



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

CWP-17791-2024

**Reserved on : 23.09.2024
Date of decision : 01.10.2024**

Bau Masih

.....Petitioner

Versus

The Punjab State Power Corporation Limited,
Patiala and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Raj Kaushik, Advocate for the petitioner.

Ms. Harpriya Khaneka, Advocate for the respondents.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Articles 226/227 of the Constitution of India, seeking quashing of the orders dated 18.05.2009 (Annexure P-4), 05.08.2010 (Annexure P-5), 20.05.2015 (Annexure P-8) and 11.03.2016 (Annexure P-10) passed by the respondents. Further a writ of mandamus has been sought for directing the respondents to reinstate the petitioner, with all consequential benefits.

2. The brief facts, as have been pleaded in the present petition, are that the petitioner joined the respondent-department on 01.11.1976 as Peon and was thereafter, promoted as Lower Division Clerk on 16.01.1987. He was issued charge-sheet dated 26.04.2007 with the allegations that he had availed L.T.C. bill amounting to Rs.47,690/- on the basis of bogus tickets, which were got cancelled by him. After holding regular departmental inquiry on the said charge-sheet, the

petitioner was dismissed from service vide order dated 18.05.2009 and the departmental appeal preferred against the said order was rejected by the Appellate Authority vide order dated 05.08.2010. Both these orders were challenged by the petitioner by filing a suit for declaration bearing Civil Suit No.324 of 2010 titled as 'Bau Masih Vs. The Chairman, Punjab State Electricity Board and others' before the learned Civil Judge (Junior Division), Amritsar. The said suit was partly decreed vide judgment and decree dated 16.07.2013 and the order dated 18.05.2009 and order dated 05.08.2010 were declared to be null and void on the ground that rules of natural justice were not followed as the petitioner/plaintiff was not given personal hearing and the respondents/defendants were directed to hold a fresh departmental inquiry with respect to the charges levelled against the petitioner/plaintiff within a period of three months. The said judgment and decree dated 16.07.2013 was challenged by the respondents/defendants by filing Civil Appeal No.196 of 2013 before the learned Additional District Judge, Amritsar which was partly accepted vide judgment dated 18.02.2015 and the judgment dated 16.07.2013 passed by the trial Court was modified to the extent that no fresh inquiry be conducted against the petitioner/plaintiff and the personal hearing will be given to the petitioner/plaintiff by the Chief Engineer Workshop, Ludhiana and thereafter, the matter will be further proceeded with against him and the respondents/defendants were directed to give personal hearing to the petitioner/plaintiff within a period of two months from the date of receipt of copy of the judgment.

In compliance with the judgment and decree dated 18.02.2015, passed

by learned lower Appellate Court, the petitioner was given personal hearing by the Chief Engineer/Storage and Workshop, P.S. Power Com Limited, Ludhiana and the punishment of dismissal awarded to the petitioner was upheld, vide order dated 20.05.2015. The petitioner preferred an appeal against the said order which has been rejected by the Appellate Authority vide order dated 11.03.2016. The said orders were challenged by the petitioner by filing CWP No.14663 of 2016 titled as 'Bau Masih Vs. Punjab State Electricity Board (now known as Punjab State Power Corporation Limited) and others' and the said writ petition was withdrawn by the counsel for the petitioner, vide order dated 06.09.2017, with liberty to file the regular second appeal. Thereafter, the petitioner preferred a regular second appeal bearing RSA No.4599 of 2018 along with an application for condonation of delay of 871 days. The said appeal was dismissed by the learned Single Judge vide order dated 23.03.2023 on merits as well as being time barred. Relevant portion of the said judgment reads as under :-

"In the present case, no valid justification has been given to condone the delay in filing the present regular second appeal.

