



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.09.2023

+ **LPA 691/2016**

AITA RAM AND ORS.

..... Appellants

versus

THE HINDUSTAN TIMES LTD AND ANR..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Ramesh Kumar Mishra, Mr. Kumar Abhinandan & Ms. Kirti Paliwal, Advs.

For the Respondents : Mr. N.B. Joshi, Mr. Rajinder Singh, Mr. Nikunj Verma & Ms. Khushoo Kohli, Advs.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The appellants have filed the present intra-court appeal under Clause 10 of the Letters Patent, challenging the order dated 03.10.2016, passed by the learned Single Judge in W.P.(C) 9036/2016 (hereafter '**the impugned order**'), whereby the writ petition filed by the appellants was dismissed.



2. The writ petition was filed by 205 petitioners, impugning the award dated 23.01.2012, passed by the Industrial Tribunal, to the extent that the learned Tribunal, even though has directed reinstatement of the petitioners/workmen treating them in continuity of service, had failed to pass any order with regard to the back wages.

Brief Facts

3. The litigation, in the present case, has a long history. In the year 2004, the respondent/ management terminated the services of 362 workmen including the petitioners in the writ petition. Pursuant to the dispute raised by the workmen, the appropriate Government referred the dispute to the Industrial Tribunal on 02.02.2005.

4. During the pendency of the industrial dispute, the respondent Management was also directed to pay 50% of the last drawn wages each month to the workmen as an interim relief. The Management challenged the said direction before the High Court in W.P.(C) 2247/2007, but was unsuccessful and the same was upheld.

5. The Industrial Tribunal, after recording evidence of the parties, passed a final award dated 23.01.2012, holding the termination of the petitioners as illegal and directed the respondent Management to reinstate the workmen, treating them in continuity of service.

6. The execution proceedings were filed by the workmen, claiming that despite the award of the Industrial Tribunal in favour of the workmen, the respondent Management has failed to give back wages. The claim was rejected by the executing Court, holding that the award



passed by the Industrial Tribunal directed reinstatement in service and had not awarded payment of back wages.

7. The claim was, however, allowed by the learned Single Judge of this Court in W.P.(C) 1000/2013. The learned Single Judge held that the relief may be couched in any other language and the moment, the Industrial Tribunal held that the workmen are entitled to relief of reinstatement with continuity in service, the grant of full back wages was implicit.

8. The said order of the learned Single Judge was challenged by the respondent in an appeal being LPA 6/2015. The Division Bench of this Court, by its judgment dated 23.02.2015, set aside the order dated 17.11.2014 passed by the learned Single Judge. The Division Bench noted that an application was filed by the workmen before the Industrial Tribunal, seeking clarification that the relief for payment of back wages was included in the award passed by the Tribunal but it was withdrawn by the applicants. The Division Bench, therefore, inferred that the appellants were always aware that no award in relation to back wages was passed by the Industrial Tribunal. It was held that when the award was not passed in relation to the back wages, the same cannot be held to be implicitly or impliedly included in the relief for reinstatement. It was, therefore, held that no execution for recovery of back wages can be filed in the absence of any award to the aforesaid effect. The judgment passed by the Division Bench was not interfered with by the Hon'ble Supreme Court and the SLP was dismissed *in limine*.



9. This led to another round of litigation. The workmen then filed a writ petition, being W.P.(C) 9036/2016, challenging the award dated 23.01.2012, to the extent that the back wages were not granted by the Tribunal in addition to the relief of reinstatement. The learned Single Judge observed that the Division Bench, in its judgment dated 23.02.2015, had considered all aspects of the matter, and the issue, therefore, stood settled.

10. The Court held that the appellants could not re-agitate their claim for back wages as it was barred by the principle of *res judicata*. The dismissal of the writ petition, by the impugned judgment, led to the filing of the present appeal.

Arguments

11. The learned Counsel for the appellants submitted that the learned Single Judge fell in error in dismissing the writ petition based on the principle of *res judicata*. He submitted that reliance on the judgment passed by the Division Bench of this Court in LPA 6/2015 for the purpose of deciding the issue was misplaced.

