

(2007) 02 AHC CK 0101
In the Allahabad High Court

U.P. State Road Transport Corporation	APPELLANT
Vs	
Mahmood Khan	RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 17B, 2
Road Transport Corporations Act, 1950 — Section 12

Citation : (2007) 4 ADJ 385 : (2007) 3 AWC 2617 : (2007) 113 FLR 626 :
(2007) 3 UPLBEC 106

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Sheshadri Trivedi, the learned Counsel holding the brief of Sri Sameer Sharma, the learned Counsel for the petitioner and Shri Manas Bhargava, the learned Counsel holding the brief of Shri Akhilesh Mishra, the learned Counsel appearing for the respondent No. 1.

2. The Workman, respondent No. 1 was working as a conductor and was charge sheeted for taking passengers without issuing tickets. A domestic enquiry was conducted and he was found guilty of the charges. Based on the domestic enquiry, the Assistant Regional Manager issued an order of termination dated 30.6.1985. The petitioner, being aggrieved by the aforesaid order of the termination, preferred a writ petition before this Court, which was allowed by a judgement dated 30.9.1986 and the termination order was set aside on the ground that the Assistant Regional Manager had no authority to pass the order of termination. It transpires that the aforesaid judgment was passed on the basis of a leading judgment of this Court in the case of Bhopal Singh v. UPSRTC passed in writ petition No. 8363 of 1986 decided on 10.9.1986. Based on the said judgment, the State Government issued an ordinance No. 9 of 1987 which was subsequently replaced by the U.P. Act No. 15 of 1987 Clause 3 of the said Act reads as under:

Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or any provisions of the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulation, 1981, no orders made, actions or proceedings taken or jurisdiction exercised on or after June 19, 1981 by the officers authorised as appointing authorities by the Uttar Pradesh State Road Transport Corporation under Clause (c) of Sub-section (1) of Section 12 of the Road Transport Corporation Act, 1950 shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that such authorised officers were not the appointing authorities.

3. In view of the aforesaid provision, a division bench of this Court in 1988 (5) FLR 185 upheld the validity of Act No. 15 of 1987 to be valid with retrospective effect. As a result of the aforesaid judgment, by virtue of the provision of Clause (3) of Act No. 15 of 1987, the judgment of this Court dated 30.9.1986 passed in favour of the petitioner was rendered ineffective and the petitioner could not avail the benefit of the judgment passed in his favour. Consequently, in view of the aforesaid decision upholding the validity of the Act with retrospective effect, the termination order of the respondents became valid.

4. From 1987 onwards, the workman remained silent and did not step into the matter except making wild allegations that he was representing before the authorities concerned and, eventually after a lapse of 13 years, a reference was made in the year 1988 referring the dispute to the labour court for adjudication with regard to the validity and legality of the order of the termination dated 13.6.1985.

5. Before the Labour Court, the workman filed his written statement alleging that the enquiry was conducted against the principles of natural justice and that no opportunity of hearing was given to him to defend himself and that, in any case, the charges was not proved against him. On the other hand, the management filed its statement in rejoinder, contending that the reference had become infructuous on account of the fact that the workman had challenged the order of the termination which was allowed by the High Court in a writ petition. Subsequently, by the Act No. 15 of 1987, the said judgment was rendered infructuous and the validity of the termination order was revalidated by Act No. 15 of 1987. The management further contended that no industrial dispute existed nor was it apprehended and that the State Government had committed an error in referring the dispute after a lapse of 13 years. The management also contended that full opportunity was given to the workman to defend himself and that the principles of natural justice was complied, and that, in any case, the charges stood proved against him which was serious in nature warranting an order of the termination of the service.

6. The labour court after considering the evidence on record, allowed the claim of the workman and, by its award, directed that the workman would be entitled to all the benefits including the arrears of back wages till the date of his superannuation as, during the pendency of the proceedings, the workman had

attained the age of superannuation.

7. In my opinion, the reference with regard to the validity and legality of the order of the termination of the respondent No. 2 could not have been referred for adjudication to the labour court. In my opinion, the reference was barred by the principles of res judicata.

8. In Executive Engineer ZP Engg. Divn. and Another Vs. Digambara Rao etc. etc., the Supreme Court held that the principles of res judicata squarely applies to an industrial adjudication. In this case, the workman had challenged the validity of his termination order before a writ court and after the dismissal of the writ petition, the workman got the matter referred for adjudication under the Industrial Disputes Act before the labour court and in that scenario, the Supreme Court held that no industrial dispute could have been referred to the labour court and that the principles of res judicata was squarely applicable.

9. In Pondicherry Khadi and Village Industries Board Vs. P. Kulothangan and Another, the Supreme Court held that the principle of res judicata would operate on a court or tribunal holding-

We are, therefore, of the opinion that the High Court erred in upholding the award of the Labour Court having regard to Section 11 of the Code of Civil Procedure. In this view of the matter, it is not necessary for us to consider the other contentions raised by the appellant. The appeals are accordingly allowed and the decision of the High Court as well as the award of the Labour Court are set aside. However, the appellant will not recover any amount that may have been paid to the respondent under the provisions of Section 17B of the Industrial Disputes Act, 1947. There will be no order as to cost.

10. In view of the aforesaid, once the workmen elects a forum for adjudication of a dispute, it is not open to him to approach another forum at a subsequent stage.

11. In the State of U.P. v. State Public Service Tribunal Lucknow 2002(2) LB 1123 a Division Bench of this Court held that a petition for the same relief before another court or forum was not permissible as the petitioner did not seek any liberty to agitate the issue afresh. The Court held that the principle of order 23(1) of the C.P.C. was squarely applicable.

12. In Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others, the Supreme Court held that a second petition was not maintainable and that the principle of constructive res-judicata was applicable.

13. The learned Counsel for the workman submitted that the writ petition was only allowed on one issue, namely, that the Assistant Regional Manager had no jurisdiction to pass the order of termination and that the writ court had not dwelt into the matter on merit.

14. Be that as it may. The fact that the dispute of the petitioner was not adjudicated on merits will not allow the petitioner to raise the same dispute on

the same cause of action before another forum. The principle of *res judicata* is squarely applicable. The Supreme Court in the case of the Executive Engineer, ZP. Engg. Divn. (*supra*).

The pleas raised before us by the respondents to the effect tht their termination of employment fell within Sub-clause (bb) of Clause (oo) of Section 2 of the Industrial Disputes Act, apart from having not been raised before the Labour Court and the High Court, in our opinion, is not available to them having regard to the decision of the High Court in the writ petitions filed by the respondents.

15. Quite apart from the aforesaid, the Court is of the opinion that there has also been delay in approaching the Labour Court. The reference was made after a lapse of 13 years. The award of the Labour Court directing back wages without considering the fact that the issue was raised belatedly after 13 years is illegal.

16. The Supreme Court in the case of Haryana State Coop. Land Development Bank Vs. Neelam, held-

BELATED CLAIM:

The Industrial Courts like any other Court must be held to have some discretion in the matter of grant of relief. There is no proposition of law that once an order of termination is held to be bad in law, irrespective of any other consideration the Labour Court would be bound to grant relief to the workman. The Industrial Disputes Act does not contain any provision which mandates the Industrial Court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances obtaining in each case. In absence of any express provision contained in the statute in this behalf, it is not for the Court to lay down a law which will have a universal application.

17. In view of the aforesaid, this Court is of the opinion that no reference could be made under the Industrial Disputes Act after the workman had approached the writ Court. The entire proceedings before the labour court was barred by the principle of *res judicata*. Consequently, the award passed by the labour court cannot be sustained and is quashed. The writ petition is allowed.

18. In the circumstances of the case, there shall be no order as to cost.