

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25.02.2020

Judgment pronounced on 23.03.2020

Writ Appeal No. 300 of 2018

(Arising out of Order dated 24.10.2017 passed by Hon'ble Single Judge
in WPS-5533 of 2017)

- Puniram Shrivastava S/o S/o Shri Nanhu Ram Shrivastava Aged About 74 Years
Watchman, D Employment And Self Centre, Raigarh, Tahsil District-
Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Department of Human
Resources And Main Power, Mahanadi Bhavan, Mantralaya New Raipur,
District Raipur, Chhattisgarh
2. Director, Employment And Training Government Of Chhattisgarh At
Raipur, Chhattisgarh
3. Divisional Employment Officer, Office Of The District- Employment, Korba,
District- Korba, Chhattisgarh
4. District Employment Officer, Raigarh, District- Raigarh, Chhattisgarh

-----Respondents

For Appellant	: Shri HB Agrawal, Senior Advocate with Shri KS Pawar and Shri Shashi Kumar Kushwaha, Advocates
For Respondents/State	: Shri Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Challenge in this appeal is to the order dated 24.10.2017 passed in
WPS-5533 of 2017 whereby the Writ Petition filed by the appellant
seeking relief for counting service of appellant, which he rendered prior to

his permanent engagement, for the purpose of calculating pension has been dismissed.

2. Facts of the case, in a nutshell, are that the appellant was initially appointed as Daily Wage labour on 08.04.1980 for a period of 89 days. Employment and period of his engagement as Daily Wage labour was extended from time to time by the respondent for the same period. He was given appointment on the post of Watchman (Chowkidar) till further orders vide order dated 13.11.1996. Appellant retired from his service after attaining the age of superannuation on 31.03.2004. Respondent department paid gratuity and other retiral benefits to the appellant but pension was not given. Representation submitted by the appellant for fixing pension was turned down by mentioning that his regular period of service comes to 7 years, 3 months and 22 days (from 13.11.1996 to 31.03.2004). His service period is less than pensionable service period of 10 years as permanent employee as such, he is not entitled for benefit of pension.

3. Appellant filed Writ Petition before this Court bearing No.WPS-4858 of 2010 challenging rejection of his claim for granting pension which came to be dismissed on 23.01.2013 by holding that appellant has not completed 10 years of qualifying service to get eligibility for pension. He was working prior to his becoming permanent employee only as Daily Wage labour with break of service after every 89 days and service rendered by him prior to becoming permanent employee cannot be counted for the purpose of total length of regular service. Against dismissal of Writ Petition, appellant filed Review Petition No.33 of 2013

which also came to be dismissed on 25.04.2013. Appellant thereafter filed Writ Appeal which was withdrawn by learned counsel appearing for the appellant for making representation to the department and the appeal was dismissed as withdrawn vide order dated 06.04.2016 after some argument.

4. Appellant filed another Writ Petition(S)- 5533 of 2017 with following reliefs:

“10.1 That the Hon'ble Court may kindly be pleased to allow the petition by directing the respondents to pay pension by counting service of petitioner from the date of appointment ie 10.03.1980 and not from Annexure P/1 dated 13.11.1996 which is against decision of this court and Apex Court as mentioned in Annexure P/7 and P/8.

10.2 Costs of the petition be awarded and

10.3 Any other relief or direction which the Hon'ble Court may deems fit, be also awarded.”

5. Learned Single Judge, upon hearing learned counsel for the parties, dismissed the said Writ Petition as barred of *resjudicata*, which is under challenge in the present appeal.

6. Learned counsel for the appellant submits that as the Writ Appeal- 173 of 2016 was withdrawn and not dismissed on merits, therefore, principle of *resjudicata* will not apply. He further submits that after decision of Writ Appeal, Circular dated 04.05.2017 was issued by Office of the Chief Engineer, PWD Raipur, by which the State Government has made entitled the employees whether they have approached to the Court or not, entitled for pension counting their earlier service prior to the date of

appointment in permanent employment/regularisation of their service. He also submits that learned Single Judge erred in dismissing the Writ Petition on the ground of *resjudicata*, ignoring that there was Circular issued by the State Government on 04.05.2017 for granting pension to the employees standing on similar footing, extending benefit of pension.