12. He submitted that the only issue for consideration before the Division Bench was, whether the grant of back wages was implicit in an award whereby the workmen had succeeded in their claim as the Tribunal had passed an order for reinstatement with all benefits. He submitted that the workmen were under a *bona fide* belief that the award passed by the Industrial Tribunal included the grant of back wages and it was only when the Hon'ble Supreme Court dismissed the



SLP that the cause of action to challenge the award passed by the Industrial Tribunal accrued.

13. The contention that the workmen believed the award included the grant of back wages, was not fanciful, and was also accepted by the learned Single Judge of this Court in the proceedings for enforcement of the award.

14. He submitted that the award, at no stage, was challenged before this Court and, therefore, the principle of *res judicata* could not have been applied. The workmen have been diligently following their remedies and the writ petition could not have been held to have been filed with delay and laches.

15. He further submitted that the learned Single Judge failed to appreciate that another learned Single Judge of this Court, in its judgment dated 17.11.2014, passed in W.P.(C) 1000/2013, had categorically held that the back wages were implicit in the award and, therefore, there was no occasion for the workmen to challenge the award for the reason that the back wages were not granted.

16. He further submitted that the Management has failed to bring on record, any material to suggest that the workmen were gainfully employed.

17. The learned counsel for the respondent supports the judgment passed by the learned Single Judge and submitted that the workmen, after having filed an application dated 13.02.2012, for clarification before the Industrial Tribunal, in regard to the grant of back wages cannot now turn around and argue that their right to challenge the award on the ground that the back wages were not granted by the



Industrial Tribunal, only accrued after dismissal of the SLP by the Hon'ble Supreme Court. He submitted that the workmen were always aware that the Industrial Tribunal had not granted any back wages, and for that reason, a specific application was filed by the workmen before the Industrial Tribunal. He further submitted that the workmen, after having taken their chance, cannot now be permitted to challenge the award at such a belated stage.

18. The learned counsel also relied upon the observation made by the Division Bench in LPA 6/2015 to contend that all the issues have been decided by this court in an earlier judgment and are barred by the principle of constructive res judicata. Workmen could have challenged the award at an earlier stage but chose not to do so and are now not entitled to challenge the same on the principle of constructive res judicata.

Analysis

19. It is significant to note that the only reason given by the learned Single Judge for dismissing the writ petitions is that the issue stands settled and is barred by the principle of *res judicata*.

20. The law in relation to the principle of *res judicata* is well settled. It prohibits the Court from trying an issue that has been directly and substantially an issue in formal proceedings between the same parties and has been finally heard and decided by the Court.

21. It is also well settled that it is the decision on an issue, which operates as *res judicata* between the parties and a mere finding of an



incidental question to reach such conclusion does not operate as *res judicata*.

22. The Courts have time and again held that only those findings, without which the Court cannot adjudicate a dispute and which also form a vital element in the reasoning on an issue, constitute *res judicata* between the same set of parties in subsequent proceedings.

23. At the same time, however, if the Court during the process of arriving at a conclusion, makes any incidental, supplemental, or non-essential observation that is not foundational to the final determination, the same will not constitute *res judicata* precluding the Courts from deciding such issue in future.

24. In this regard, the Hon'ble Supreme Court, in the recent decision in the case of ***Yadaiah and Another v. State of Telangana and Others*** : 2023 SCC OnLine SC 897, held as under:

“49. By now it's a globally settled principle of common law jurisprudence that only determinations which are fundamental would result in the application of the doctrine of res judicata. Only those findings, without which the Court cannot adjudicate a dispute and also form the vital cog in the reasoning of a definite conclusion on an issue on merits, constitute res judicata between the same set of parties in subsequent proceedings. However, in the process of arriving at a final conclusion, if the Court makes any incidental, supplemental or non-essential observations which are not foundational to the final determination, the same would not tie down the hands of courts in future.”

25. From the perusal of the judgment passed by a Coordinate Bench of this Court in LPA 6/2015, it is apparent that the Court was concerned with the issue, whether the grant of back wages was implicit in the award passed by the Tribunal when the workmen



succeed, but no subsequent direction for back wages is mentioned in the award.

26. The Coordinate Bench of this Court rightly noted that the issue before the learned Single Judge in the earlier round was not whether the workmen were entitled to back wages or not. In para 20, it was noted as under:

“20. The issue before the learned Single judge was not whether the workman were entitled to back wages or not. Thus, it would be useless to discuss various decisions of the Supreme Court where emphasis was placed by the Court that ordinarily back wages should be granted and non-grant thereof was the exception to the rule and such decisions which held that with the change in thinking today due to globalization, back wages could be denied or some lump sum amount could be paid. This issue could have been debated if there is a challenge to an award which grant or denies back wages. The jurisdiction of the learned Single Judge was restricted to the language of the award and then to determine whether a direction to pay back wages was implicit in the award. Thus, reliance by the learned Single Judge on such decisions of the Supreme Court which emphasized that if termination is held to be illegal, as a matter of course back wages should be directed to be paid while ordering reinstatement would be out of place, but meaningfully read, the learned Single Judge has referred to the said decisions as the backdrop of his reasoning, with emphasis placed on paragraph 89 of the award where the Tribunal held that the workman ‘are entitled to the relief of treating them in continuity of service under terms and conditions of service or before their alleged termination’. The learned Single Judge has, though not expressly so stated, held that the direction qua continuity of service and being brought back to the status as before the termination required it to be held that back wages have to be paid, because how else could somebody be brought back ‘as before’ sans the financial aspect.”

27. The Coordinate Bench held that the learned Single Judge erred in discussing various decisions of the Hon’ble Supreme Court that ordinarily back wages should be granted and the non-grant thereof was an exception to the rule.



28. The Coordinate Bench further noted that the issue could have been debated if there was a challenge to the award. The Coordinate Bench set aside the judgment passed by the learned Single Judge holding that in the absence of an express direction for payment of back wages, the same could not have been granted in proceedings where the award was not under challenge.

29. The payment of back wages could not have been presumed as an implicit direction simply because reinstatement was ordered with a direction of there being continuity in service.

30. The Tribunal, in relation to the disputes, can pass an award as under:

- (i) reinstatement with continuity of service and with back wages;
- (ii) reinstatement with continuity of service, but without back wages;
- (iii) reinstatement without continuity of service and without back wages;
- (iv) reinstatement with continuity of service and with attendant benefits, but without back wages;
- (v) reinstatement with continuity of service, but without back wages and without any attendant benefits;
- (vi) reinstatement without continuity of service, without back wages, and without any attendant benefits; and
- (vii) stoppage of four increments with a cumulative effect on reinstatement.



31. Therefore, after considering the evidence and the issues involved, the Tribunal can pass various types of awards, which the circumstances of each case may warrant. Thus, as rightly decided by the Coordinate Bench in the earlier round, in the absence of a specific award it cannot be interpreted that the award of back wages was implicit. In an award which does not specifically mention grant of back wages, the workmen were not entitled to claim the same.

32. The Coordinate Bench, therefore, rightly decided the issue in favour of the Management that in the absence of any specific direction for the award of back wages, the same could not have been presumed to be included in the award for reinstatement with continuity of service.

33. The Court, therefore, admittedly was not seisin of the issue, whether the Industrial Tribunal fell in error in not granting the back wages despite holding the termination of the workmen as illegal.

34. The issue being agitated by the workmen, which also led to the filing of an application for clarification before the Industrial Tribunal, was that even in the absence of any specific mention in the award in relation to back wages, the same was implicit when the Industrial Tribunal awarded reinstatement with continuity of service from the date of their termination.

35. It was not contended by the workmen at any stage that the order passed by the Industrial Tribunal was required to be set aside to an extent that the back wages were not granted.

36. The arguments raised by the workmen since the beginning were that the Industrial Tribunal could not have refused the grant of back



wages and therefore, in the absence of any specific denial, the same was implicit in the award. The closure to the said issue came with the dismissal of the SLP filed by the workmen challenging the order passed by the Coordinate Bench in LPA 6/2015.

37. To that extent, we do not agree with the view taken by the learned Single Judge, that the issue stands settled, and re-agitating the same would be bound by the principles of *res judicata*.

38. The claim made by the workmen in the present petition can also not be construed to be barred by the principle of Constructive *res judicata*. The principle of constructive *res judicata* bars the party from raising the claim it could have raised in an earlier round of litigation. The principle stems from Order 2 Rule 2 of the Code Of Civil Procedure, 1908. It provides that the party shall include all the claims which they are entitled to with respect to a cause of action. A party who omits to sue for any claim is not entitled to afterward sue in respect of the claim so omitted.

39. We disagree with the argument raised by the learned counsel for the Respondents that the claim raised by the workmen in the present proceedings is barred by the principle of constructive *res judicata*. As discussed above the appellants were agitating that the award passed by the Industrial Tribunal includes award for back wages. Thus, when the stand of the workmen was that the award included back wages, they could not have at the same time also claimed or take a contradictory stand that the award needs to be set aside for the reason of not including direction to pay back wages.



40. The other aspect – though the learned Single Judge has not dismissed the writ petition on that ground but has made reference in the impugned order – is whether the writ petition was filed belatedly and ought to have been dismissed on the ground of delay and laches.

41. It is not in dispute that an application for clarification was filed on behalf of the workmen before the Tribunal, which would *prima facie* show that the workmen, at that time in the year 2012, were aware that the Tribunal had not granted any award for back wages. The said application was withdrawn and the issue was contested in the form of an execution application, wherein the workmen claimed that the back wages were part of the award.

42. It is contended by the learned counsel for the respondents that despite being aware in the year 2012 itself that the Industrial Tribunal had not passed any award in relation to back wages, the workmen, at such a belated stage in the year 2016, could not have challenged the same by filing a writ petition.

43. The argument raised by the learned counsel for the respondents does not commend us.

44. It is true that an application seeking clarification, was filed immediately on passing of the award, which shows that the workmen required clarity as to whether the back wages were awarded by the Tribunal or not.

45. It is also true that the ignorance of law is no excuse and when the law recognizes that it is within the power of the Tribunal to pass an award in many ways, as discussed above, in the absence of any



specific award of the back wages, the same ought not to have been presumed.

46. It is, however, true that the arguments raised by the workmen were accepted by the learned Single Judge of this Court W.P.(C) 9036/2016. The issue was agitated by the workmen initially before the Industrial Tribunal in the execution application and thereafter before this Court in the writ petition, which also led to the passing of the judgment in favour of the workmen. Thus, their claim that the award included payment of back wages cannot be termed as fanciful and lacking *bona fide*.

47. When the workmen were specifically pleading and contesting that the award passed by the Industrial Tribunal also included the award for back wages, there was no reason for the workmen to challenge the said award. The workmen's contention that the award passed by the Industrial Tribunal was required to be set aside to the extent it did not grant back wages, would have been contradictory to their contention that the award included the award for back wages.

48. We agree with the explanation given by the learned counsel for the workmen that they were not in a position, to challenge the award before finality to the issue, which came with the dismissal of the SLP.

49. The other aspect, which also cannot be ignored, is that the Tribunal took seven years to decide the case, which finally culminated in an award dated 23.01.2012.

50. The writ petition, finally challenging the award, was filed in the year 2016, after the dismissal of the SLP No. 10578 of 2015 by order dated 01.08.2016.



51. In view of the explanation as provided by the appellants, it cannot be held that the dispute had become stale and the petition was barred by delay and laches.

52. The Court also cannot lose sight of the fact that the issue pertains to a large number of workmen, whose termination by the Management has been declared illegal and they have been fighting for the same from last many years. The delay, in the facts of the present case, cannot be termed to have occasioned because of the workmen.

53. It is pointed out by the learned counsel for the appellants that a specific prayer was made by the workmen for the grant of back wages. Further, evidence was led by the workmen to establish that they had not been gainfully employed during the period of termination.

54. He also referred to the various decisions, which at this stage need not be referred, to support the contention that when a specific plea, supported by an affidavit, is raised by the workmen that they were not gainfully employed, the onus shifts on the Management to prove to the contrary.

55. He submitted that the party cannot be asked to prove the negative and the onus was on the respondent Management to show that the workmen were gainfully employed.

56. He further submitted that the respondent Management, in their rebuttal, had not produced any evidence to the contrary and the Industrial Tribunal erred in not granting full back wages.

57. In our opinion, the said issue has not been considered by the learned Single Judge. The same was also never an issue in the earlier round of litigation before the Coordinate Bench in LPA 6/2015.



58. In view of the above, we consider it apposite to set aside the impugned judgment passed by the learned Single Judge and remand the matter for adjudication afresh on the issue, whether the appellants are entitled to back wages.

59. The appeal is allowed in the aforesaid terms.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

SEPTEMBER 13, 2023

"SS"/KDK