

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF JUDGMENT: 3.1.90

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 114/89

V. Manoharan

Applicant

Vs.

1. The Sub-Divisional Inspector of Post Offices, Mattannur Sub Division, P.O. Mattannur
2. The Supdt. of Post Offices, Tellicherry Division, Tellicherry
3. Ashokan C., Shreeji Nilayam, Panunda, P.O. Pachapoika and
4. R. K. Chandri, Kuniyil House, Paramhai, P.O. Mambram, Via Pinarayi

Respondents

M/s. P. A. Mohammed & K. K. Mohamed
Ravuf S.

Counsel for the applicant

Mr. K. Narayananakurup, ACGSC

Counsel for R -1 & 2

M/s. M. K. Damodaran, C. T. Ravikumar & K. S. Saira

Counsel for R-3

M/s. P. V. Narayanan Nambiar & M. P. Ashok Kumar

Counsel for R-4

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

This is another case dealing with the controversy in respect of the appointment of Extra Departmental Branch Post Master in Pachapoika Branch Post Office. The

connected case, O.A. 60/89, heard along with this case today, has been allowed and in the view already taken in that case, we have only to close this case holding that the applicant has not established any legal right.

2. The applicant, who had been appointed only as a provisional EDBPM, Pachapoika for a period of two months from 20.8.1983 to 19.10.1983, but continued upto the order at Annexure-I dated 14.12.88 by virtue of the stay order in O.P. 8513/83 issued by the High Court of Kerala, filed this case with the following reliefs:

- " i) to call for records relating to Annexure-1 and to quash the same
- ii) To cancel the steps taken by the respondents 1 and 2 for making afresh selection pursuant to Annexure A-4 and
- iii) To allow the petitioner to continue as EDBPM of Pachapoika Post Office without any break of service after reinstating him in service."

3. The applicant filed O.P. 8513/83 before the High Court of Kerala challenging the steps taken by the respondents 1 & 2, to terminate his provisional service on account of the completion of the regular selections to the post of EDBPM. The case was later transferred to this Tribunal under Section 29 of the Administrative Tribunals Act 1985 and renumbered as T.A. K. 595/87. It was heard and dismissed as per judgment dated 8.12.1988. The review application filed was allowed; but the case

was again dismissed as per judgment dated 14.2.89.

4. Presumably the applicant filed this case in view of the observations in the judgment reserving his right to challenge the termination order. However, his challenge against Annexure-IV fresh selection after the dismissal of the earlier O.A. filed by the applicant has been considered and quashed by us/while disposing of the connected case, O.A. 60/89.

5. Therefore the only relief/nov survives for consideration in this case is about the legality of Annexure-I, the order of termination of the service of the applicant and fresh selection to the post. His case is that the fourth respondent who had been regularly selected xxxxxxxxxxxxxxx as early as in 1983 is not residing with the jurisdiction of the Pachapoika BPO and that the only qualified person to be appointed under the Rules is the applicant. He did not challenge the initial /^{rejection} of the fourth respondent even though he filed the earlier case before the High Court on 2nd October, 1983. But he made an attempt to challenge the selection by filing a rejoinder in that case on 14.2.1989 which was dealt with by the Tribunal in the following manner:

"Today when this matter was taken up for hearing it was admitted by the counsel of the applicant that on 17.12.88 the services of the applicant have been terminated. He invited our attention to the rejoinder filed by the applicant on 14.2.89 and submitted that the order dated 17.12.88 by which the services of the applicant have been terminated as well as

the selection made by the second respondent have to be cancelled. It is seen that in the rejoinder two such specific reliefs have been prayed for. We are afraid that it is not open to a party to claim substantive reliefs in a rejoinder to an application filed at the fag end of the proceedings before the Tribunal. When a party seeks a particular relief it is fundamental that necessary averments in support of the relief should be set forth in the application and the opposite party is enabled to file his reply thereto. Besides, from the nature of the averments in the present application and from the scope of the relief that is claimed therein, what is sought for at this stage in the rejoinder is something totally different. Moreover without the selected candidate on the party array the question of cancellation of the selection as such cannot be considered."

6. The respondents 1 & 2, 3 & 4 have filed separate counter affidavits and opposed the application. But we feel that the applicant's plea against the appointment of the fourth respondent is barred by principles of constructive resjudicata as against respondents 1 & 2. & 4. In fact securing of justice is one of the objectives of our Constitution. Rules of evidence, rules of procedure and doctrine of resjudicata will all apply to the enforcement of fundamental rights as they do to the enforcement of other rights. Gagendragadkar, J., as he then was, said in Daryao V. State of Uttar Pradesh (AIR 1961 S.C. 1457) " It is in the interest of public at large that a finality should attach to the binding decisions pronounced by the courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of general law of res judicata

they cannot be treated as irrelevant and/or inadmissible even in dealing with fundamental rights in petition filed under Article 32." This principle is further amplified and Somerveli L. J. said as follows in Greenhalgh V. Mallard (1947 2 All. E.R. 255):

" 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 issue 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."

The Supreme Court in State of Uttar Pradesh V. Nawab Hussain (AIR 1977 SC 1680) also held " that is why this other rule has sometimes been referred to as constructive res judicata which in reality is an aspect or amplification of the General Principle." (emphasis ours).

In this case the Supreme Court applied the principles of constructive res judicata in a case where the petitioner filed a suit on the ground that his dismissal is violative of Article 311 after the dismissal of his writ petition challenging the disciplinary proceedings and termination of service on the ground of violation of principles of natural justice and held " The court held that the case is "clearly barred by the principles of constructive res judicata and the High Court erred in taking a contrary view." Same view was taken by the Supreme Court in K. M. Oil Extraction (P) Ltd., and another Vs. State of M.P. and other (AIR 1986 SC 1929)



The elucidation of this rule is stated at page 152 of Spencer Bower and Turner on 'Res Judicata' 2nd Edition.

The relevant portion reads as follows:

"On the whole, it is conceived that the rule may compendiously, but safely, be stated in the following form. Where the decision set up as a res judicata necessarily involves a judicial determination of some question of law or issue of fact, in the sense that the decision could not have legitimately or rationally pronounced by the tribunal without at the same time, and in the same breath, so to speak, determining that question or issue in a particular way, such determination, even though not declared on the face of the recorded decision, is deemed to constitute an integral part of it as effectively as if it had been made so in express terms but, beyond these limits, there can be no such thing as a res judicata by implication."

This principle which is otherwise known as Doctrine of 'right and ought' or constructive res judicata squarely applies to the facts of this case.

7. In the instant case as between the applicant and respondents 1 & 2 the issue is barred by constructive res judicata. In the counter affidavit filed by the respondents 1 & 2 in the earlier case they had stated that all the three candidates viz. the applicant, and respondents 3 & 4, "satisfied the conditions prescribed in the notification for the post. Out of them Smt.

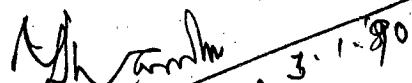
R. K. Chandri, the candidate at item 2 of the statement was selected by the Supdt. of Post Offices, Tellicherry Division." This counter affidavit was filed on 10th July, 1984 in that case, but the applicant did not challenge the appointment of Smt. Chandri. The decision in that case was rendered by the Tribunal after adverting

to this aspect. The applicant ought to have challenged this appointment of Smt. Chandri, the fourth respondent in this case itself. The failure bars him from questioning the same in subsequent proceedings. Now this question is barred by the principles of constructive res judicata and we decide this question against the applicant.

8. But with regard to his termination of service as covered by Annexure-I order dated 14.12.1989 and the further regular selection to the post of EDBPM this principle would not apply in view of the reservation contained in the concluding portion of the judgment that the applicant, if so desires, may have the freedom to challenge the order of termination of his service and the regular selection to the post which the respondents 1 & 2 proposed to initiate after the judgment of the Tribunal. With regard to the former there is no fresh materials to establish that Annexure-I order is illegal-except a mere statement by the applicant that he is the only qualified person to be selected as EDBPM under the provisions of the relevant Rules. According to us, this is a matter within the jurisdiction of the respondents 1 & 2 and they had made a proper assessment of the respective merits and qualification of the applicant and the respondents 3 & 4 and selected the fourth respondent. Consequently Annexure-I order was passed to provide place for accommodating the

regularly selected candidate. There is no allegation of malafide or other illegality against the decision of the respondents. So we have to uphold Annexure-I. Similarly with regard to the challenge against the further scopes for a fresh selection after the judgment we have considered the issue and quashed all the further steps initiated by the respondents 1 & 2 for making a fresh selection to the post of EDBPM, Pochapoika after the judgment in the earlier case, as we felt that the selection of Respondent-4 cannot be cancelled on the alleged fraud that she was not a resident in the jurisdiction of the Post Office. Therefore, nothing further survives for our consideration in this case and the application is only to be dismissed.

9. Accordingly we do so. There will be no order as to costs.


(N. Dharmadan)

Judicial Member


(N. V. Krishnan)
Administrative Member

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