

(2001) 01 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 4736 of 1998

Surya Prakash Agarwal

APPELLANT

Vs

Dean and others

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Citation : (2001) 2 AD 204

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Surya Prakash Agarwa, for the Appellant; Mr. Maninder Singh, Ms. Pratibha Singh and Mr. Nishikant Pandey, for the Respondent

Judgement

A.K. Sikri, J.—This petition filed by the petitioner is misuse and abuse of the process of law. This would become more and more apparent as I unfold the events that led to the filing of this Writ Petition. It may be mentioned at the outset that the present Petition filed by the petitioner in the year 1998 challenging termination of his service way back on 4th June, 1973 is his sixth attempt to challenge the said termination.

2. Petitioner was appointed as Lower Division Clerk in the Office of Dean, Indian Photo-Interpretation Institute, Survey of India, Dehradun, U.P.(hereinafter referred to as IPI, for short) i.e. who is arrayed as respondent no.1. He sent letter dated 1st June, 1973 to Dean, IPI making the following request:-

"Notice is hereby given to serve on the Dean, Indian Photo-Interpretation Institute, Dehra Dun - 248 001, for favor of, after giving the terminal leave, terminating the services of Sri Surya Prakash Agarwal, a resident of 27, Pipal Mandi, Dehra Dun - 248001, at present serving in his office as a Temporary Lower Division Clerk with effect from the after noon of June 30th 1973."

3. This was followed by another request letter dated 4th June, 1973 to the following effect:-

"In continuation of my letter dated 01.06.1973, I beg to state that due to some unforeseen circumstances, I request that I may kindly be relieved of my duties, in the after noon of 04.06.1973. I will not claim my pay or allowances after from 05.06.1973 if I am relieved on the after noon of today. The clearance certificate is attached today."

4. Pursuant to the aforesaid request made by the petitioner, by a letter dated 4/6th June, 1973 he was informed by Dean, IPI that the resignation tendered by him was accepted w.e.f. 4th June, 1973 (A.N.). Thus, by letter dated 1st June, 1973 petitioner had sought termination of his services w.e.f. 30th June, 1973 and by letter dated 4th June, 1973 he requested for immediate relief from duties i.e. w.e.f. 4th June, 1973 itself by specifically mentioning that he would not claim pay or allowances from 5th June, 1973. Treating his letter dated 1st June, 1973 as resignation letter his request was accepted by letter dated 4/6th June, 1973. However, after receiving the pay and allowances from 1st June, 1973 to 4th June, 1973 through money order on 11th July, 1973 and the credit balance lying in his General Provident Fund Account on 18th December, 1974, petitioner sent representation dated 19th December, 1974 (i.e. one and a half years, after acceptance of his resignation) claiming reinstatement. This was replied to by letter dated 5th February, 1975 by the respondents stating that nothing could be done as petitioner had resigned voluntarily. Petitioner again kept quiet for more than a year and on 15th February, 1976 he demanded enhanced salary as revised by Government of India pursuant to its acceptance of Pay Commission Recommendation from 1st January, 1973. (It may be mentioned here that this was paid to the petitioner on 16th September, 1976). Thereafter, on 28th May, 1976 he sent notice u/s 80 of CPC claiming reinstatement in service and all consequential benefits. This claim was refuted by the respondents by reply dated 1st July, 1976. At this stage, petitioner entered the legal arena and filed one proceeding after the other, the detail whereof are as under:-

1. On 2nd August, 1976 (i.e. 3 years and 2 months of acceptance of his resignation) petitioner filed Civil Suit No. 40 of 1976 in the Court of Civil Judge, Dehra Dun, Uttar Pradesh, claiming reinstatement of service and all consequential benefits. This Suit was filed as an indigent person Along with application to sue in forma pauperis. That application was dismissed by the Civil Judge on 30th October, 1976. Petitioner filed Civil Revision Petition No. 133 of 1976 in the Court of District Judge at Dehra Dun, Uttar Pradesh against the Order dated 30th October, 1976 passed by the Civil Judge. This Revision Petition was also dismissed by District Judge on 17th December, 1976. Against the Order of District Judge, petitioner filed Civil Revision Petition no. 311 of 1977 in the High Court of Judicature at Allahabad, Uttar Pradesh. This petition was dismissed in default on 30th March, 1979.

After the dismissal of the aforesaid Revision Petition, petitioner filed two applications before the Civil Judge, Dehra Dun, Uttar Pradesh. First application dated 2nd August, 1976 was for permission to amend the plaint by scaling down

its valuation and the second application was to give him permission to pay Court fee on the amended plaint. These two applications were dismissed in default by the Civil Judge on 16th August, 1980. Petitioner moved application for restoration of these applications on 25th October, 1980. This application was allowed and the petitioner's miscellaneous applications were restored by Order dated 5th March, 1982. However, respondent no.3 filed Civil Revision Petition No. 80 of 1982 in the Court of District Judge against this Order. While this was pending, petitioner moved an application in the Court of Civil Judge seeking permission to withdraw Civil Suit No. 40 of 1976 filed by him. Petitioner alleges that this application was filed in view of the assurance given by the respondent no.3 that his case for reinstatement would be considered sympathetically. This aspect would be adverted to at the appropriate stage. Suffice is to state that the Suit of the petitioner was dismissed as withdrawn on an application filed by petitioner himself. It may be mentioned that the Revision Petition No. 80 of 1982 filed by respondent no.3 in the Court of District Judge came up for hearing and was allowed by the District Judge. The effect was that the restoration Order dated 5th March, 1982 was set aside and the earlier Order dated 16th August, 1980 dismissing the two applications of the plaintiff-petitioner in default was maintained.

