A/3

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.959 of 1987
(Civil Misc. Writ Petition No.8784 of 1982).

Phool Chand Gupta and 2 others ... Petitioners

Vs.

Union of India and 10 others ... Respondents

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This writ petition under Art.226 of the Constitution of India has been received u/s.29 of the Administrative Tribunals Act XIII of 1985 from the High Court of Judicature at Allahabad.

2. The material facts of this case are that the petitioners were initially appointed as Clerks in the N.E.Railway and after passing the requisite suitability test, they were promoted as Sr.Clerks in due course. From the office of the General Manager N.E.Railway letter dated 29.8.1969 was issued for holding a selection for the post of Assistant Welfare Inspectors (for short AWI) in the scale of Rs.210-320 and applications were invited from all class III staff for appearing in the said selection. The petitioners had also applied for appearing in the selection. The written test for this selection was held on 17.1.1971 and the viva-voce test was held on 17.3.1971. In the list known as panel of the selected candidates prepared by the selection committee in order of merit, the names of the petitioners appeared at sl.nos. 1,8 and 10 respectively and the petitioners and other selected candidates were sent for condensed course of training. After

A3/2

the completion of the training the petitioner nos. 1 and 2 were posted as AWI in the office of Divisional Superintendent (P) Izatnagar and Samastipur respectively and petitioner no.3 was posted as such in the office of Chief Personnel Officer Gorakhpur vide order dated 29.4.1971. The petitioners had taken over charge as AWI on or about 18.5.1971.

3. On 1.10.1971, the General Manager N.E.Railway expressing his doubt about the correctness of the procedure followed in preparing the panel for the post of AWI referred the matter to the Railway Board for clarification. In reply, the Board intimated vide letter dated 3.12.1971 that the final panel for the general posts including the post of AWI shall be prepared in accordance with para 216(h) of the Railway Establishment Manual(hereinafter referred to as the Manual). After receiving this communication the General Manager prepared a fresh panel excluding the petitioners and 5 others from the old panel and included the names of 8 new persons, namely, the respondent nos. 4 to 11. After the revesion of the panel on 29.12.1971, the promotion order of the petitioners as AWI was cancelled and the same was ordered to be treated as fortuous.

4. Aggrieved by their reversion, the petitiner nos. 1 and 2 filed Civil Misc. Writ Petition No. 1332 of 1972 under Art.226 of the Constitution on 25.2.1972 in the Allahabad High Court. The said writ petition was allowed on 4.8.1972 by a Single Judge but on filing two Special Appeal nos. 568 and 575 of 1972 against the said decision by the Railway Board and some private respondents, the Division Bench set aside the Single Judge

A3/3

decision and dismissed the writ petition of the petitioner nos. 1 and 2. The petitioners did not go in appeal before the Hon'ble Supreme Court against the decision of the Division Bench in Special Appeals.

5. One A.P.Srivastava, who was also selected as AWI with the petitioners and his name was at sl.no.11 in the panel prepared on 26.4.1971 had filed Civil Writ Petition No.2 of 1976 before the Lucknow Bench of the Allahabad High Court under Art.226 of the Constitution which was heard by a Division Bench and was allowed on 3.12.1976 and A.P.Srivastava, petitioner was restored to the post of AWI. The certificate of fitness sought by the Railway Board and others for filing appeal before the Hon'ble Supreme Court was refused by the Division Bench on 21.4.1980. The Railway Board thereafter filed Special Leave Petition No.6973 of 1980 before the Hon'ble Supreme Court for leave to appeal against the decision in writ petition no.2 of 1972 but the same was dismissedl on 16.3.81

6. In accordance with the decision of the Lucknow Bench of the Allahabad High Court, A.P. Srivastava was restored to the post of AWI but the railway administration refused to give the advantage of the decision in the said writ petition to the petitioners and others despite a representation by the petitioner no.1. This writ petition was filed on 26.7.1982 for including the names of the petitioners in the panel dated 26.4.1971 of AWI and for quashing General Manager's order dated 12.5.1982, Railway Board's order dated 20.3.82,

A3/4

and the recast panel dated 29.12.1971 with the allegations that the interpretation of para 216(h) of the Manual was not correctly made and no finality could be attached to the decision in the earlier writ petition no.1332 of 1972 filed by the petitioner nos. 1 and 2. The petitioners had obtained more marks than Sri A.P.Srivastava who was restored to the post of AWI by the High Coaurt and the petitioners are also entitled to the benefit of the decision in his writ petition. The impugned orders dated 20.3.1982 and 12.5.1982 of the Railway Board and the General Manager are illegal and the petitioners having been rightly selected as AWI on the basis of their eligibility could not be reverted after removing their names from the panel and the impugned orders are violative of Articles 14 and 16 of the Constitution.

7. The writ petition has been contested on behalf of the respondents. One counter affidavit was filed on behalf of the Union of India, Railway Board and Chief Personnel Officer, N.E.Railway- respondent nos. 1 to 3 by the Assistant Personnel Officer Gorakhpur and it was stated therein that in the preparation of panel of AWI the instructions contained in para 216(h) of the Manual were not kept in view and the principle of seniority was not followed on account of which the General Manager had made the reference to the Railway Board and on the direction of the Railway Board, the panel was recast in accordance with the rules and the names of the petitioners and 5 others were deleted from the panel and they were consequently reverted to their substantive posts. The petitioner no.3 did not challenge the deletion of his name from panel in 1971 by the General Manager and his petition filed along with other peti-

tioners in 1982 is highly belated and is also barred by principle of res judicata. It was further stated that in his writ petition no. 2 of 1972 A.P.Srivastava had prayed to quash the order dated 29.12.1971 of the General Manager amending the panel and in the alternative for redrawing the panel but the Division Bench of the High Court did not grant any of these reliefs to him and only he was restored to the post of AWI. The decision in the said writ petition, therefore,cannot be applied to other persons whose names were deleted from the panel along with him. The Special Leave Petition (for short SLP) filed by the railway administration was rejected by the Hon'ble Supreme Court as it did not involve any substantial question of law of general importance. The claim of the present petitioners was not considered in the writ petition filed by A.P.Srivastava and as the writ petition filed by the petitioner nos. 1 and 2 earlier was already dismissed by the Allahabad High Court the benefit of the decision in writ petition no.2 of 1972 cannot be extended to any other person and the representations filed by the petitioner no.1 and some other persons were rightly rejected by the General Manager.

8. It was further stated that Empanelment of respondent no.4 to 11 was made on recasting the panel in pursuance of the directions of the Railway Board contained in its letter dated 31.12.1971 and as the panel so recast was not quashed by Lucknow Bench of the Allahabad High Court (hereinafter referred to as the Lko. Bench) and the Hon'ble Supreme Court did not set-aside the judgment dated 31.10.1972 of the Allahabad High Court passed in special appeals, the petitioners have no case and their writ petition is liable to be dismissed.

9. On behalf of the respondent nos. 4,5 and 9 to 11 a separate counter affidavit was filed by respondent no.11 on similar lines. It was further stated therein that after the dictation of the judgment in writ petition no.2 of 1972 the respondent no.8 Y.N.Shukla had moved an application on 3.12.1976, copy annexure C.A.1, for staying the operation of the judgment for one month to enable him to approach the Hon'ble Supreme Court and obtain a stay order but the said application was rejected by the Bench on 3.12.1976 with the observation that it was misconcieved as the Bench had not given any relief against Y.N.Shukla vide copy annexure CA-2. The petitioners, therefore, cannot reagitate the matter in this writ petition for the inclusion of their names in the panel and for the deletion of the names of respondent nos. 4 to 11.

10. In the rejoinder filed on behalf of the petitioners, it was stated that the letter dated 3.12.1971 of the Railway Board for recasting the panel was not correctly interpreted by the General Manager. Only the inter-se seniority of the duly empaneled candidates was to be reassigned under this letter and the General Manager wrongly reframed a new panel deleting the names of the petitioners and some other persons and adding the names of respondent nos. 4 to 11, which was not in accordance with the spirit of the letter of the Railway Board and the provisions of para 216(h) of the Manual. The Allahabad High Court in its judgment dated 31.10.1972 in special appeals had neither discussed nor decided the scope of para 216(h) and as such, the decision in the special appeals does not have the force of res judicata and as the matter was continuously sub-judiced in the High Court and the Hon'ble Supreme Court, the petition is also not belated. It

was further stated that the judgment of the Lucknow Bench involved a question of law of general importance and the Supreme Court had rejected the SLP of the railway administration after hearing the contentions of both the parties for three days and judgment of the Lko.Bench being a policy judgment based on the scope and interpretation of para 216 (h) of the Manual, it is equally applicable to the petitioners and the contention to the contrary made by the respondents is not correct. According to the decision of the Lko.Bench the empanelment of respondent nos.4 to 11 is incorrect and illegal and it automatically stood quashed. The petitioner nos. 1 and 2 were later on promoted as AWI vide order dated 30.12.1972 by the General Manager vide annexure RA-3 which proves that the respondent nos. 1 and 3 were fully convinced about the injustice done to them. It was further stated that the petitioner nos.1and 2 were selected in subsequent panels in 1979 and 1982 respectively and they are entitled to their seniority and other benefits on the basis of original panel.

11. We have very carefully considered the contentions raised on behalf of the parties before us and are of the view that in view of the various decisions of the Allahabad High Court on the point in issue we are, perhaps, not required to examine the merits of the case of the petitioners to see whether their empanelment made on 26.4.1971 was correct and the deletion of their names from the panel subsequently on 29.12.1971 was incorrect as some finality is attached to the decisions of the High Court under the law. On the deletion of their names from the panel, the petitioners 1 and 2 had filed writ petition no.1332 of 1972

A3/8

which was allowed by an Hon'ble Single Judge on 4.8.1972 and the order dated 3.12.1971 of the Railway Board for recasting the panel and the order dated 29.12.1971 of the General Manager revising the panel and reverting the petitioners were quashed with costs vide annexure 14 to the petition. One special appeal by some private respondents (respondent no.8 and one other) and another by the railway administration being special appeal nos. 568 and 575 of 1972 were filed against the said judgment, which were heard by a Division Bench and by its judgment dated 31.10.1972 the Division Bench set aside the judgment of the Hon'ble Single Judge and dismissed the writ petition with costs vide copy annexure 15 to the petition. It may be mentioned here that in both these judgments, both the Benches did take into consideration para 216(h) of the Manual though they did not enter into a detailed discussion thereon. It will suffice to say that the provisions of para 216(h) were not lost sight of ~~the framework of~~ the Hon'ble Benches but they were very much before them & form consideration.

12. As stated above, one A.P.Srivastava had filed another writ petition no.2 of 1972 before the Lko Bench challenging the deletion of his name from the panel dated 26.4.1971. This writ petition was heard by a Division Bench constituted by a set of two other Hon'ble Judges and this Bench had interpreted and considered the scope of para 216(h) of the Manual in some detail and in accordance with its interpretation, the panel of 20 persons was to be recast only by placing the candidates from one position to another according to their seniority and the panel could not be revised by deleting and adding ~~the~~ some names. The judgment of the special appeals, copy annexure 15, was also considered by this Bench and it was contended before it that the said decision was binding on the Bench even though it might not have considered any point or any new

A3/9

point might have been raised before it. This contention was repelled with the observation that in the special appeals the Division Bench did not give a finding on the scope of para 216(h) of the Manual and the ratio decidendi of that Bench will not deter the Bench hearing writ petition no.2 of 1972 from considering the point for the first time raised before that Bench and as such, the said decision was not treated as a binding precedent and the writ petition was accordingly allowed on 3.12.1976 and the name of A.P.Srivastava was ordered to be restored to the post of AWI vide copy of judgment, annexure 16.

13. It is not in dispute that the certificate of fitness sought by the railway administration for filing appeal before the Hon'ble Supreme Court against this decision was rejected by the Lko.Bench on 21.4.1980 by passing a speaking order, copy annexure 16-A, in which it was observed that there was no substantial question of law of general importance requiring a decision by the Supreme Court. These observations support the contention of the respondents raised in their counter affidavits that the SLP No.6973 of 1980 filed by the Railway Board against the decision of the Lko.Bench was rejected on the ground that there was no substantial question of law of general importance involved for the decision of the highest Court of the land. Annexure 17 is the copy of the order dated 16.3.1971 of the Hon'ble Supreme Court dismissing the SLP by passing the order "Special Leave Petition is dismissed."

14. The learned counsel for the petitioners had contended before us that the law declared by the Supreme Court is binding on all Courts within the territory of India under Art.141 of the Constitution and this Tribunal is also bound by the law laid down by the Hon'ble Supreme Court in the aforesaid SLP. It was further contended that the decision made against the petitioners 1 and 2 in the two special

A3/10

appeals by the Allahabad High Court will not operate as res judicata against the petitioners as after the decision of the Lko. Bench they have acquired a fresh right as the decision of the Lko.Bench is a policy decision for preparing the panel and it is equally applicable to the case of the petitioners. It was also contended that as the provisions of Para 216(h) of the Manual were not properly considered by the Allahabad High Court in the special appeals, its decision cannot operate as res judicata.

