

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT APPEAL No.34 of 2019

Date: 28.10.2019

Between:

The Singareni Collieries Company Limited
& two others

..Appellants

And

Bathula Sathaiah

..Respondent

Counsel for the appellants : Mr.J.Sreenivasa Rao

Counsel for the respondent : Mr.Chidagam Srinivas for
Mr.K.Vasudeva Reddy

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Writ Appeal is filed by the Singareni Collieries Company Limited and its Officers assailing the order of the learned Single Judge, dated 18.09.2018, passed in W.P.No.2271 of 2011.

2) The brief facts of the case are that the sole respondent herein has filed the Writ Petition seeking a Writ of Mandamus:

- i) declaring the impugned proceeding No.RG3/PER/Spl/file/1418, dated 29.09.2006, issued by the 2nd respondent and consequential office order No.RG3/OC3/PER/05/322, dated 03.12.2006, issued by the Project Officer, OCP-3, RG Singareni Collieries Company Ltd., as illegal, and arbitrary, insofar denying the back wages and continuity of service of petitioner is concerned, and
- ii) Consequently direct the respondents to treat petitioner's appointment as EP operator continuous w.e.f. his initial date of appointment i.e., 27.01.1997 duly granting all other consequential benefits, such as back wages and continuity of service duly granting him annual grade increments from 2006 onwards.

3) The learned Single Judge, after going through the earlier Judgment, dated 14.10.2004, rendered by this Court in W.P.No.36503 of 1998, between the same parties, has held that the appellant-Corporation has misconstrued the earlier orders of this Court, and also the provisions of The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short, 'the Act 16 of 1993'). Thus, the learned Single Judge

directed the appellants to grant continuity of service, and back wages to the respondent herein, with all consequential benefits, by duly treating him to have been appointed as EP Operator with effect from 27.01.1997.

4) Aggrieved by the same, the present Writ Appeal is filed on various grounds, viz., (1) the Caste Certificate produced by the respondent was not a genuine one; it is only after following the due procedure and conducting domestic enquiry by the Corporation that the respondent was dismissed from services; (2) while disposing of W.P.No.36503 of 1998, dated 14.10.2004, this Court has not given the benefit of back wages to the respondent herein; and (3) that the Order in W.P.No.36503 of 1998 has become *res judicata* and as such, the direction of the learned Single Judge in the impugned Order for payment of back wages does not arise; and therefore, the impugned order is liable to be set aside.

5) Heard Mr. J. Sreenivasa Rao, the learned Standing Counsel for the appellants, and Mr. Chidagam Srinivas, the learned Counsel representing Mr.K.Vasudeva Reddy, learned Counsel for the sole respondent.

6) It is seen from the record, the respondent herein had earlier filed W.P.No.36503 of 1998 challenging the order of dismissal made by the appellants herein vide Office Order No.P.RG.III/29A/1774, dated 21.09.1998. Vide Order, dated 14.10.2004, this Court allowed the said writ petition, had set aside the impugned proceedings, directed the appellants herein

to inquire as to the social status of the respondent herein afresh, and to pass appropriate orders, as per law, after giving an opportunity and notice to the respondent herein etc. Subsequently, the respondent herein was appointed as EP Operator afresh in Exc.Cat.D.Grade-III in the pay scale of Rs.243.61-6.09-353.23 (NCWA-VII) without any back wages, and without continuity of service vide Ref.No.RG3/PER/Spl.file/1418, dated 29.09.2006. This order of appointing afresh as EP Operator without any back wages and without continuity of service has been assailed by the respondent in the present writ petition i.e., W.P.No.2271 of 2011 on the ground that earlier when he was dismissed on the ground that the Caste Certificate produced by him was not a genuine one, this Court vide Order, dated 14.10.2004, in W.P.No.36503 of 1998 had set aside the dismissal order and directed the Corporation to inquire as to his social status afresh and after conducting due enquiry, the Corporation found that the Caste Certificate issued to the respondent herein was a genuine one. Therefore, the question of appointing the respondent herein afresh, without any back wages, and without continuity of service does not arise. It is the contention of the respondent that once termination order is set aside, the consequential benefits which arise due to the setting aside of the termination order, will accrue to the benefit of the employee irrespective of the fact as to whether there is an observation regarding payment of back wages or not. Once the termination order is held to be illegal, arbitrary and violative of principles of natural

justice, all the consequential benefits due to the employee will have to be extended even in the absence of any observation by this Court.

7) After going through the impugned judgment and the record, we do not find any merit in the appeal for the following reasons:

i) The earlier order of termination of the respondent on the ground that he has submitted a fake Caste Certificate was held to be violative of principles of natural justice; the same was set aside by this Court in W.P.No.136503 of 1998 on 14.10.2004. The only option given by the Court to the appellant was to inquire into the social status of the respondent herein afresh, and to pass appropriate orders. Once the order of termination is set aside as illegal, the employee is deemed to be in service, and he will be entitled to all the back wages and consequential benefits.

ii) The appellant-Corporation, after holding an enquiry, did not find that the Caste Certificate produced by the respondent-employee was a fake one. Hence, the passing of the impugned order assailed in the writ petition, whereby the respondent was appointed afresh without back wages and continuity of service is not only contrary to the Order passed in W.P.No.36503 of 1998, dated 14.10.2004, but is also illegal.

iii) Merely because the Court in the earlier writ petition filed by the petitioner has not granted one of the reliefs sought in the writ petition i.e., direct the respondent therein to reinstate

the petitioner into service duly granting all other consequential benefits, it does not mean that the same was rejected by the Court, and that the same will operate as *res judicata* in the subsequent proceedings. The principles of *res judicata* will apply only when the *lis* between the parties is adjudicated and an order is pronounced on that issue. In the absence of the same, it cannot be said that merely because the relief is not granted by this Court earlier, the same will operate as *res judicata*.

8) In view of the above mentioned facts and circumstances, the Writ Appeal is devoid of merits; the same is hereby dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

28th October, 2019
smr