7. Per contra, Shri Gagan Tiwari, learned counsel for the State submits that appellant was appointed as contingent employee, but for a limited period of 89 days, as daily wage labour. His employment was extended from time to time for a period of 89 days with a break of service. He was not working against the sanctioned and vacant post. It is contended by him that order dated 13.11.1996 is order of his appointment as Chowkidar in the Employment Office, Shahdol, whereas, appellant was working as Daily Wage worker in the Employment Office at Akaltara. The facts of the case in Writ Appeal-281 of 2013 are different and no benefit can be extended to the appellant of the order passed in Writ Appeal-281 of 2019. It is further contended by learned counsel for the State that same relief has been sought for by the appellant in WPS-4858 of 2010, which was dismissed on merits against which Review Petition was also preferred and that also came to be dismissed. Writ Appeal, which was filed thereafter, was withdrawn after arguing for some time, only to make representation before respondent/State. He submits that learned Single Judge rightly dismissed the Writ Petition by holding that claim of appellant became final in earlier round of litigation.

8. We have heard learned counsel for the respective parties and also gone through record available in Writ Appeal-5533 of 2017 and reply filed by respondent/State.

9. So far as the submission made by learned counsel for the appellant that appellant's case is covered with judgment passed by this Court in Writ Appeal-281 of 2013 and the appellant is also entitled for similar benefits is concerned, we cannot decide the said issue raised by learned counsel for the appellant, unless and until he makes out the case that the finding recorded by learned Single Judge that the Writ Petition filed by the appellant is not barred by principles of *resjudicata*.

10. Learned Senior counsel appearing for the appellant only submitted that as the Writ Appeal against order dated 25.04.2013 was withdrawn to file representation before the department and Division Bench has not considered the same on merits of case. We are not impressed with aforementioned submission made by learned Senior counsel. It is not in dispute that Writ Petition was dismissed on merits holding that the appellant is not entitled for pension and relief of counting of his prior service before his permanent appointment as Watchman/Chowkidar. In Writ Appeal, learned counsel appearing therein for the appellant after arguing for sometime before appellate Court, withdrew the appeal. In that order, Division Bench has not given any liberty/direction to the appellant to approach the Court for redressal of his grievance, after the department rejected/dismisses his representation. Claim of appellant has become final after withdrawal of Writ Appeal.

11. Principals of *resjudicata* are applicable to the writ proceedings with equal force. The principle of *resjudicata* contains the rule of conclusiveness of the judgment which is based upon the maxim of Roman jurisprudence '**Interest reipublicae ut sit finis litium**'.

12. Hon'ble Supreme Court in its recent judgment in the matter of **Subramanian Swamy Vs State of Tamil Nadu**, (2014) 5 SCC 75 has held thus:

“The literal meaning of “res” is “everything that may form an object of rights and includes an object, subject-matter or status” and “res judicata” literally means “a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments”. “Res judicata pro veritate accipitur” is the full maxim which has, over the years, shrunk to mere “res judicata”, which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence “interest reipublicae ut sit finis litium” (it concerns the State that there be an end to law suits) and partly on the maxim “nemo debet bis vexari pro uno et eadem causa” (no man should be vexed twice over for the same cause).”

13. If we consider the facts of the case at hand in the light of aforementioned verdict passed by the Hon'ble Supreme Court in the matter that **Subramanian Swamy** (supra) the subject matter of earlier Writ Petition and the litigation was one and the same as projected in WPS-5533 of 2017 (Second Writ Petition) and the reliefs sought for are also same. Case was finally decided on merits in the earlier round of litigation in Writ Petition and in Writ Appeal filed by the appellant in the 1st round of litigation, after raising some arguments, was withdrawn with liberty to file

representation before the department, but without any liberty to challenge outcome of the representation.

14. In view of the above facts and the order passed in Writ Petition in the first round of litigation on the same issue and the relief sought for by the appellant, the order passed in WPS-4858 of 2010 has become final. We do not find any infirmity in the order passed by learned Single Judge either in law or on facts.

15. The appeal being devoid of any substance, which is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge