
(2002) 09 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34467 of 1997

Union of India (UOI) and Others

APPELLANT

Vs

Shanker Gandaiah and Another

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Evidence Act, 1872 — Section 115

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14(2), 9

Citation : (2002) 5 ALT 788

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : R.S. Murthy, for the Appellant; N. Ram Mohan Rao and T. Puspender Kour, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This writ petition is filed challenging the judgment dated 7-5-1997 passed by the Central Administrative Tribunal, Hyderabad in O.A.No. 1365/1994. By the impugned judgment, the Tribunal directed the petitioners herein to consider the case of the respondent-applicant in accordance with the directions issued by the Hon'ble Supreme Court of India in the case of Union of India v. R. Reddappa (Civil Appeal Nos. 4081/1992 dated 5-8-1993) and accordingly regularize his service and sanction pensionary benefits, within a period of four months from the date of receipt of copy of that order. Aggrieved by the said direction, the Union of India, filed this writ petition.

2. The brief facts of the case are as follows:--

The respondent herein who is the applicant before the Tribunal, while working as Driver in South Central Railway participated in a strike during the year 1981. Therefore, he was removed from service with effect from 13-2-1981 on the ground of unauthorized absence and on some other irregularities. The said dismissal was without holding any inquiry as per Rule 9 of Railway servants (D and A) Rules, 1968. Challenging the said dismissal, the respondent preferred an

appeal before the appellate authority and the same also ended in dismissal. Aggrieved by the same, the respondent preferred a writ petition before this Court in W.P.No. 906/1982 and this Court disposed of the writ petition by order dated 17-9-1985 remitting the matter back to the appellate authority for reconsideration of the appeal after giving personal hearing. Accordingly the appellate authority reconsidered, but however again passed the order of dismissal. Challenging the same, the respondent preferred O.A.No. 312/1988 before the Tribunal. The Tribunal disposed of the O.A. by modifying the punishment from that of dismissal to compulsory retirement with effect from 13-2-1981, but granted all the pensionary benefits from 13-2-1989. In accordance with the directions of the Tribunal, the respondent retired from service with effect from 13-2-1981 and pensionary benefits were granted with effect from 13-2-1989. Aggrieved by the direction of the Tribunal, the Union of India, i.e., the petitioner herein preferred a SLP No. 11395/1989 before the Hon'ble Supreme Court and the same ended in dismissal, by order dated 14-9-1989.

3. Subsequently it appears that some other employees, with similar grievance approached the Supreme Court in Civil Appeal No. 4081/1992 and batch and the Hon'ble Supreme Court by order dated 5-8-1993 disposed of the batch with certain directions, which are extracted as under:--

(i) Employees who were dismissed under Rule 14(2) for having participated in the Loco Staff Strike of 1981 shall be restored to their respective post within a period of three months from to-day.

(ii) (a) Since more than three years have elapsed from the date of the orders were found to be bad on merits by one of the Tribunals, it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the judgment was delivered, that is in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead, the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death.

4. In view of the above judgment, the respondent herein filed another application before the Tribunal in O.A.No. 1365/1994, seeking the extension of the benefits granted by the Supreme Court by order dated 5-8-1993 in the batch of civil appeals. The Tribunal considering the facts and circumstances and also taking into account other judgments of the Supreme Court, allowed the O. A. Aggrieved

by the orders of the Tribunal, the Union of India, filed the present writ petition.

5. The learned Standing Counsel for the petitioners Sri R.S. Murthy contended that the respondent herein is not party to the batch of civil appeals in 4081/1992 and as such the directions in the said batch cannot be extended to the respondent. He further contended that in so far as the respondent is concerned, the judgment of the Tribunal in O.A.No. 312/1988 dated 13-5-1989 had become final, since the appeal preferred before the Supreme Court was dismissed confirming the order of the Tribunal and therefore, the judgment of the Tribunal was implemented and the respondent also accepted the said judgment of the Tribunal and also accepted the pensionary benefits as per the directions of the Tribunal and, therefore, he has no right to file the second application i.e., the present one before the Tribunal in O.A.No. 1365/1994 and same is hit by res judicata. In support of his contentions, he placed reliance on some judgments of the Supreme Court, which will be referred to in the course of the judgment. With these submissions, he sought for setting aside the impugned judgment.

6. On the other hand, the learned Counsel Sri N. Ram Mohan Rao, appearing for the respondent supporting the impugned judgment contended that the tribunal taking into account the guidelines of the Hon"ble Supreme Court in the batch of civil appeals preferred by similarly placed employees, which are general in nature, and also basing on the principle that there is no order in favour of an individual while the principle has been decided in respect of a similarly placed individual, extended those benefits to the respondent. He finally contended that the Tribunal while passing the impugned orders, had taken into consideration the other judgments of the Hon"ble Supreme Court and same does not warrant any interference of this Court. With these submissions he sought for dismissal of the writ petition.

7. In view of the above contentions the issue that falls for our consideration is whether the principles of res judicata apply to the case of the respondent?

8. From the above facts it is clear that the Tribunal in the first O.A. i.e., O.A. No. 312/1988 modified the punishment from that of dismissal to compulsory retirement and granted pensionary benefits. The respondent did not challenge the said modification, perhaps felt complacent and accepted the verdict and received the pensionary benefits. Even the Supreme Court also confirmed the judgment of the Tribunal and dismissed the appeal filed by the petitioners. It has to be noted that the respondent filed the later O.A. i.e., the present one, after issuance of the guidelines by the Supreme Court in the batch of civil appeals preferred by similarly placed employees in the year 1993. Therefore, the basis for the petitioner to file the present O.A. is the guidelines issued by the Supreme Court in the batch of civil appeals. It has also to be noted that the later judgment of the Supreme Court was rendered in the year 1993 i.e., only after the confirmation of the judgment of the Tribunal in O.A. No. 312/1988. This shows that the judgment of the Tribunal, in so far as the respondent herein is concerned, has become final.

9. Here it is necessary to look into the judgment of the Supreme Court in *Ferro Allys Corporation Ltd. v. Union of India* IR 1999 SC 1236 relied on by the learned Standing Counsel for the petitioners. Since the facts of the said case run criss-cross with prolonged history, it is difficult to concise them. Considering the facts and circumstances, the Supreme Court held that by the conduct of FACOR which is a party to the said litigation, it had waived its right to challenge the correctness of assessment made by a Committee and further held that the appeal was also hit by principles of estoppel, apart from the question of acquiescence.

10. Finally at paragraph No. 44, the Supreme Court observed as under:--

As we have already held earlier, even though the technical bar of *res judicata* and constructive *res judicata* may not apply on the facts of the present case to non-suit the appellant, at least on the ground of estoppel and acquiescence as well as waiver, the appellant can be said to have given up its challenge regarding upward revision of the assessment of its need as arrived at by the Expert Committee when it saw to it by keeping mum that the entire order of the Central Government dated 17th August, 1995 got confirmed by this Court in TISCO's appeal.

11. Coming to the case on hand, challenging the order of the Tribunal in O.A.No. 312/1988 modifying the order of punishment from that of dismissal to compulsory retirement, the petitioner herein filed appeal before the Supreme Court and at that time the main intention of the respondent was to see that the orders of the Tribunal were confirmed. For that purpose the respondent was not required to claim any additional benefits and he was successful in getting the order of the Tribunal confirmed. Therefore, when there is no claim and adjudication on the issue whether the respondent was entitled to any additional benefits or not, in view of the above judgment of the Supreme Court, it cannot be said that subsequent claim of the respondent is either hit by *res judicata* or constructive *res judicata*.

12. However, the moment the respondent accepted those benefits given by the Tribunal, as confirmed by the Supreme Court, it is deemed that he waived his right to dispute the order of the Tribunal. Therefore, subsequently he is estopped u/s 115 of the Indian Evidence Act, from challenging the earlier order of Tribunal, since the same has become final.

13. The main grievance of the respondent before the Tribunal now in the present O.A. is that when similarly placed employees are getting more benefits, why should he be denied. As stated above, he acquiesced the order of the Supreme Court and did not choose to put forward his claim any more. Therefore, following the judgment of the Supreme Court we are of the view that even though the order of the Tribunal is not hit by principles of *res judicata* or constructive *res judicata*, it is definitely hit by the principles of estoppel and acquiescence and waiver as well.

14. Looking from another angle, by the present impugned order, the Tribunal extended the benefits of the judgment of the Supreme Court to the respondent also, on the ground that the directions given by the Supreme Court in the later judgment are general in nature. Admittedly the respondent is not a party to those proceedings and extension of those benefits by the Tribunal to the respondent will tantamount to modifying or reviewing its own earlier order, which was confirmed by the Supreme Court.

15. Here it is necessary to look into the facts in State of Maharashtra and another Vs. Prabhakar Bhikaji Ingle, which reveal that the respondent therein was removed from service. Challenging the order of removal, he moved the Maharashtra Administrative Tribunal and the Tribunal also confirmed the order of removal. Again challenging the order of the Tribunal, he preferred SLP and that also ended in dismissal, confirming the order of Tribunal. In the meanwhile before the passing of the orders by the Supreme Court, the respondent filed a review petition before the Tribunal. The Tribunal even after the passing of the judgment by the Supreme Court confirming the order of removal, reviewed its earlier order.

16. The Supreme Court in those circumstances held that when once the order of the Tribunal was confirmed and became final, and moreover when it had the knowledge of dismissal of the SLP by Supreme Court, the Tribunal is not justified in reviewing its order.

17. In view of the above position as laid down by the Supreme Court, we do not find any merit in the order of the Tribunal extending the benefits of the judgment of the Supreme Court to the respondent also when it had knowledge that the earlier order of the Tribunal in respect of the respondent had become final.

18. Finally the situation if nut-shelled, it is clear that the order of the Tribunal had become final by 14-9-1989, i.e., by the confirmation of the Supreme Court in S.L.P.No. 11395/1989. The respondent herein approached the Tribunal second time only after the employees got the benefit from the Supreme Court by its order dated 5-8-1993, which means the respondent approached the Tribunal second time after four years from the judgment of the Supreme Court which confirmed the earlier order of the Tribunal.

19. For the foregoing reasons, we pass the order as under:-

The writ petition is allowed and the impugned judgment of the Tribunal is set aside. In the circumstance of the case, parties are directed to bear their own costs.