

In the High Court of Judicature at Madras

Dated: 10.04.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.610 of 2015 and
M.P.No.1 of 2015

Micro Electric Controls
Rep. by its Proprietor Mr.G.R.Jaganathan
New No.170, Railway Station Road,
Periyanaicken Palayam,
Coimbatore - 641 020 ..Appellant/ Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Coimbatore

2. G.Francis Raja ..Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the order of this Court dated 18.02.2015 made in W.P. No. 31364 of 2014. Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the entire records pertaining to the impugned award dated 11.3.2002 passed in Industrial Dispute No.322/1999 on the file of the Labour Court, Coimbatore and quash the same and consequently direct the 1st respondent to conduct a fresh trial by taking into account the report of the Forensic Department , Government of Tamil Nadu, dated 9.4.2012.

For Appellant :Mr.M.S.Ramesh

JUDGMENT

[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

The Appellant / Petitioner has projected the instant intra Court Appeal as against the order dated 18.02.2015 in W.P.No.31364 of 2014 passed by the Writ Court.

2.The Writ Court while passing the impugned order on 18.02.2015 in W.P.No.31364 of 2014 (filed by the Appellant/Petitioner) had inter alia observed in Paragraph Nos.11 to 13 as under and resultantly dismissed the Writ Petition without costs.

"11. The petitioner-management should have taken the steps at the earliest point of time i.e., before the Labour Court while conducting I.D.No.322 of 1999. That apart, even the finding given by the Forensic Department is not conclusive and the same have to be established only by adducing acceptable evidence. It is also brought to the notice of this court that the management has not filed any appeal as against the order passed in the writ petition in W.P.No.7781 of 2003. Therefore, the order passed by this court has become final. That being the case, filing of the second writ petition seeking to quash the award passed in I.D.No.322 of 1999, which was already confirmed in W.P.No.7781 of 2003 cannot be entertained. Only if the award passed in I.D.No.322 of 1999 is set aside, the consequential relief, i.e., to direct the Labour court to conduct fresh trial will arise. When the award passed in I.D.No.322 of 1999 was confirmed by this court in the earlier writ petition, that cannot be interfered by this court again in the writ petition and therefore, the consequential relief also cannot be granted. If this writ petition is entertained, it would virtually amounts to nullifying the earlier order passed in W.P.No.7781 of 2003, which cannot be done.

12.It is needless to say that the order passed by the learned Single Judge can be interfered only by a Higher Forum and not by this court in an another writ petition. If the order passed by the learned Single Judge is interfered in this writ petition, it virtually amounts to sitting on appeal over the said order or on review over the said order, which cannot be done under the law. Merely because the petitioner had obtained a report from the Forensic Science Department in its favour, that too, without notice to the employee, shall not give rise to fresh cause of action.

13. In these circumstances, the judgments relied upon by the learned counsel for the petitioner are not applicable to the facts and circumstances of the present case...."

3.The Learned Counsel for the Appellant/Management urges before this Court that the Order of the Writ Court dated 18.02.2015 passed in W.P.No.31364 of 2014 is against the well settled principles of constructive Res Judicata and therefore it is liable to be set aside.

4.The Learned Counsel for the Appellant contends that the Writ Court should have seen that the second Writ Petition was filed based on subsequent cause of action which was non-existent when the First Writ Petition was filed and the same would not disable the Appellant from filing a fresh Writ Petition on the subsequent cause of action.

5.The Learned Counsel for the Appellant submits that the Writ Court ought to have considered that the second Writ petition is not barred by the principles of Res Judicata or Constructive Res Judicata.

6.Advancing his arguments, the Learned Counsel for the Appellant proceeds to take a plea that when a Writ Petition is brought on a non-existent cause of action, it would not disable the Appellant/Petitioner from filing a fresh Writ Petition on the subsequent cause of action.

7.Further, it is represented on behalf of the Appellant that the Writ Court should have allowed the Writ Petition, since the Appellant is now seeking for an opportunity to enable it to mark the copy of the subsequent Report of the Forensic Department, Government of Tamilnadu dated 09.04.2012 before the First Respondent/Labour Court, Coimbatore and therefore should have allowed the Writ Petition.

