



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-19516-2002 (O&M)
Date of decision: 31.08.2024

Vinod Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate, for the petitioner.

Mr. Dushyant Saharan, AAG, Haryana.

AMAN CHAUDHARY, J.

1. Challenge in the present petition is to the non-grant of the arrears in the order dated 16.08.2002, Annexure P-5, whereby his services were regularised.

2. The services of the petitioner, who was appointed on adhoc basis as a Clerk on 22.10.1993, were terminated vide order dated 24.05.1996, against which he, along with one Amar Nath filed CWP-13272-1999, the main prayers made therein are apposite to be referred to and reads thus:

“iv) a writ in the nature of certiorari be issued to quash the impugned order P/15 by which services of the petitioners have been terminated;

v) a writ in the nature of certiorari be issued to quash the order dated 27.8.99 by which the claim of the petitioners have been rejected;

vi) a writ in the nature of mandamus be issued to the respondents to consider the claim of the petitioners for regularisation in light of the Policy decision P/16 by ignoring the break in service from 21.6.94 to 16.8.94;”

3. The Division Bench of this Court vide judgment dated 27.02.2001 allowed the writ petition with the following direction:



“For the reasons recorded above, this petition is allowed. The impugned orders Annexures P-15 and P-21 are quashed. The petitioners are entitled to continue on the posts till the regular selected candidates are available and in case the petitioners fulfill the conditions for regularisation of the services, the same shall duly be considered in accordance with the government policy, Annexure P-16.”

4. In compliance to the aforesaid judgment, his services, vide order dated 16.08.2002, were regularised w.e.f. 31.01.1996.

5. The sole grievance raised is that the respondents have not granted him the arrears for the period he remained out of service, i.e. from 24.05.1996 to 10.04.2001.

6. The first ground taken to justify rejection of the claim being, it not raised in his previous writ petition and the other on the principle of “No work No Pay”, the relevant paras of the written statement dated 12.08.2003, which have not been rebutted by filing any replication, read thus:

“1.That the petitioner has not claimed any arrears of pay etc. in the earlier writ petition No. 13272/99, and the Hon’ble High court has also not granted any relief with regard to back wages. Hence the petitioner is entitled to any back wages. The condition imposed in his appointment letter is correct, maintainable and binding upon the petitioner. So the present petition is barred and bad being governed by the principle of constructive res-judicata.

2. That the petitioner is not entitled to any back wages on the principle of “No work No Pay”. The petitioner did not work with the Department w.e.f. 25-5-96 to 10-4-2001. Moreover, the petitioner is estopped from filing the present writ petition by his own act and conduct.”

7. Evidently, neither was any prayer made in the previous *lis* with regard to the period the petitioner remained out of service nor for grant of any consequential benefits, if any, that may have arisen in the eventual quashing of the order terminating his services, as such the present petition is hit by the principles of res judicata and constructive res judicata, which have been exhaustively considered in the case of **M. Nagabhushana vs. State**



Karnataka¹, wherein Hon'ble the Supreme Court had observed and held thus:

“17. It may be noted in this context that while applying the principles of res judicata the court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that:

“... the application of the rule by courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.”

(See Sheoparsan Singh v. Ramnandan Singh [(1915-16) 43 IA 91 : ILR (1916) 43 Cal 694 (PC)] , IA at p. 99 : ILR at p. 706.)

18. Therefore, any proceeding which has been initiated in breach of the principle of res judicata is prima facie a proceeding which has been initiated in abuse of the process of court.

19. A Constitution Bench of this Court in Devilal Modi v. STO [AIR 1965 SC 1150] , has explained this principle in very clear terms: (AIR p. 1152, para 7)

“7. ... But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide Daryao v. State of U.P. [AIR 1961 SC 1457 : (1962) 1 SCR 574]).”

20. This Court in AIMO case [(2006) 4 SCC 683] explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in AIMO case [(2006) 4 SCC 683] relied on the following formulation of Somervell, L.J. in Greenhalgh v. Mallard [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (AIMO case [(2006) 4 SCC 683] , SCC p. 700, para 39)

“39. ... ‘I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it 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.’ ”

(emphasis supplied in AIMO case [(2006) 4 SCC 683])
The Bench in AIMO case [(2006) 4 SCC 683] also noted that the judgment of the Court of Appeal in Greenhalgh [(1947) 2 All ER 255 (CA)] was approved by this Court in State of U.P. v. Nawab Hussain [(1977) 2 SCC 806 : 1977 SCC (L&S) 362] , SCC at p. 809, para 4.

21. Following all these principles a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)

“35. ... 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.”

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.”

8. Had the petitioner been dissatisfied with the direction in the judgment rendered in his case, there was no stopping him from seeking any remedy with regards thereto, that may have been available in accordance with law.

9. On an anvil of the aforesaid and as a fall out thereof, the present petition is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

31.08.2024
Hemant

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No