

Jai Bhagwan Vs. Pec Ltd

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Court : Delhi

Decided On : Dec-12-2014

Judge : Hima Kohli

Appellant : Jai Bhagwan

Respondent : Pec Ltd

Advocate for Pet/Ap. : Dr. Nirmal Chopra

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 8835/2014 and CM APPL. 20271-20273/2014 Decided on:

12. 12.2014 IN THE MATTER OF: JAI BHAGWAN Petitioner Through: Dr. Nirmal Chopra, Advocate versus PEC LTD Respondent Through: None
CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) 1. The petitioner herein seeks directions to the respondent/PECL to restore the medical facilities to him in terms of the Voluntary Retirement Scheme (in short VRS).

2. The present case has a chequered history. As per the averments made in the writ petition, the petitioner was working on the post of Office Manager in the respondent/PECL since the year 1992. On 07.07.2000, the petitioner submitted his resignation to the respondent/PECL. As per the petitioner, the respondent/PECL had refused to accept his resignation. However, the averments made in the petition reveals that on 04.10.2000, while still in the service of the

respondent/PECL, the petitioner had joined the Excise and Taxation Department, Government of Haryana, as a Taxation Inspector, under the name, J.B. Parashar. On 03.01.2001, the respondent/PECL had introduced VRS for its employees and the petitioner applied under the said Scheme on 15.01.2001. On 17.01.2001, the petitioner was relieved from the service of the respondent/PECL.

3. It is the case of the petitioner that all the employees, who were granted VRS, were entitled to medical facilities for self and spouse under the Scheme, but on 26.02.2002, the respondent/PECL had abruptly stopped extending the benefit of medical facilities to him, and the same was duly communicated by the respondent/PECL vide letter dated 01.04.2002, stating inter alia that as per the information received from the Haryana Government, the petitioner had taken employment as Taxation Inspector in the office of the Deputy Excise and Taxation Commissioner, Haryana in October, 2000 when he was still in the employment of the respondent/PECL and had remained so till January, 2001, thereby illegally getting employed with two different government organizations in the same period.

4. Aggrieved by the aforesaid order, the petitioner had filed a writ petition in this Court, registered as W.P.(C)4646/2003. As none had appeared on behalf of the petitioner on 27.08.2003, the aforesaid petition came W.P.(C) 8835/2014 to be dismissed. While passing the dated 27.08.2003, the Court did not grant any liberty to the petitioner to file a fresh petition on the same cause of action. Admittedly, in all these years, the petitioner did not take any steps to have the aforesaid petition restored to its original position by filing an application. As a result, the said order has attained finality.

5. In the year 2002, the respondent/PECL instituted a civil suit for recovery of money, injunction and declaration against the petitioner in the District Court, registered as Suit No.193/2002 that was dismissed by a speaking order on 06.09.2004. Aggrieved by the aforesaid decision, the respondent/PECL preferred an appeal in the High Court, registered as RFA No.553/2004, which was dismissed vide judgment dated 27.05.2009. The aforesaid dismissal order was challenged by the respondent/PECL before the Supreme Court on 24.08.2009 and the same came to be finally dismissed on 17.09.2014.

6. A perusal of the aforesaid decisions reveals that the same were contested by the petitioner at every stage and therefore, it is not as if he would have remained unaware of the order dated 27.08.2003 passed in W.P.(C) 4646/2003, wherein he had laid a challenge to the order dated 01.04.2002 passed by the respondent/PECL, denying him medical facilities under the Scheme.

7. Counsel for the petitioner states that the petitioner had approached the Supreme Court directly for assailing the very same order dated 1.4.2002 by filing W.P.(C) 998/2014, which was listed on 05.12.2014. On the said date, learned counsel for the petitioner had sought leave to withdraw the said petition with liberty to approach the High Court. Learned counsel explains that it is in these circumstances that the present petition has been filed.

8. At the outset, it has been enquired from learned counsel for the petitioner as to how would the present petition be maintainable, when the earlier writ petition filed by the petitioner based on the very same cause of action and asking for the same relief came to be dismissed on 27.08.2003, and no steps whatsoever were taken by the petitioner for the past over one decade for seeking review of the said order or by filing an application for restoration of the said petition.

9. Learned counsel for the petitioner submits that he has elected to file the present petition in view of the order dated 05.12.2014 passed by the Supreme Court, whereunder, while dismissing his petition, he had been granted liberty to approach the High Court.

10. A perusal of the order dated 05.12.2014 does not bear testimony to the aforesaid submission. The said order has only recorded the submission as made by counsel for the petitioner that he be given liberty to approach the High Court and the said liberty, as prayed for, was granted. No observation has been made in the said order with respect to the maintainability of the said petition.

11. It is next submitted by learned counsel for the petitioner that in all these years, the petitioner has been waiting for a finality to be attached to the decision rendered by the trial court in the civil suit instituted by the respondent/PECL against him in the year 2002, for recovery of money, injunction, declaration etc. and therefore, it

must be construed that the cause of action had arisen in his favour only after the order dated 17.09.2014 was passed by the Supreme Court in the appeal filed by the respondent/PECL.

12. The aforesaid submission is also found to be misconceived in view of the fact that the civil suit was instituted by the respondent/PECL some time in the year 2002 and in the very next year, i.e., in the year 2003, the petitioner had taken steps to file a writ petition to assail the order dated 01.04.2002, which is now sought to be impugned afresh in the present proceedings. Therefore, it cannot be urged that the petitioner was patiently waiting for the outcome of the suit for recovery instituted by the respondent/PECL against him or that the cause of action would have got deferred till a final decision was taken in the appeals against the decision of the trial court. This is all the more apparent from the fact that the petitioner had not waited for the outcome of the aforesaid suit instituted by the respondent/PECL against him when he had elected to approach the High Court in the year 2003 by filing W.P.(C) 4646/2003 for the very same relief as is being sought after over a decade, in the present proceedings.

13. In view of the aforesaid facts and circumstances, this Court is not inclined to exercise its discretion in favour of the petitioner by entertaining the present petition, which would be barred by constructive res judicata, apart from being hopelessly barred by limitation. The petition is accordingly dismissed in limine alongwith the pending applications.

14. Needless to state that this order shall not preclude the petitioner from seeking restoration of W.P.(C) 4646/2003, that was dismissed in default on 27.08.2003, as per law. DECEMBER12 2014 rkb/mk W.P.(C) 8835/2014 (HIMA KOHLI)

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