
(2015) 06 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (S). No. 1431 of 2013

Sushila Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Citation : (2016) 1 AJR 509

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Devesh Krishna, for the Appellant; Lallan Singh, J.C. to Sr. S.C.I, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. Petitioner herein has challenged the office order No. 4 dated 21.7.2010 vide memo No. 446(IV) passed by the Director-in-Chief, Health Directorate, Jharkhand, Ranchi where under certain period of absence of the petitioner from 7.6.1998 to 15.9.2004 has been treated as extraordinary leave (without pay) under Rule 180 of the Jharkhand Service Code. Petitioner consequently has also sought payments of arrears of salary from May 1998 to November 2004 along with interest and other claims which are for grant of increment upon pay from 1998 as also the benefits of A.C.P etc.

3. It appears that petitioner had earlier approached this Court in W.P.S. No. 604 of 2008 with a prayer for directing the respondents to release the arrears of salary for the same period i.e. from May 1998 to November 2004. In the said writ petition itself, the respondent- State had appeared and filed their counter affidavit bringing on record the present impugned order bearing memo No. 446(IV) dated 21.7.2010 indicating therein that the aforesaid period was treated as extraordinary leave under Rule 180 of the Jharkhand Service Code and that her services have now been regularized. It was their consistent stand that since

the petitioner has not worked during the said period, she is not entitled for the salary for the said period.

4. It would be relevant to point out herein that the said order though on record in the said writ petition itself specifically in respect of the same claim of arrears of salary for the period from May 1998 to November 2004, which has now again been sought for was never challenged by the petitioner till the writ petition was decided by the judgment at Annexure-12 dated 18.12.2012. The relevant extract of the said judgment which have taken into account the aforesaid order dated 21.7.2010, the contention of the parties and the reasons indicated therein are worthy of being quoted herein as such:--

"However, it appears that office order-04 under Memo No. 446(IV) dated 21.07.2010, which was passed by the Director-in-Chief, Health Directorate, Jharkhand, Ranchi, has not been challenged by the petitioner in the present writ petition.

From perusal of the office order, it appears that she was transferred and relieved from Thethai Tanger, Gumla in May, 1998, but she did not join at her transferred place of posting at Purnea and kept on recording her attendance at Thethai Tanger, Gumla without any authority and despite being objected by the In-charge Medical Officer, Thethai Tanger, Gumla through his letter No. 189 dated 08.09.2001. The Communication of the Civil Surgeon, Purnea dated 28.11.2002 has been taken into account where he had reported that the petitioner had never joined at her transferred place of posting at Purnea and as such, by his letter dated 23.10.2002, the service book and last pay certificate etc. were returned to Civil Surgeon, Gumla. Thereafter, the petitioner was posted at Lohardaga, but their being no post available in the category of Grade A Nurse, she was finally posted by letter dated 03.11.2004 at Referral Hospital, Mandar, Ranchi where she has submitted her joining on 05.11.2004. The Director-in-Chief, Health Services, Ranchi in the reasoned order, has also recorded that even on asking her to give her show cause vide letter dated 26.08.2006, she did not appear in the office of Director in Chief, which was fixed on 30.11.2006. In the background of the aforesaid findings of the facts recorded by him, he has proceeded to pass an order as referred above by granting extraordinary leave to the petitioner under Rule 180 of the Jharkhand Service Code for the period w.e.f. 07.06.1998 to 15.09.2004. As already stated hereinabove, the said order has not been challenged. Finding of facts relating to the voluntarily absence of the petitioner for the period in question have been recorded by the authority concerned. From the order passed in Cont. Case (Civil) 855 of 2001 dated 15.07.2002, it further appears that petitioner was granted liberty to claim her salary from June 1998 before the appropriate Government, where she has been transferred i.e. from the State of Bihar where the district of Purnea now lies after bifurcation of the State. In this writ petition, petitioner has again come before this court against the authorities of Health Department, State of Jharkhand and not against the authorities of State of Bihar. From the facts narrated hereinabove, it also appears

that petitioner has never reported her joining at Purnea in June 1998 and deliberately kept on making her attendance at her original place of posting Thethai Tanger, Gumla contrary to the order of the respondent authorities. For the complication which ensued thereafter, the petitioner is primarily responsible for that. Thereafter also she did not join and remained voluntarily absent away from her place of posting. In these circumstances, the Director in Chief, Health Services, Government of Jharkhand, Ranchi has taken sympathetic view by granting her extraordinary leave under Rule 180 of the Jharkhand Service Code thereby benefiting her from rigours of break in service for the period of absence from service. However, the petitioner has never challenged the reasoned order dated 20.07.2010. Therefore, she is not entitled to claim her salary for such period for which extraordinary leave has now been sanctioned.

In the totality of the facts and circumstances, which have been discussed hereinabove, I do not find any merit in this writ petition, which is accordingly, dismissed".

5. Respondents have appeared and filed their counter affidavit as well in which they have indicated that the petitioner has not come with clean hand as according to them the instant grievances relating to payment of arrears of salary for the said period has been subject matter of the earlier litigation between the parties. It is also their stand that the prayer of the petitioner therefore is barred by the principal of res-judicata as the reasoned order was passed by the competent authority, which was not challenged earlier. So far as the third and fourth prayer of the petitioner is concerned, it has been stated that they need verification and it will be done as soon as possible after the final disposal of the matter.

6. The fact which has been noticed herein above gives a clear impression that the relief which was sought for by the petitioner in respect of payment of arrears of salary for the period from May 1998 to November 2004 was duly considered by not only the respondents through reasoned order dated 21.7.2010 but also taken into account by this Court while dismissing the writ petition vide judgment at Annexure-12 dated 18.12.2012. Petitioner being conscious of the said order did not venture to challenge the same in the previous writ petition though the same was squarely related to the grievances being raised once again herein. Such a recourse to challenge the said reasoned order once again in the present writ petition therefore is barred by the principal of res-judicata and constructive res-judicata which has been explained in several judgment of the Hon"ble Supreme Court as also in the Privy Council and the Courts of England. The whole object and purpose behind the said principle is that the litigant should not be encouraged to split one cause of action and re-agitate it one after another, as it is not only in the interest of the republic that a litigation should attain finality but also in the interest of the individual, who should also not be vexed again and again for the same cause of action available to the concerned party at the first occasion itself.

7. The principle of Constructive Res-judicata has been beautifully explained by the Hon"ble Supreme Court in the judgment rendered in the case of State of U.P. Vs. Nawab Hussain, AIR 1977 SC 1680 : (1977) 2 SCC 806 : (1977) 3 SCR 428 of which is reproduced herein below:--

"Para 3:-The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council, it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

Para 4:- But 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 and Somervell, L.J., has answered it as follows in Greenhalgh v. Mallard:

"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

"This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle."

8. Therefore the prayer related to the challenge to the impugned order dated 21.7.2010 cannot be allowed once again in the present writ application.

9. The respondents however have indicated in their counter affidavit that they

are inclined to consider the claim of the petitioner so far as prayer No. 3 and 4 relating to payment of certain increment and grant of A.C.P/time bound promotion is concerned. In that view of the matter, it is left open for the petitioner to approach the competent authority for the said relief which may be considered in accordance with law.

10. The writ petition is disposed of in the aforesaid manner.