

(57)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.462/90.

Date of Judgement : 9-12-93

B.R.K.Gouri Sankar

.. Applicant

Vs.

1. Divl. Signal & Tele-communications Engineer,
S.C.Rly., Hubli.
2. Divl. Personnel Officer,
S.C.Rly., Hubli.
3. The Chief Personnel Officer,
S.C.Rly., Rail Nilayam,
Secunderabad.
4. The Chief Signal & Tele-communications Engineer,
S.C.Rly., Secunderabad.
5. The Divl. Ely. Manager,
S.C.Rly., Vijaywada.
6. The Sr. Divl. Signal & Tele-communications Engineer,
S.C.Rly., Vijaywada. .. Respondents

Counsel for the Applicant :: Shri G.V.Subba Rao

Counsel for the Respondents:: Shri N.R.Devaraj, SC for Rlys.

C O R A M

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The Applicant, having been selected as an apprentice ESM was deputed to undergo training w.e.f. 27.1.81. He underwent training at various places till he fell sick on 5.4.82 while on training at Hubli. His request to transfer him to Rajahmundry was turned down. He, therefore, left for home where he was treated by a private medical officer. When he recovered from his illness, he was reposted

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to DSTE Hubli, but he was not allowed to continue his training. His service with the Respondents thus stood terminated. Aggrieved by it, he filed O.A.No.83/89 which was dismissed with the following observation:-

"The application is hopelessly time-barred and is not maintainable. This Miscellaneous Application is accordingly dismissed. Consequently the O.A. is also dismissed. In the circumstances, no order as to costs."

2. The first and foremost issue to be decided in the present O.A. is whether it is maintainable despite the fact that an earlier, identical application was dismissed by the Tribunal on the ground of limitation.

3. We have heard Shri G.V.Subba Rao, learned counsel for the Applicant at length. His main contention is that as the earlier O.A. was dismissed not on merits but on the technical plea of limitation, a fresh O.A. claiming the same relief can be heard on merits. In support of his argument, he made reference to some decided cases, which are discussed in the succeeding paragraphs.

4. In The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust & Another, AIR 1978 SC 1283, the issue that came up for consideration was whether dismissal of Special Leave Petition in limine would bar a subsequent writ petition under Article 226 of the Constitution on the same grounds. Holding that the rule of res judicata would not apply, the Supreme Court observed thus:

"Dismissal of a special leave petition under Art.136 need not necessarily bar the entertainment of a writ petition under Art.226 on the same grounds. Where the award of the Industrial Tribunal is challenged in the special leave petition before the Supreme Court on almost all grounds which are in the subsequent writ proceeding agitated in the High Court, the principles of constructive res judicata would apply. However, from the order dismissing the special leave petition in limine it cannot be inferred

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that all the matters agitated in the writ petition were either explicitly or implicitly decided. The technical rule of res judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res judicata to such an extent so as to found it on mere guess-work." (emphasis added)

5. It is evident that in the present case, there cannot be any doubt that the earlier O.A. claiming identical relief was dismissed for delay. Moreover, the principle laid down by the Hon'ble Supreme Court pertained to the maintainability of a writ petition under Art.226 after an S.L.P. was dismissed in limine. The facts of the case before us clearly show that a specific prayer was made in M.A.No.227/89 for condoning delay in filing O.A.No.83/89 and that aspect was duly and fully considered by the Tribunal in its reasoned judgement dt. 23.6.89, by which both M.A.No.227/89 and O.A.No.83/89 were dismissed. There is hardly any scope for 'guess-work' or 'uncertain assumption' as to the reason why the earlier O.A. was dismissed by the Tribunal. Hence the ratio of The Workmen of Cochin Port Trust case cannot be applied to the present case. In this view that we have taken, we are supported by Hoshnak Singh Vs. Union of India & Ors. AIR 1979 SC 1328, relied upon ^{by} the applicants' counsel also. While taking the same view as in The Workmen of Cochin Port Trust case (supra), the Hon'ble Supreme Court further clarified that when a petition is dismissed in limine without passing a speaking order, it would not be easy to decide what factors weighed in the mind of the court. That problem would not arise in the present case, as already stated.

