

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16821 of 2022

Trinath Gouda

....

Petitioner

Dr. Jitendra Kumar Lenka, Adv.

-versus-

State of Odisha and Ors.

....

Opposite Party

Mr. D.R. Mohapatra, SC

(for SC and ME Deptt.)

Mr. Haraprasad Rath, Adv.

(for O.Ps.3 and 4)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

04.

ORDER

27.10.2022

1. This matter is taken up through hybrid mode.
2. The present Writ Petition has been filed challenging the suspension orders dated 10.05.2022 and 23.05.2022 issued by the Principal of Bellaguntha Science Junior College and the order dated 28.06.2022 issued by the President, Governing Body. The petition assails the action of the Opposite Parties in illegally justifying the suspension of the Petitioner as the same is contrary to and in violation of 2nd Proviso of Rule 21 of Odisha

Education (Recruitment and Conditions of Service of the Teachers and Members of the Staff of Aided Educational Institution) Rules, 1974.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this Court remains that pursuant to advertisement in the year 1992, the petitioner had applied for the post of Lecturer in English. Even though the Petitioner had already appeared M.A examination; however, the result for the same was not published at the time of his application. The result of the P.G examination was published on 23.03.1993.
4. The Selection Committee considered the candidature of the Petitioner and interviewed him on 25.07.1992. The Selection Committee recommended the appointment of the Petitioner subject to performance in the P.G examination and publication of result and, accordingly, the Petitioner was appointed vide order dated 31.07.1992.
5. The result of the P.G examination which the Petitioner had appeared was published on 23.03.1993 and the Petitioner had secured the required percentage of mark for appointment to the post of Lecturer in English. After the publication of result, the Petitioner submitted the

same before the then Principal on 15.04.1993 and the Governing Body after due consideration approved the appointment of the Petitioner vide Resolution dated 25.09.1993.

6. After receiving allegation from different quarters, the Government instructed the Director of Higher Education, Odisha to verify the records concerning appointments of the teaching and non-teaching staff of all colleges of state who have been granted Block Grant Aid. Under such circumstances, the Regional Director of Higher Education, Berhampur verified the record of all colleges under his jurisdiction. In the process of verification, a format was provided to each of the teaching and non-teaching staff to fill up the essentials and also affix a self-attested photograph thereon. The correctness of the statements provided was to be verified by the Regional Director vis-à-vis the personal files of the individuals available in the office of the concerned college.
7. In the verification process, the Regional Director found that the Petitioner had joined post the post of Lecturer in English on 31.07.1992 and had not submitted his P.G marksheet either on the interview date or the joining date. The Regional Director communicated the enquiry

report to Opposite Party No. 4 and after due consideration, the Opposite Party No. 4 vide Letter No. 3385 dated 30.04.2022 placed the Petitioner under suspension for disobeying the instructions of higher authorities amounting to misconduct. Accordingly, the Opposite Party No. 3 vide Letter No. 98 dated 10.05.2022 issued instructions that the Petitioner has been suspended with immediate effect and has been instructed to submit the documents relating to publication of result of M.A. Examination, Marksheet and other related certificates within 15 days.

8. It is pertinent to mention that the Petitioner had approached this Court in W.P.(C) No. 13142 of 2022 and on 24.05.2022 the Petitioner had submitted that he may be granted liberty to file a fresh representation before the President, Governing Body of the College for redressal of his grievances and had prayed that the said authority be directed to take a decision on such motion within a specific time period.

II. SUBMISSION ON BEHALF OF THE PETITIONER

9. It is submitted by Learned Counsel for the Petitioner that the present Principal with malafide intention manipulated the date of representation dated 15.04.1993 by overwriting the said date as 15.07.1992 and has

placed the Petitioner under suspension for furnishing false information in relation to appointment to the post of Lecturer in English.

10. Furthermore, it is contended by Learned Counsel for the Petitioner that even though the result of the M.A. Examination that the Petitioner had appeared in, was published on 23.03.1993, his valid date of joining is 01.06.1993 as the post is created from the date on which the College got affiliation and recognition.

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTY

11. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that so far as the prayer to quash the order of suspension of the Petitioner is concerned, the same is hit by the principle of Constructive Res judicata as the Petitioner had approached this court in W.P.(C) No. 13142 of 2022 and the Petitioner instead of pressing the prayer for quashing of order of suspension dated 10.05.2022 had instead submitted to be granted liberty to file fresh representation before the President of the Governing Body.

12. It is also contended by Learned Counsel for the Opposite Parties that Petitioner was appointed as Lecturer in English vide appointment order dated 31.07.1992 and on the date of appointment, the

Petitioner didn't possess any educational qualification of M.A. to hold the post of Lecturer. Further, the Petitioner's claim that the present Principal has manipulated the dates by overwriting 15.04.1993 as 15.07.1992 is not substantiated by any document or evidence.