8.Finally, it is the contention of the Learned Counsel for the Appellant that the Writ Court should have considered that since the cause of action for the second Writ Petition is subsequent and distinct, ought to have allowed that the order in the First Writ Petition in W.P.No.7781 of 2003 merges with the order in the Second Writ Petition in W.P.No.31364 of 2014.

9.The Learned Counsel for the Appellant relies on the decision of the Hon'ble Supreme Court in State of Haryana and Others v. M.P.Mohila, (2007) 1 Supreme Court Cases 457 at special page 459 whereby and whereunder it is observed as follows:-

"....d. A dispute between the parties once adjudicated must reach its logical conclusion. If a specific question which was not raised and which had not been decided by the High Court the same would not debar a party to agitate the same at an appropriate stage, subject, of course, to the applicability of principles of res judicata or constructive res judicata. If a subsequent cause of action has arisen in the matter of implementation of a judgment, a fresh writ petition may be filed, as a fresh cause of action has arisen...."

10. At the outset it is to be pointed out that the 2nd Respondent/Petitioner filed I.D.No.322 of 1999 on the file of the 1st Respondent/Labour Court, Coimbatore praying to set aside the oral termination dated 04.02.1999, to award him back wages for the month of January and February, 1999 and for ordering his reinstatement with continuity of service, other benefits and salary increments etc., In fact, the Appellant/Management before the Labour Court took a plea that the 2nd Respondent/Employee gave a resignation letter on his own volition on 29.07.1998, which was accepted by the Management and therefore he was relieved from service/employment.

11.The prime stand of the Appellant/Management before the Labour Court was that no dues were payable to the 2nd Respondent/Employee and further when he had resigned his job even on 29.07.1998, the question of paying wages for the month of January and February, 1999 does not arise. Also, it is the plea of the Appellant/Management that there was no necessity for it to orally terminate the 2nd Respondent, that too from 04.02.1999. Further, it is represented that since the case of the 2nd Respondent/Employee is one of voluntary resignation, the issuance of show cause notice for conducting an enquiry does not arise.

12.The 1st Respondent/Labour Court, Coimbatore in I.D.No.322 of 1999 (filed by the 2nd Respondent - Employee) passed an award on 11.03.2002 ordering reinstatement and back wages. In fact, the Labour Court in the Award categorically opined that the signature found in Ex.M3 was not proved to be that of the 2nd Respondent/Employee (Petitioner in I.D.No.322 of 1999). To put it precisely, the plea taken on behalf of the Appellant/Management that the 2nd Respondent/ Employee gave a resignation letter on 29.07.1998 and the same was accepted on 30.07.1998 and accordingly he was relieved from work/service was not accepted by the Labour Court. Further, the Labour Court came to the conclusion that because of the inconsistencies of the Management, it was evident that the 2nd Respondent/Employee had attended the work till 04.02.1999. In short, the 1st Respondent/Labour Court, Coimbatore in I.D.No.322 of 1999 finally found that the termination of the 2nd Respondent/Employee was unlawful and ordered reinstatement with continuity of service and back wages.

13. It comes to be known that being dis-satisfied with the award passed by the Labour Coimbatore in I.D.No.322 of 1999 dated 11.03.2002, the Appellant/Management filed W.P.No.7781 of 2003 before this Court and this Court by means of an order dated 23.12.2009 came to the conclusion that the Appellant/Management had failed to establish the truth and genuineness of Ex.M3, Resignation Letter. Ultimately, this Court affirmed the award passed by the Labour Court and dismissed the Writ Petition.

14.In the afore said background, the Appellant/Management once again filed W.P.No.31364 of 2014 as petitioner, before this Court seeking to call for the entire records pertaining to the Impugned Award dated 11.03.2002 passed in I.D.No.322 of 1999 on the file of the 1st Respondent/Labour Court, Coimbatore and to quash the same. Further, the Appellant had also sought for a consequential direction being issued to the 1st Respondent/Labour Court, Coimbatore to conduct a fresh trial by taking into account the report of the Forensic Department, Government of Tamilnadu dated 09.04.2012.

15.It is an admitted fact that after dismissal of W.P.No.7781 of 2003 by this Court on 23.12.09, the Appellant/Management had obtained the 2nd Respondent's original resignation letter and sent the same to Superintendent of Police, Coimbatore for verification of his signature. In reality, the 2nd Respondent/Employee's

signature was forwarded to the Forensic Department, Chennai for comparison and the Department gave a finding in its report dated 09.04.2012 in favour of the Appellant/Management stating that Ex.M3, Resignation Letter was signed and written by the 2nd Respondent. Only after obtaining the report from the Forensic Department, the Appellant/Management filed W.P.No.31364 of 2014 before this Court mentioning the Award passed by the 1st Respondent/Labour Court was to be set aside and further a direction to be issued to the 1st Respondent/Labour Court to conduct a fresh trial by taking into consideration the Report of the Forensic Department.

16.At this stage, it cannot be forgotten that the relief sought by the Appellant/Management in W.P.No.31364 of 2014 to the effect to quash the award dated 11.03.2002 passed by the 1st Respondent in I.D.No.322 of 1999 was affirmed by this Court in W.P.No.7781 of 2003 (filed by the Appellant/Management) and in fact, the said Writ Petition was dismissed. Indeed, only when the Award passed in I.D.No.322 of 1999 dated 11.03.2002 by the 1st Respondent/ Labour Court, Coimbatore is set aside by a Court of Law, the consequential relief, viz., praying for issuance of direction to the 1st Respondent/Labour Court to conduct a fresh trial would crop up for consideration. In fact, the Award passed by the Labour Court in I.D.No.322 of 1999 was confirmed by this Court in earlier Writ Petition and when that be the fact situation, the W.P.No.31364 of 2014 filed by the Appellant/Management before the Writ Court is per se not maintainable in the Eye of Law, in the considered opinion of this Court.

17. At this stage, this Court aptly points out that the basic idea in Rule of 'Res Judicata' as sprouted from the maxim 'NEMO DEBET BIS VEXARI PRO UNA ET EADEM CAUSA' (No Homo-Sapien should be vexed twice over for the same cause).

18.Moreover, 'Res Judicata' is a rule of procedure and it cannot change the 'Law of the Land' and it is not concerned with the question whether previous decision is right or wrong. It cannot be gainsaid that when the parties litigate in respect of a subject matter, or on same facts, the earlier decision is clearly applicable in subsequent litigation, as opined by this Court.

19.It is to be noted that the 'Res Judicata' endorsed in Section 11 of Code of Civil Procedure contains the Rule conclusiveness of the Judgment/Order. An issue of fact determined finally between the parties by a competent Court of Jurisdiction, would operate as 'Res Judicata' when the same issue comes directly in question in subsequent proceedings between the same parties. In fact, the principle for 'Res Judicata' bars retrial and decision onceagain of what was concluded. Suffice it for this Court to point out that 'Res Judicata' applies when fresh proceedings/suit is brought on the same cause of action. It is true that the provisions of Civil Procedure Code are inapplicable to Writ Proceedings. However, it is to be remembered that the basic principles like 'Res Judicata' do certainly apply. Moreover, the

'Constructive' 'Res Judicata' applies to Writ. No wonder 'Res Judicata' is a principle of Equity, Good conscience and Justice. Also that, it is neither equitable, nor fair, nor in accordance with the principle of Justice that an issue that was decided / concluded earlier should be permitted to be raised subsequently in different proceedings. It cannot be lost sight of that 'Res Judicata' is not a technical Rule, but it is undoubtedly a 'Rule of Public Policy'.

20.Be that as it may, a careful consideration of the contentions advanced on behalf of the Appellant/Management and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case in an wholesome manner comes to an inevitable and inescapable conclusion that the Writ Court had rightly observed that if the Writ Petition No.31364 of 2014 was entertained, it would virtually amounted to nullifying the earlier order passed by this Court in W.P.No.7781 of 2003 and in fact, this Court is in complete agreement with the view so taken in this regard. As a matter of fact, the order of the Writ Court in dismissing the Writ Petition No.31364 of 2014 dated 18.02.2015 filed by the Appellant does not suffer from any legal infirmity or material irregularity in the Eye of Law. Consequently, the Writ Appeal fails.

21.In the result, the Writ Appeal is dismissed, leaving the parties to bear their own cost. Resultantly, the order of the Writ Court dated 18.02.2015 in W.P.No.31364 of 2014 is confirmed by this Court for the reasons assigned in this Appeal. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Presiding Officer,
Labour Court, Coimbatore.

+ 1 cc to M/s. M.s. Ramesh, Advocate Sr.19870

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