
(2004) 02 AP CK 0116

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16370 of 1993

Zonal Manager, Central Bank of India

APPELLANT

Vs

D. Anjaiah and Another

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 10(1), 2A

Citation : (2004) 5 ALD 204 : (2004) 4 ALT 486 : (2004) 3 LLJ 1118

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : C.V. Rajeev Reddy, for the Appellant; A.K. Jayaprakash Rao and Government Pleader for Social Welfare, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—This writ petition is filed by the Management challenging an award passed by the Industrial Tribunal, Hyderabad in I.D. No. 40 of 1991, dated 1-9-1993, wherein the dispute raised by the 1st respondent herein, as referred by the Government of India u/s 10(I)(d) and (2-A) of the Industrial Disputes Act, 1947 (for short "the Act"), was answered in favour of the employee granting relief of reinstatement with continuity of service and all other attendant benefits.

2. The facts are not in dispute. Earlier, the 1st respondent herein along with some other employees of the petitioner-Bank, who were retrenched, filed Writ Petition No. 4482 of 1982 before this Court seeking a mandamus directing the petitioner herein to follow the procedure laid down u/s 25H of the Act and reinstate them into service. The said writ petition was allowed on 17-2-1986 as under :

".....The cases of the petitioners would be considered as per the recruitment policy in force after following the procedure contemplated u/s 25H of the Act read with Rules 77 and 78 of the Rules. However, it is made clear that this direction does not effect the appointments already made. The respondent is

accordingly directed to follow the Rules 77 and 78 of the Rules and consider the cases of the petitioners."

3. Aggrieved by the said order, the petitioner herein filed Writ Appeal No. 791 of 1986, which was dismissed on 28-11-1986 with the following modification:

"...The case of the writ petitioners will, therefore, be considered in accordance with Section 25H only for the temporary appointment. The temporary posts, which may exist or arise in future, in such circumstances, the writ petitioners will be given a preferential treatment for appointment. If there is any dispute between any particular individual about the appointment or post itself, that can be agitated before any authority, which can decide after examining the facts of each case."

4. Challenging the said judgment, the petitioner herein filed SLP before the Supreme Court and initially interim stay of the operation of the above judgment in Writ Appeal No. 791 of 1986 was granted and finally by an Order dated 31-7-1996 in Civil Appeal No. 1811 of 1992 Central Bank of India Vs. S. Satyam and others, , allowed the appeal and set aside the above judgments of this Court and dismissed Writ Petition No. 4482 of 1982 holding as follows:

"8. The plain language of Section 25H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2(oo). Section 28F also uses the word "retrenchment" but qualifies it by use of the further words "workman who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman... . who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchment while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, of ordered by Section 25-F.

9. The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word "retrenchment workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning

which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

10. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word "retrenchment" in Section 25H. This contention is, therefore, rejected.

11. The other submission of Shri Pai, however, merits acceptance. All the retrenched workmen involved in the present case were employed for short periods between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefit. The order persons employed in the industry during the intervening period of several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents herein) may result in displacement of those other workmen who have not been impleaded in these proceedings, if the respondents have any claim for re-employment. The laches leading to the long delay after which the writ petition was filed in 1982 is sufficient to disentitle them to the grant of any relief in the writ petition. Moreover, there is not even a suggestion made or any material produced to show that on the construction we have made of Section 25H, the respondents would be entitled to get any relief in the highly belated writ petition after the lapse of several years by way of preference over any person employed during the intervening period. In our opinion, this alone was sufficient for the High Court to decline any relief to them. It was urged by learned Counsel for the respondents which need not be disturbed. In our opinion, the lapse of a long period of several years prior to the filing of the writ petition is sufficient to decline any relief to the respondents."

5. In the meanwhile, the aforesaid dispute was raised by the 1st respondent-workman and the adjudication process was in progress. In fact, even before the disposal of Civil Appeal No. 1811 of 1992 before the Supreme Court, the impugned Award was passed and it is challenged in the present writ petition. While admitting the writ petition, this Court stayed the operation of the impugned Award. However, on filing vacate stay petition, the said interim order was modified directing the petitioner herein to pay to the respondent-workman, the wages as per Section 17B of the Act.

6. Learned Counsel for the petitioner, at the outset, submitted that the very dispute is not maintainable and is hit by principles of res judicata. In support of the said contention, he relied upon a decision of the Apex Court. In Pondicherry Khadi and Village Industries Board Vs. P. Kulothangan and Another, , wherein it was held as under:

"(9) Before us, the appellant has reiterated its stand before the High Court both on the question of res judicata as well as on merits. The respondent has, on the other hand, submitted that even if he was temporary employee, nevertheless the applicant's refusal to permit him to join was based on allegations of alleged misconduct and that therefore the appellant could not have terminated his service without holding an enquiry and without giving the respondent an opportunity of being heard. On the question of res judicata, it is submitted that the principle will have no application since the issue raised in the earlier writ petition was one of regularisation and not of reinstatement.

(10) In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subject-matter dealt with the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire CPC is not applicable to industrial adjudication, the principles of res judicata laid down u/s 11 of the Code, are applicable including the principles of constructive res judicata. Thus in *State of U.P. Vs. Nawab Hussain*, , it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held:

"..... 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 tune 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". (P.808)

(11) The principle of res judicata operates on the Court. It is the Courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the Court trying the subsequent proceeding is satisfied that the earlier Court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such Court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on the merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, , *Pujari Bai Vs. Madan Gopal*, . The "lesser relief" of reinstatement which was the subject-matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision

was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and re-decide the matter in the face of the earlier decision of the High Court in the writ proceedings."

7. From the above, it is clear that the doctrine of res judicata is applicable to industrial adjudication also. When the dispute raised about termination of services of temporary workman by way of writ petition, was disposed of by reasoned order, on merits, and after contested hearing, and after that order becomes final, reagitation of same issue before Labour Court is barred by res judicata. In the case on hand also, the 1st respondent was a party to the earlier writ proceedings in W.P. No. 4482 of 1982, which was concluded in Civil Appeal No. 1811 of 1992, dated 31-7-1996 before the Supreme Court. Simultaneously, during the pendency of those proceedings, the 1st respondent herein raised a dispute and on failure of conciliation proceedings, the matter was referred to the Tribunal by the appropriate Government framing the following question for adjudication:

"Whether the action of the management of Central Bank of India, Hyderabad in not giving permanent appointment to Sh. D. Anjaiah is justified? If not, to what relief the workman concerned is entitled to?"

8. In the earlier Writ Petition No. 4482 of 1982 also, the relief sought for was a similar one. A learned single Judge granted the relief sought for by the petitioners therein and thereafter, on appeal, it was modified. But the said orders were set aside by the Apex Court in Civil Appeal No. 1811 of 1992 and dismissed Writ Petition No. 4482 of 1982. Therefore, there is a concluded proceeding between the parties, since the 1st respondent herein was also a party to the above Writ Petition No. 4482 of 1982. Since the issue in the said writ petition and the question raised in the present I.D. No. 40 of 1991 is substantially one and the same, the principle of res judicata operates. In the result, the Award passed by the Industrial Tribunal in the said I.D. has no effect and it must be deemed as *nan est* in the eye of law.

9. As seen from the above, Writ Petition No. 4482 of 1992 was disposed of on 17-2-1986, the resultant Writ Appeal No. 791 of 1986 was disposed of on 28-11-1986 and the matter was carried to the Apex Court in Special Leave to Appeal (Civil) No. 3808 of 1987 and by an Order dated 27-4-1992 interim stay of operation of the said judgments was passed. Finally, Civil Appeal No. 1811 of 1992 was allowed and set aside the above Orders of this Court and dismissed Writ Petition No. 4482 of 1992, Even assuming that the orders in the above writ petition and writ appeal were in favour of the 1st respondent, the Labour Court could not have proceeded with the industrial dispute, for the reason that as on that date, the Supreme Court had already seized of the matter. Though the same was brought to the notice of the Labour Court, the Labour Court proceeded with the matter and decided the dispute. In the normal course, the Labour Court

ought to have awaited the verdict in Civil Appeal No. 1811 of 1992, since the substantial issue and dispute between the parties in both the cases was one and the same.

10. Learned Counsel for the 1st respondent submitted that the Industrial Tribunal has looked into the aspect, as to whether there was any industrial dispute existing or not, and having examined the same, decided the matter on merits and, therefore, the question of res judicata does not arise. Further, the petitioner did not bring the same to the notice of the Apex Court when Civil Appeal No. 1811 of 1992 was being disposed of. In this regard, learned Counsel for the petitioner submits that equally it was also within the knowledge of the Counsel, who represented the 1st respondent before the Supreme Court. Both the learned Counsel stated that, at this length of time, it would be difficult for them to submit in this Court that whether such a thing was brought to the notice of the Apex Court or not. However, the same was not reflected in the order of the Supreme Court. But, that itself does not mean that the doctrine of res judicata does not operate.

11. Learned Counsel for petitioner further submitted that the Supreme Court itself had looked into the aspect of delay in approaching the High Court in *Central Bank of India v. S. Satyam* (supra) and held that the lapse of a long period of several years prior to the filing of the writ petition is sufficient to decline any relief to the workman. The Labour Court ought not to have entertained the dispute on that ground alone.

12. For all the above reasons, the writ petition is allowed and the impugned award is set aside. No order as to costs.