



W.P.No.18248 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.18248 of 2014

and

M.P.No.1 of 2014

The Director-in-Charge,
Regional Labour Institute,
Chennai 600113.

..... Petitioner

-Versus-

1.The Presiding Officer,
The Central Government Industrial Tribunal-cum-
Labour Court,
Shastri Bhavan,
Chennai 600006.

2.D.Selvaraj

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the Award dated 08.11.2013 made in I.D.No.82 of 2011 on the file of the 1st respondent and to quash the same.

For Petitioner : *Mr.S.Siva Shanmugam*

For Respondents : *Mr.D.Selvaraj*
Party-in-Person (R2)
R-1 Labour Court



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ORDER

This writ petition challenges the Award dated 08.11.2013 made in I.D.No.82 of 2011 by the 1st respondent holding that the termination of the 2nd respondent was not in compliance with Section 25F of the Industrial Disputes Act, 1947 and directing the petitioner institute to pay a compensation of Rs.1,00,000/- in lieu of reinstatement.

2. The 2nd respondent is a Burma Repatriate and a person belonging to a Schedule Caste Community. He was appointed as Driver on ad-hoc basis, due to the suspension of one E.M.Tharani Singh. The said Tharani Singh was involved in a criminal case in C.C.No.4553 of 1985 on the file of the Foreshore Estate Police Station and therefore, he was placed under suspension. In the vacancy that arose due to the suspension of Tharani Singh, the petitioner was appointed. He continued in service from 23.07.1990 to 15.03.1994. On 10.03.1994, an order came to be passed stating that the 2nd respondent will not continue in service on and from 15.03.1994.

3. It is not in dispute that the 2nd respondent was in continuous service for a period of 4 years from 23.07.1990 till 15.04.1994. Therefore, he had approached the Central Administrative Tribunal (CAT) by way of O.A.No.412 of 1994 challenging the proceedings. The CAT had passed an order directing



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the petitioner to consider the representation made by the 2nd respondent.

4. Accordingly, the 2nd respondent made a representation dated 09.03.1994 and that came to be rejected on 03.05.1994. Challenging the same, the 2nd respondent filed O.A.No.542 of 1995. That was dismissed on 27.06.1996. Subsequently, the petitioner called for fresh applications from the eligible candidates to fill up the post of drivers. That was challenged in O.A.No.1085 of 1996. The said Original Application was dismissed on 19.04.1999, and the same was confirmed by this Court, by order dated 28.06.2001 made in W.P.No.11718 of 1999.

5. On 02.08.2010, the 2nd respondent made a representation to the Union of India, Ministry of Labour and Employment to refer it as an industrial dispute. Acceding to the request, on 02.08.2010, the said matter was referred to to the Central Government Industrial Tribunal (CGIT). It was taken on file as I.D.No.82 of 2011. Considering the facts and circumstances of the case, the tribunal came to the conclusion that termination was not in accordance with law, however, only a compensation of Rs.1,00,000/- was ordered to be given to the 2nd respondent in lieu of reinstatement. Challenging the same, the present writ petition has been filed by the petitioner institute.



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6. Mr.S.Siva Shanmugam, learned counsel appearing for the petitioner institute would submit that the petitioner is not an “industry” within the meaning of Section 2(j) of the ID Act and therefore, the tribunal does not have jurisdiction to adjudicate the same.

7. This issue has been settled by a Constitution bench of the Supreme Court in **Bangalore Water Supply and Sewerage Board v. Rajappa [AIR 1978 SC 548]**. Therefore, now, it is no more open to the petitioner institute to attempt to reopen the same. Apart from that, in **Ahmadnagar Textile Research Association v. State of Bombay [1960 (2) LLJ 720]** the Supreme Court has held that Research Institutes are covered by the term '**industry**' and therefore, the petitioner institute cannot argue that the Regional Labour Institute, Adayar, Chennai, is not an industry within the meaning of Section 2(j) of ID Act , 1947.

8. The second submission of Mr.S.Siva Shanmugam is that the orders of the CAT, dated 04.04.1994 made in O.A.No.412 of 1994; dated 27.06.1996 made in O.A.No.542 of 1995; and dated 19.04.1999 made in O.A.No.1085 of 1996 would operate as *res judicata* and therefore, the Central Government Industrial Tribunal could not have entered upon the judgement in I.D.No.82 of 2011. He would further submit that the claim is stale and therefore, it ought not



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to have entertained the same.

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9. I am afraid, I am unable to agree with the submission made by the learned counsel for the petitioner for the simple reason that, had the claim been stale, the petitioner institute would have challenged the reference made by the Central Government on 02.08.2010. It is the settled position of law that reference is a rule and denial is an exception. An exception to reference is that the claim which is made is either stale or settled. If as contended by the learned counsel for the petitioner, the claim was settled or stale, Regional Labour Institute, who are themselves experts in labour law, would have challenged the reference by way of a writ petition before this court. They having failed to do so, it is not open to them to contend before me that the reference is stale.