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6. It was observed by the Supreme Court in B.Prabhakar Rao & Ors. Vs. State of Andhra Pradesh & Ors. 1985(3) SLR 138 that dismissal in limine of a similar writ petition earlier would not bar a subsequent writ petition and that it could at best "inhibit our discretion but not our jurisdiction".

7. A reference was made to AIR 1993 SC 1756 wherein it was held that when an earlier suit for injunction was dismissed on technical ground it would not bar a subsequent suit for declaration and recovery of possession. The causes of action being different, it was held that the later suit was also not barred by Order 2 Rule 2(3) of the Civil Procedure Code.

8. In deciding the issue, we need not traverse beyond what has been laid down in Teja Singh Vs. The Union Territory of Chandigarh & Ors. 1981(1) SLR 274. A full bench of the Punjab and Haryana High Court, having made extensive references to Daryao & Ors. Vs. State of U.P. & Ors. 1962(1) SCR 574, Hoshnak Singh Vs. Union of India & Ors. AIR 1979 SC 1328 and The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust & Another, AIR 1978 SC 1283, summed up the law, in this regard, in the following words:-

- "(3) That when a writ petition is dismissed after contest by passing a speaking order, then such decision would operate as res judicata in any other proceeding such as suit, a petition under Art.32 etc.
- (4) That if a petition is dismissed only on the ground of laches or the availability of an alternate remedy or on a ground analogous thereto, then any other remedy by way of suit or any other proceeding will not be barred on principle of res judicata.
- (5) That even in cases where a petition is dismissed on the grounds of laches or on the ground of alternate remedy or on a ground analogous thereto, a second petition on the same cause of action under At.226 would be barred.

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- (6) That there is an exception to proposition (5) that where the first petition is dismissed on the ground that the alternative remedy under the Act has been availed of, then after availing of the statutory remedy under the Act, a second petition may be maintainable on the principle that the same has been filed on a cause of action which has arisen after the decision of the appropriate authority under the Act.
- (7) That a second petition on similar facts and in respect of the same cause of action by the same party would not be maintainable even if his earlier petition has been disposed of by one word 'Dismissed'.

9. In view of the settled position of law, we unhesitatingly conclude that when an Original Application filed before the Tribunal is dismissed on the ground of limitation, a subsequent application claiming the same relief would be barred on the principle of res judicata. It may not bar any other remedy or proceeding but we are here not concerned with that contingency.

10. We have heard learned counsel for the Applicant on the merits of the case as also on his contention that the right to work, being a right to livelihood acquired the stature of a fundamental right and cannot be denied to a citizen on the technical pleas. In support of his contention, he has drawn our attention to several judgments. It is not necessary for us to make any reference to them or to examine the case on merits because of our observation that the present O.A. is barred by the principle of res judicata. It is a rule of law that the same point once decided by a competent court is not permitted to be agitated again. The rule of res judicata is intended not only to prevent new and possibly conflicting decisions but also to prevent a party from the harassment of establishing his case over and again.

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11. In the result, we hold that the O.A. is liable to be dismissed on the principle of res judicata and it is, therefore, dismissed hereby. No order as to costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

(A.B.Gorthi)
Member(A).

Dated: 9 Dec., 1993.

br.

Deputy Registrar(Judl.)

Copy to:-

1. Divl. Signal & Telecommunications Engineer, S.C.Rly, Hubli.
2. Divl. Personnel Officer, S.C.Rly, Hubli.
3. The Chief Personnel Officer, S.C.Rly, Rail Nilayam, Secunderabad.
4. The Chief Signal & Telecommunications Engineer, S.C.Railway, Secunderabad.
5. The Divl. Ely. Manager, S.C.Railway, Vijayawada.
6. The Sr. Divl. Signal & Telecommunications Engineer, S.C.Railway, Vijayawada.
7. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
8. One copy to Sri. N.R.Devaraj, SC for Rlys, CAT, Hyd.
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O.A. 462/90

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17/12/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: *9/12/* -1993

ORDER/JUDGMENT:

For Typing

M.A./R.A./C.A. No.

O.A. No.

462/90

T.A. No.

(W.P.)

Admitted and Interim
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