15. Reliance was placed on behalf of the petitioners on Korin Vs. Indian Cables Co. Ltd., (A.I.R. 1978 S.C.-312) in which considering the applicability of the bar of res judicata in a case in which the defendants had acquired certain new rights after the first decision against them the Hon'ble Supreme Court had observed that as regards, res judicata, if the nature of the defendants' interest in the disputed plots changed after TISCO recovered possession u/s.50 of the Tenancy Act, the reason given by the first appellate Court why the rule of res judicata should not apply would be sound calling for no interference. In our opinion, this decision is of no help to the petitioners as they have not acquired any new right after the disposal of the special appeals against them. The petitioners further placed their reliance on Lallu Bhai Jodi Bhai Patel Vs. Union of India (A.I.R.1981 SC-728)in which after the dismissal of a petition for habeas corpus the maintainability of a subsequent petition to challenge preventive detention on fresh grounds was not held barred by constructive res judicata. This decision is also of no help to the petitioners as it was specifically held by the Hon'ble Supreme Court in that case that the applica-

tion of the doctrine of constructive res judicata is confined to civil applications and civil proceedings and is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Art.32 of the Constitution on fresh grounds, which were not taken in the earlier petition for the same relief.

16. Reliance has also been placed on Maj.Gen.A.S. Gauraya Vs. S.N.Thakur (1986) 2 S.C.C.-709 on behalf of the petitioners in which it was held that Art.141 of the Constitution mandates every Court to accept law laid down by the ~~Hon'ble~~ Supreme Court and there is nothing like any prospective application alone of the law laid down by the Supreme Court and such law applies to all pending proceedings as well. There can be no dispute about the principle laid down by the Hon'ble Supreme Court in this case and we are of the view that in case the decision rejecting the SLP is to be interpreted as the law laid down by the Hon'ble Supreme Court, we will be respectfully bound by the said decision. We will take up the legal implications of the order of rejection of the SLP a little later.

17. The petitioners further placed their reliance on a Full Bench decision of the Allahabad High Court in Jai Narain Har Narain Vs. Bulaqi Das (1968 A.L.J-1047 (F.B.) in which it was held that it is a decision which creates a bar of res judicata and no a decree. The contention is that as there is no decision against the petitioners on the scope of para 216(h) of the Manual in the special appeals, it will not apply as a bar of res judicata in the present petition. It was also observed in that case that for the applicability of the principle of res judicata, the matter should be heard and finally decided and in the absence of the same, the principle of res judicata will not apply. There can be no quarrel so far as the

principle laid down in the Full Bench decision is concerned. The petitioners have also placed their reliance on Shankar Ram Chandra Abhyankar Vs. Krishnaji Dattatreya Bapat (1969 (2) Supreme Court Cases-74) in which the principle of merger of the orders of the inferior Courts in those of the superior Courts was recognised by the Hon'ble Supreme Court and on the basis of this decision, it was contended that after rejection of the SLP filed by the Railway Board against the decision of the Lko Bench, the decision of the Lko.Bench merged in the decision of the Supreme Court and will have a binding effect under Art.141 of the Constitution.

18. In Girijanandini Devi Vs. Brijendra Narain Choudhary (A.I.R. 1967 S.C.-1124) it was held that when the appellate Court agrees with the view of the trial Court on evidence it need not restate the facts and evidence or reiterate the reasons given by the trial Court and the expression of the general agreement would ordinarily suffice. The contention of the petitioners is that a single line rejection order of the SLP is sufficient to indicate the agreement of the Hon'ble Supreme Court with the reasonings adopted by the Lko. Bench in the writ petition of A.P.Srivastava.

19. In Hira Lal Kapoor Vs. Prabhu Choudhary A.I.R.1988 S.C. 852), it was observed by the Hon'ble Supreme Court that a plea which was not taken before the High Court and the SLP filed by the respondents against the order of High Court was dismissed, it is not open to the respondents to press the said point before the Hon'ble Supreme Court in the SLP filed by the other party. The contention of the petitioners is that the question regarding the scope of para 216 (h) of the Manual having not been pressed before the High Court in the special appeals, cannot be reagitated in this writ petition.

20. The petitioners have further contended that there cannot be different interpretation of para 216(h) of the Manual for different employees and the Lko.Bench having interpreted that para in favour of A.P.Srivastava, the petitioners should also get its advantage and reliance was placed in this connection on Agra Electric Supply Co.Ltd., Vs. Sri Alladin (A.I.R. 1970 S.C.-512). No such clear finding appears to have been given in this case and it was observed in the end of para 10 of the judgment that the applicability of the principle of res judicata was doubtful as the reference and the award under the Industrial Disputes Act were not made in different circumstances.