IV. COURT'S REASONING AND ANALYSIS

13. On perusal of the above-mentioned pleadings, this court is of the view that the finality and conclusiveness of judicial decisions is imperative for the final termination of disputes in the general interest of the public. Moreover, the interest of the litigating parties should be protected from multiplication of litigation. In the present case, the Petitioner had the opportunity to challenge and quash the suspension order dated 10.05.2022 while approaching this Court in W.P.(C) No. 13142 of 2022; instead, he sought a direction from this Court to file a fresh representation before the President of the Governing Body. It is not in question that the Petitioner was unaware of his suspension order. The Petitioner was communicated about his suspension order before he approached this Court W.P.(C) No. 13142 of 2022 and if he was aware of malafide intention and manipulation of the part of the Opposite Party

No.4, he could've used the same as ground of defence in the former petition. He did not seek so and, therefore, it operates as res judicata. Hence, when the claim was made on earlier occasion, he should have or might have sought for challenging and quashing the concerned suspension order. It is the well settled position in law that Constructive Res judicata 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. Thus, at least on the principle of constructive res judicata, if not actual res judicata, the Petitioner's present grievance is barred

14. In the case of *State of Uttar Pradesh vs Nawab Hussain*¹, the Supreme Court observed:

"It was this other observation which led the High Court to take the view that the question whether the principle of constructive res judicata could be invoked by a party to a subsequent suit on the ground that a plea which might or ought to have been raised in the earlier proceeding but was not so raised therein, was left open. That in turn led the High Court to the conclusion that the principle of constructive res judicata could not be made applicable to a writ petition, and that was why it took the view that it was competent for the

¹ AIR 1977 SC 1680

plaintiff in this case to. raise an additional plea in the suit even though it was available to him in the writ petition which was filed by him earlier but was not taken. As is obvious, the High Court went wrong in taking that view because the law in regard to the applicability of the principle of constructive res judicata having been clearly laid down in the decision in Devilal Modi's case (supra), .it was not necessary to reiterate it in Gulabchand's case (supra) as it did not arise for consideration there. The clarificatory observation of this Court in Gulabchand's case (supra) was thus misunderstood by the High Court in observing that the matter had been "left open" by this Court.

It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court, that by virtue of clause (1) of article 311 of the Constitution he (1) [1962] 1 S.C.R. 574. (2) [1963] Supp. 1 S.C.R.172 could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the Case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that 'he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the

principle constructive res judicata and the High Court erred in taking a contrary view."

15.In the case of *Asgar vs Mohan Varma*², the Supreme Court held that:

"The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation enures to the benefit, unfortunately for the decree holder, of those who seek to delay the fruits of a decree reaching those to whom the decree is meant. Constructive res judicata, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future."

16.A Constitution Bench of the Supreme Court in *Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra*³ laid down the following principle:

² SLP(C) No. 1216 OF 2016

".....an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata"

17. In the case of **Devilal Modi, Proprietor, M/S. Daluram Pannalal Modi vs Sales Tax Officer, Ratlam and others**⁴, the Supreme Court ultimately held that the second writ petition was barred by the principles of constructive res judicata, and the learned Chief Justice observes at page 1153:

"Considerations of public policy and the principle of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an Impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another."

³ (1990) 2 SCC 715

⁴ AIR 1965 SC 1150

18. From the Supreme Court decision referred to above, the following principles emerge : (a) the principle of constructive res judicata applies with equal force to writ petitions under Article 226, (b) finality of decisions rendered by courts of competent jurisdiction is emphasised, (c) parties should not be made to face twice over the same kind of litigation, (d) a plea which could have been taken by a party in a proceeding between him and his opponent, If not taken at the proper time that party should not be permitted to take that plea against the same party in a subsequent proceeding on the same cause of action.

19. Res judicata means "a thing adjudicated", that is, an issue that is finally settled by judicial decision. The principle of constructive res judicata emerges from Explanation IV to Section 11 CPC when read with Explanation III thereof, both of which explain the concept of "matter directly and substantially in issue". Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised.

20. The principle of finality of litigation is based on high principle of public policy. In the absence of such a

principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

21. Therefore, the contentions of the Opposite Parties that the present writ petition is barred by the principle of constructive res judicata as the Petitioner seeks for a direction to file fresh representation before the President of the Governing Body instead of pressing for quashing the suspension order, must be accepted.

22. In the final analysis, this Court is of the opinion that the Writ Petition, for the foregoing reasons is, liable to fail.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar

