the Labour Court, it is also to be seen whether the principles of constructive res judicata can be made applicable in the present dispute.

8. The principle of constructive res judicata cannot be applied indiscriminately without taking note of the fundamental principles thereof which have in the meantime been entrenched deeply in the policy of law for the reason that a court is duty bound to be very cautious while applying the principle of constructive res judicata as by using constructive res judicata the enforcement of civil right/rights of a party can be barred for all times to come.

Before applying the principle of constructive res judicata it is to be ascertained whether a party omits to include one of the several causes of action arising out of the same set of facts, this principle cannot be applied when different and independent causes or action arise out of altogether different set of facts.

While applying the doctrine of constructive res judicata identity of issues, and not identity of subject matter, is relevant. The mere fact that the first party might or could have included his claim in the former dispute is not sufficient; it must also be shown that he ought to have included it in the former dispute.

One important test is to see before applying the principles of res judicata is whether by raising the present question the order which was passed in the former dispute could have been defeated, varied or in any way affected.

It is to be seen also whether, the issue and the matter in the former dispute were completely different from the later dispute.

The present matter has not been tested at all by the Labour Court keeping in mind the above principles.

Therefore, it cannot be said also that principle of constructive res judicata is applicable in the matter.

9. Therefore, in respect of the decision of the Labour Court with regard to res judicata, I hold that the Labour Court has fully misdirected itself by considering a non-applicable decision of the Hon'ble Supreme Court in the matter in respect of res judicata and by not testing the dispute from the view point of principles of applicability of constructive res judicata as stated above.

10. The Labour Court has also not given any decision in respect of the claim of the first party as has been pleaded in their statement of demand. It has also not taken note of the above mentioned very significant pleading in the written objection of the respondent No. 4 to the effect that the period of engagement of the DRMs were extended from time to time without any break. In the award there is also no indication as to the Labour Court's observation in respect the reason as to why the claim of the workmen for regularization in regular post could not be considered.

11. In respect of the decision relied upon by the representative of the first party has been held to be not "in pari materia with the facts of the case" and it has also been held that those judgments were pronounced by the Hon'ble Apex Court either in exercise of power conferred under Article 32 or in civil appeal while considering the propriety of judgment passed under Article 226 of the Constitution by the Hon'ble High Court.

12. In a matter wherein the service life of 115 DRMs and their future so far as their services are concerned is involved, the judgments relied upon by the workmen should not have been rejected only by using the two wards expression "pari materia" with the facts of the case. A Court may or may not follow a

judgment cited from the bar but why the judgment has not been followed has to be clearly mentioned by the Court in its judgment. Rejection of judgment by using a two-word expression is wholly irresponsible and unacceptable to this Court and should not have been made without discussing the reason as to why the judgments cannot be followed by the Court.

It is to be kept in mind that litigants do not come to court for such slipshod observation which reflects that the responsibility which is a heavy one indeed to decide a matter has been shaken-off from his shoulder by a Judicial Officer.

13. The reasoning of the Labour Court that the judgments were pronounced by the Hon'ble Apex Court either in exercise of power conferred under Article 32 or in civil appeal not at all understood. It is to be kept in mind, what is followed of a judgment delivered by the Hon'ble High Court or by the Hon'ble Supreme Court is the ratio of the judgment which has been laid down considering the factual matrix of the case and the law applicable to the set of facts and not in what type of matters such judgments were passed. After delivery of a judgment by the High Court or by the Supreme Court, it is the ratio of the judgment which is important and binding in similar cases. In what type of proceeding such judgment was delivered is wholly immaterial.

14. The Labour Court has not also considered as to the number of posts vacant in which the Daily Rated Workers can be permanently absorbed.

15. It is found that the Labour Court has committed several mistakes of serious nature as have been pointed out above, while deciding the reference and the award is liable to be set aside for the above gross mistakes and the award is set aside.

16. By setting aside the award and with the above observations, the matter is remanded back to the Labour Court for an award on the reference by further hearing the parties by considering all documents and case laws, if any, relied upon by the parties, before passing its award.

17. By discussing as above, I have only indicated the illegalities in the award and I have not shown any way in which the award should proceed. The Labour Court has the full liberty to proceed afresh in the matter in accordance with law.

18. In any event, the award must be passed within a period of three months from the date of this order.

19. The writ application is disposed of, without any order as to costs.