21. In Dalbir Singh Vs. State of Punjab (A.I.R.1979 S.C. 1384), the Hon'ble Supreme Court had considered the provisions of Art.141 of the Constitution and the applicability of rule of precedent and had made the following observations which may be of much help in appreciating the controversy before us :-

> "..... A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less'law declared'within the meaning of Art.141 of the Constitution so as to bind all Courts within the territory of India. According to the well settled theory of precedents every decision contains three basic ingredients :
>
> (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts ;
>
> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient No.(iii) is the material element ~~is the material element~~ is the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from re-opening the dispute. However, for the purposes of the doctrine of precedents, ingredient No.(ii) is the vital element in the decision. This indeed is the ratio decidendi. (53) It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi."

22. A constitution Bench of the Hon'ble Supreme Court in Daryao Vs. State of U.P. (A.I.R. 1961 S.C.-1457) had considered the scope of Section 11 of the Civil Procedure Code and the applicability of the principle of res judicata in writ petitions and it was held that the rule of res judicata has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical ; but the basis on which the said rule rests is founded on consideration of public policy. It is in the interest of public at large that a finality should attach to the binding decision pronounced by Courts of competent jurisdiction and it is also in the public interest that the individuals should not be vexed twice over with the same kind of litigation. The Hon'ble Supreme Court further held that the rule of res judicata is equally applicable to writ petitions.

23. In State of West Bengal Vs. Hemant Kumar Bhattacharya (A.I.R. 1966 S.C.-1061), another Constitution Bench of the Hon'ble Supreme Court had held that a wrong decision of a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher Tribunals or other procedure like review, which the law provides.

24. After a very careful considerations of the various decisions cited at the Bar and discussed above, we are of the view that there are two stages in a SLP. Under Art.136 of the Constitution no one has a right to file an appeal to the Hon'ble Supreme Court and such appeal can be filed only when the special leave to appeal is granted by the Hon'ble Court. As is the usual practice, the special leave is generally granted only when the appeal raises some substantial question of law of general importance or other questions of general importance or of far reaching consequences. Therefore, it may not be correct to say that the rejection of the SLP will amount to agreement of the Hon'ble Supreme Court with the judgment against which the appeal is sought to be filed. On the other hand, once the special leave to appeal is granted and the appeal is heard and dismissed, whether by passing a detailed order or short order, it will amount to a decision of the Hon'ble Supreme Court and only in that case a decision of the High Court or Tribunal against which the appeal was filed, will merge in the decision of the Hon'ble Supreme Court and it will have the force of Art.141 of the Constitution. In the present case, the SLP filed by the Railway Board was rejected by the Hon'ble Supreme Court and the Railway Board was not granted leave to appeal against the decision of the Lko.Bench. Interpreting this order of reject-

+3/16

ion or dismissal with the help of the order dated 21.4.1980, annexure 16-A, of the Lko.Bench, we will like to say that the Hon'ble Supreme Court did not grant the leave to appeal as the appeal did not involve any substantial question of law of general importance for its decision and to our mind, no other interpretation can be made. This being the position, the order rejecting the SLP cannot be said to be an order declaring any law by the Hon'ble Supreme Court under Art.141 of the Constitution and the contention made to the contrary by the petitioners is not correct.

25. Regarding the principle of res judicata, we are of the view that the single Member Bench as well as the Division Bench of the Allahabad High Court while deciding the writ petition filed by the petitioner nos. 1 and 2 and the special appeals arising therefrom did have before them para 216(h) of the Manual for consideration and, their decision should be taken to have been made after its due consideration and the present writ petition, so far as the petitioner nos.1 and 2 are concerned, is barred by the principle of constructive res judicata.

26. The other contention of the petitioners that the Lko.Bench had given its judgment on a policy matter and it being a policy decision should apply to the petitioners and other similarly situated, is also not correct. The same Bench which had allowed the writ petition of A.P.Srivastava had rejected the stay application of the respondent no.8 with the observation that the Bench did not give any relief to the petitioners against the private respondents vide copy of order annexure CA-2. Had it been a policy decision, such observations could not be made on that very day by the Bench which had allowed the writ petition. We are, therefore, of the view that the petitioners are not entitled to any benefit under the said

decision in the present writ petition.

27. In the end, we conclude that so far as petitioner nos. 1 and 2 are concerned, the writ petition is barred by principle of res judicata and as the petitioner no.3 is also sailing in the same boat with them and he had slept over the matter for a long period of about 11 years after the deletion of his name from the panel, he cannot be granted any relief on the ground of undue delay and laches. We are further of the opinion that on the reasonings adopted by the Allahabad High Court in the special appeals with which we agree, the petitioner no. 3 has no case on merits and on this ground as well, he is not entitled to any relief.

28. The writ petition is accordingly dismissed without any order as to costs.

MEMBER (J)

MEMBER (A)

Dated: 17.10.1988.
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