10. Insofar as the plea of res judicata is concerned, it is an interesting plea but, a close scrutiny would show that it does not arise here. The industrial tribunal is a body constituted under the ID Act for the purpose of resolving the disputes between the workmen and employers. It has the benefit of recording the evidence and seeing the witnesses before it. In case of Central Administrative Tribunal, the power that is conferred on the High Court is the power exercised by the respective Tribunals under the Administrative Tribunals Act, 1985. If I accept the arguments of Mr.S.Siva Shanmugam,



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learned counsel for the petitioner, then, a dismissal of the writ petition would bar a person from raising an industrial dispute. The jurisdiction exercised by this court or by the tribunal is only supervisory in nature and at best visitatorial. That does not take away the jurisdiction of the industrial tribunal in its entirety. The rule of *res judicata* would apply where the tribunal has been specially constituted for Explanation -VIII to Section 11 of CPC to apply. If a tribunal has been constituted to hear and decide an issue by court of limited jurisdiction and competent to decide such issue then, it will operate as *res judicata*. To put it in other words, if the industrial tribunal had adjudicated the issue, which is specialised tribunal of limited jurisdiction, that would operate as *res judicata* before Central Administrative Tribunal and not vice versa.

11. Further, I have gone through the reliefs sought before the Central Government Industrial Tribunal. They cannot be said to be the same as the reliefs before CAT. If the reliefs are different then, the principles of *res judicata* does not apply. Furthermore, pleadings in those proceedings are not before this court. In order to invoke the principles of *res judicata*, the party must file pleadings as well as issues that had been raised and the final order that had been passed. Though a counter has been filed, the original application has not been filed before me.



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12. With respect to this view, I take strength from the judgement of the Supreme Court in **Syed Mohd. S. Labbai v. Mohd. Hanifa [(1976) 4 SCC 780]**. In Para of the said judgement, the Supreme Court was pleased to hold as follows:-

“8. In our opinion the best method to decide the question of *res judicata* is first to determine the case of the parties as put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgements which operate as *res judicata*. Unfortunately however in this case the pleadings of the suits instituted by the parties have not at all been filed and we have to rely upon the facts as mentioned in the judgements themselves. It is well settled that pleadings cannot be proved merely by recitals of the allegations mentioned in the judgment.”

In order for me to decide whether the principles of *res judicata* applies, the burden is on the petitioner to show that the matter which was adjudicated in the previous cases before the CAT and the matter which was adjudicated before the CGIT in the present case are one and the same and the issues were directly and substantially the same. An Additional burden is that the CAT should have heard and finally decided the issue. It is useful to refer here to the judgement of



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the Supreme Court in *Workman of the Straw Board Manufacturing Co. Ltd., v.*

M/s.Straw Board Manufacturing Co. Ltd., [(1974) 4 SCC 681] In the said judgement, the Supreme Court had cautioned against the extremely technical considerations while dealing with the industrial disputes. I extract hereunder the relevant portion for ready reference:-

“29. Some distinction, of whatever shade or magnitude, may have to be borne in mind in application of principles of *res judicata* in industrial adjudication in contra-distinction to civil proceeding. Extremely technical considerations, usually invoked in civil proceedings, may not be allowed to outweigh substantial justice to the parties in an industrial adjudication.”

13. The discussions in the previous paragraphs would show that the petitioner has not made an attempt to file the pleadings, issues and the judgements of the CAT before the CGIT.

14. In a recent judgement in **Jamia Masjid v. K.V.Rudrappa [(2022) 9 SCC 225]**, the Supreme Court was pleased to hold that there have been material alterations in the facts since the first proceedings then, the principles of *res judicata* will not apply. As seen from the above, the first proceeding before the CAT was a direction to dispose of the representation made by the



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petitioner herein and the second proceedings challenged the rejection of the representation made pursuant to the first order and the third proceeding challenged the selection process. Therefore, the issue projected in this particular case was not directly and substantially in issue in any of the previous proceedings and therefore the court could not have heard and finally decided the same. Therefore, I am constrained to reject the arguments of *res judicata*.

15. The CGIT in para 14 of the order has found that the termination was not in compliance with Section 25-F of the ID Act. It has gone through the evidence and come to the conclusion that there was a statutory infraction. On this issue, the Central Administrative Tribunal had not entered upon a finding. The ground on which the Industrial Tribunal had allowed I.D. No.82 of 2011 was statutory violation of Section 25-F of the ID Act. The said issue has not been gone into by the Central Administrative Tribunal at any point of time. On that score, I would hold that plea of *res judicata* does not at all arise. When discretion has been exercised in favour of the 2nd respondent, I do not find that such exercise of discretion is either arbitrary or capricious for me to interfere with impugned order that too in a proceeding under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed. The petitioner is directed to



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comply with the award passed by the 1st respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

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- 2.The Presiding Officer,
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V.LAKSHMINARAYANAN, J.

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