With this, the chapter relating to Civil Suit No. 40 of 1976 stood closed - be it treated as dismissed as withdrawn or otherwise.

2. At the stage when the two miscellaneous applications of the petitioner have been dismissed in default and he moved restoration application in the said Suit, the petitioner had made representation dated 4th December, 1981 to respondent no.3 claiming reinstatement in service. The petitioner alleges that he met respondent no.3 on 23rd November, 1982 who heard him sympathetically and verbally promised him reinstatement in service. Along with the consequential benefits provided the petitioner withdraws Suit No. 40 of 1976 and also sends departmental appeal under Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA) Rules, for short). The petitioner withdrew the Suit, as aforesaid, and sent representation dated 24th November, 1982. It may be noted at this stage that respondents denied any such assurance and maintained that petitioner of his own withdrew the Suit and also sent representation/departmental appeal under Rule 23 of the CCS (CCA) Rules of his own. Also, there is nothing to suggest such a meeting or such an assurance given by respondent no. 3. Be as it may, the representation of the petitioner was rejected by the respondents vide communication dated 1st May, 1983. The petitioner made Review Petition dated 28th November, 1983 which was also rejected by Order dated 6th December, 1983. According to the petitioner himself, this Order was received on 9th December, 1983. However, petitioner after a gap of one year and four months sent another representation dated 28th April, 1985 claiming reinstatement. This was followed by another representation dated 23rd December, 1985 and notice to respondent no.3 u/s 80 of the Code of Civil Procedure. Thereafter, representation dated 13th May, 1986

was sent to Hon''ble President of India. Such attempts of the petitioner did not yield any results.

3. The petitioner approached the Court yet again by filing Civil Suit on 19th May, 1986. This time it was filed in the Court of Senior Sub-Judge, Delhi claiming reinstatement in service and all consequential benefits. After the enactment of The Administrative Tribunal Act, 1985 this Civil Suit No. 280 of 1986 pending in the Civil Court, Delhi stood transferred to Central Administrative Tribunal, Principal Bench, New Delhi on 15th October, 1986. Central Administrative Tribunal heard the case and dismissed the same vide Order dated 18th September, 1987 on the ground that the impugned Order dated 4/6th June, 1973 was passed more than three years prior to the constitution of the Tribunal and Therefore, the Suit filed by the petitioner was time barred.

4. It may be mentioned that even during the pendency of the aforesaid Suit before the Civil Court and before the Central Administrative Tribunal after its transfer, the petitioner kept on sending representations to the Hon''ble President of India claiming reinstatement in service and all consequential benefits. These representations are dated 30th June, 1986 (rejected on 14th August, 1986), 20th September, 1986, 1st January, 1987, 16th January, 1987 (last two rejected by communication dated 14th May, 1987); 4th March, 1994, 3rd April, 1996, 10th February, 1997 and 10th May, 1997. Some of the representations were made to respondent no.2 and 6 as well. These representations were either specifically rejected or were not responded to and naturally so as respondents were not supposed to respond to each and every representation of the petitioner who was sending these representations endlessly claiming the same relief inspire of rejection thereof earlier by the respondents number of times.

4. Now the petitioner approached the Apex Court and filed Writ Petition under Article 32 of the Constitution of India on 17th June, 1997 challenging the Order date 4/6th June, 1973 and claiming reinstatement and all consequential benefits. This Writ Petition was dismissed in liming on 28th July, 1997.

5. Petitioner again started sending representations to the respondents. First representation dated 29th July, 1997 was made to respondent no.3 i.e. immediately after the dismissal of the Writ Petition by the Supreme Court. It was followed by notice u/s 80 of the CPC on 5th August, 1997. However, the respondents this time did not respond at all.

At this stage, the petitioner filed Review Petition dated 2nd September, 1997 in the Supreme Court against its Order dated 28th July, 1997 dismissing his Writ Petition in liming. The said Review Petition was disposed of by Order dated 18th March, 1998 and it was passed in the following terms:-

"Delay condoned.

The only grievance of the party in person is that while dismissing his writ petition under Article 32 of the Constitution of India on 28.7.1997, this Court had not

entertained the said petition as the petitioner could ventilate his grievances before the High Court under Article 226 of the Constitution of India. However, the order does not clarify this position. Therefore, likely confusion and complication may arise if he files writ petition under Article 226 for ventilating his grievances.

In our view, the said grievance of the party in person is justified. We, Therefore, clarify the order dated 28.7.1997 by observing that the writ petition under Article 32 was dismissed only on the ground that the petitioner had an alternative remedy of filing a writ petition under Article 226 for ventilating his grievances.

The review petition is disposed of accordingly. IAs do not survive and are disposed of with no orders.

6. Armed with the aforesaid review Order petitioner has filed the instant petition on 8th September, 1998.

5. The aforesaid facts would reveal that the present petition is clearly barred by principles of res judicata/constructive res judicata inasmuch as: (a) the petitioner had filed Suit No. 40 of 1976 challenging the same Order dated 4/6th June, 1973 whereby his resignation was accepted. This Suit was dismissed as withdrawn. As per the provision of Order 23 Rule 1 of the CPC once the Suit is withdrawn then another Suit on the same cause of action cannot be filed. This principle of Order 23 Rule 1 of the Code of Civil Procedure, which is based on sound public policy, applies to writ proceedings as well (*Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*,). Thus the petitioner could not have filed the Petition after withdrawal of the aforesaid Suit. (b) The petitioner had also filed another Suit dated 19th May, 1986 in the Court of Senior Sub-Judge, Delhi which was transferred to Central Administrative Tribunal. This Suit was dismissed as time barred. While passing the Order on 18th September, 1987 the Tribunal applied the same principles as were applicable in respect of filing of such Suit before the Civil Court. As the Suit filed on 19th May, 1986 before the Civil Court was barred by limitation, and there is no provision for condensation of delay in so far as Suit filed was beyond the period of limitation prescribed under the Limitation Act is concerned and Civil Court could not have condoned the delay, applying the same principles Central Administrative Tribunal dismissed the said Suit observing that it had no jurisdiction to entertain the said Suit which was challenging the impugned Order passed more than three years prior to the constitution of the Tribunal.

6. Petitioner is claiming the same relief in the present petition. This petition founded on the same cause of action is clearly untenable after the withdrawal of the first Suit and dismissal of the second Suit on the ground of limitation.

7. Even otherwise the petition suffers from inordinate delays and laches. From the events explained above, it is clear that after being unsuccessful in one attempt, petitioner again started making representations to the authorities and when these representations were rejected he again made an attempt to file the Court case. This cannot be permitted. Repeated representations and rejections

thereof will not give any fresh cause of action to the petitioner. The petition is liable to be dismissed on this ground.

8. In so far as Order dated 16th March, 1998 of the Apex Court is concerned, nodoubt in the said Order Supreme Court clarified that earlier dismissal Order dated 27th August, 1997 dismissing the Writ Petition in liming was on the ground that the petitioner had an alternative remedy of filing Writ Petition under Article 226 for ventilating his grievance. However when the Writ Petition is filed it has to be decided in accordance with law and Therefore if it is found that petition is barred by res judicata and also on laches and delays, the High Court can refuse to entertain such a petition in exercise of its extraordinary jurisdiction under Article 226 of the Constitution which is a discretionary remedy.

9. There is another hurdle in the way of the petitioner. The subject matter is covered by the Administrative Tribunal Act, 1985 and Therefore the petitioner has to approach the Central Administrative Tribunal. This is so decided by seven Judges Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . In this case, the petitioner in fact approached the Central Administrative Tribunal inasmuch as the Suit which was filed by him was transferred to Central Administrative Tribunal and Central Administrative Tribunal after hearing the petitioner dismissed the said Suit. If the petitioner had any grievance against that Order he could approach High Court under Article 226 of the Constitution and challenge the said Order. However he did not choose to do so and instead he filed the Writ Petition under Article 32 of the Constitution before the Supreme Court. It may be mentioned here that in his Writ Petition the petitioner did not at all disclose that he had earlier filed a Civil Suit in Dehra Dun, which was dismissed as withdrawn and thereafter the Suit filed before the Civil Judge, Delhi which was transferred to Central Administrative Tribunal was also dismissed. The petitioner also did not mention that respondents are covered by the Administrative Tribunal Act and Therefore it is the Central Administrative Tribunal which has the jurisdiction to deal with such matters. Had he so disclosed, may be Order dated March 16, 1998 would not have been passed by the Supreme Court. Therefore, it appears that even Order dated March 16, 1998 is obtained by suppressing material facts. Be as it may even if the Supreme Court has observed in the Order dated March 16, 1998 that petitioner had an alternate remedy of filing a Writ Petition under Article 226 as aforesaid, this Petition would be entertained as per law only and the petitioner has still to satisfy that this Court should exercise its extraordinary discretion under Article 226 of the Constitution. Petitioner has miserably failed to do so. In fact the conduct of the petitioner in filing one petition after the other in the manner detailed above aptly attracts the observation of the Supreme Court in the case of K.K. Modi Vs. K.N. Modi and Others, .

"The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/88 (p.344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used bona fide and

properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as *res judicata*. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

10. This Writ Petition is, Therefore, without any merit. Keeping in view the conduct of the petitioner in filing one petition after the other and abusing the process of the Court, it was a fit case where the petition should have been dismissed with heavy costs. However, keeping in view that the services of the petitioner came to an end way back in the year 1973, no order as to costs are passed in this case