Learned counsel for the respondents on the other hand submits that the appellant accepted the judgment and decree dated 18.02.2015 passed by the Lower Appellate Court and keeping in view the direction given by the Lower Appellate Court, a fresh order was passed by the authorities concerned on 11.03.2016, which means that judgment and decree of the Lower Appellate Court sought to be impugned in the present regular second appeal, already stood executed and complied with by the department. Learned counsel for the respondents further

submits that a fresh order which was passed in pursuance to the judgment and decree dated 18.02.2015 of the Lower Appellate Court was challenged by the appellant by way of filing a CWP-14663-2017, which writ petition was withdrawn, which shows that it was only when appellant remained unsuccessful in challenging the fresh order, he decided to file the present regular second appeal.

The said fact, stated by the learned counsel for the respondents has not been rebutted by the learned counsel for the appellant rather the same has been conceded.

Keeping in view the above, once, the judgment and decree of the Lower Appellate Court dated 18.02.2015 already stood complied with and a fresh order has already been passed, which order was unsuccessfully challenged by the appellants by way of filing a CWP-14663-2017 hence, thereafter, filing the present regular second appeal with application seeking condonation of delay is to unsettle the crystallized rights, which vest with the respondents.

In the facts and circumstances of the present case, once the rights of the parties have already been crystallized, keeping in the view the judgment and decree dated 18.02.2015 of the Lower Appellate Court and the said judgment has already been complied with, no ground for condoning the delay, as being prayed in the present application is made out.

At this stage, learned counsel for the appellant submits that the appellant be given liberty to avail an appropriate remedy against the fresh order passed by the respondent-department.

This Court is not required to pass any order on the said aspect as in case any remedy exists with the applicant-appellant to challenge the fresh order in pursuance to the judgment and decree dated 18.02.2015 of the Lower

Appellate Court, the applicant-appellant is free to avail the said remedy.

Keeping in view the above, present application seeking condonation of delay of 871 days in filing the accompanying appeal is dismissed.

As the appeal is time barred, the present appeal is not required to be decided on merits hence, the present regular second appeal along with the miscellaneous applications if any, is dismissed.”

Now, the petitioner has filed the present writ petition impugning the orders dated 18.05.2009, 05.08.2010, 20.05.2015 and 11.03.2016.

3. Since the petitioner has already availed the legal remedies impugning the order of dismissal dated 18.05.2009 and appellate order dated 05.08.2010 by filing a civil suit which was partly decreed vide judgment and decree dated 16.07.2013 passed by the Civil Court at Amritsar and on an appeal filed by the respondents/defendants, the judgment and decree dated 16.07.2013 was modified by the lower Appellate Court vide judgment and decree dated 18.02.2015 and the said judgment has already been executed and complied with by the respondents by passing an order dated 20.05.2015 upholding the earlier punishment order dated 18.05.2009 and appeal preferred by the petitioner against the said punishment order dated 20.05.2015 having been rejected vide order dated 11.03.2016 and the said orders were challenged by the petitioner in CWP-14663-2016 which the petitioner has chosen to withdraw vide order dated 06.09.2017 with liberty to file a regular second appeal and the said regular second appeal having been dismissed vide order dated 23.03.2023, therefore, the present petition is not maintainable and suffers from the principles of res judicata.

4. The Hon'ble Supreme Court in the judgment dated 02.02.2011 passed in Civil Appeal No.1215 of 2011 (arising out of Special Leave Petition (C) No.26391/10 in case ***M. Nagabhushana versus State of Karnataka and others : AIR 2011 SC (Civil) 483*** has explained the doctrine/principles of res judicata qua its applicability to the writ petitions and after considering the various judgments, has held that “the principles of constructive res judicata, as explained in explanation IV to Section 11 of the Civil Procedure Code, are also applicable to the writ petitions”. The relevant paras of the said judgment explaining the doctrine/principles of res judicata, read as under:-

“xx xx xx xx xx

14. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari, si constet curiae quod sit pro un aet eadem cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That 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.

xx xx xx xx xx

30. *In the premises aforesaid, it is clear that the attempt by the appellant to re-agitate the same issues which were considered by this Court and were rejected expressly in the previous judgment in All India Manufacturers Organisation (supra), is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of Res Judicata or Constructive Res Judicata and principles analogous thereto.*

xx xx xx xx xx”

5. In view of the above, there is no merit in the present petition and the same is hereby dismissed, with no order as to costs.

01.10.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No