

J. Shadrack Vs. Union of India and Others

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Court : Andhra Pradesh

Decided On : Feb-20-2001

Reported in : 2001(2)ALD597; 2001(3)ALT548

Judge : S.B. Sinha, C.J. and; S.R. Nayak, J.

Appeal No. : WP No. 11526 of 1999

Appellant : J. Shadrack

Respondent : Union of India and Others

Advocate for Def. : Mr. R.S. Murthy, SC for Railways

Advocate for Pet/Ap. : Mr. Sri Ganesh for ;Mr. P.B. Vijayakumar, Adv.

Judgement :

ORDER

S.B. Sinha, CJ

1. This application is directed against a judgment and order dated 31-12-1998 passed by the Central Administrative Tribunal in Original Application No.950 of 1998 whereby and whereunder the application filed by the petitioner herein was dismissed, Before the learned Tribunal, the petitioner prayed for setting aside the Memorandum No.GR/P.481/A/V, dated 24th August, 1998, which was issued reviving the order of recovery of overpaid amounts to the petitioner.

2. The facts of the matter are not much in dispute. The petitioner was initially appointed as Khalasi in the Loco Shed of Hubli Division on 21-1-1977. He opted for transfer for newly opened Wagon Workshop at Guntupalli and thereafter he was promoted to Welder (skilled) Grade III, II and I on 31-12-1980, 1-1-1984 and 1-3-1993 respectively. In the seniority list of skilled Grade-III Welders published on 23-2-1989, he was placed at Serial No.77. The said entry was later on found to be erroneous and alongwith three colleagues of the petitioner, the seniority list was altered from 77 to 153-A on 12-4-1989.

3. The pay of the petitioner, which was revised in terms of the seniority list was thereafter refixed from Rs.330/- to Rs.278/-. Consequent directions for recovery of the excess amounts paid to him were issued. The petitioner filed a representation which was not replied to. Thereafter, the aforementioned Original Application was filed before the learned Tribunal. The learned Tribunal found that the petitioner had been pursuing his remedies before the Tribunal for several years. He first filed OA No.922 of 1989 impugning alterations of the seniority, which was dismissed. Yet again he filed another OA No.460 of 1990 questioning the seniority assigned to him on 23-2-1989, which application was again dismissed on 10-6-1983 upon considering the merits of the matter. He filed Miscellaneous Application in the aforementioned application in OS No.460 of 1990 questioning the proposed recovery from this pay as regards the over-payment made to him. The said M.A. was also dismissed. The petitioner filed a review petition in the aforementioned case and certain interim orders have been passed. Pursuant thereto, he had been receiving his salary at the refixed scale.

4. Mr. Sri Ganesh, learned Counsel appearing on behalf of the petitioner, inter alia, submits that having regard to the fact that payments have been made to the petitioner herein long back, the same should not be directed to be recovered.

5. Although there are several decisions of the Apex Court, as also this Court, to the effect that recovery should not be directed to be made if the same is sought to be done after a long lapse of time having regard to the factual matrix of the present case, we are of the opinion that the petitioner is not entitled to such an equitable relief. As noticed hereinbefore, he had been filing several applications

before the Tribunal, which had been dismissed. The petitioner, therefore, now cannot be permitted to say, as was sought to be contended by the learned Counsel, that the seniority has erroneously been refixed. It is a well settled principle of law that a mistake can be rectified. If the mistake committed by the concerned authority is apparent on the face of record, even principles of natural justice are not required to be complied with. However in a given case where rectification of such mistake will entail civil consequences, and opportunity of hearing may be given. In the instant case, the petitioner had questioned refixation of seniority, but lost. He had questioned the order directing recovery of the amount. Again he had lost before the Tribunal. The petitioner had been paid excess amount pursuant to the interim orders passed by the learned Tribunal not even in OA., but only in RP No.66 filed in MA No.357 of 1990 arising out of OA No.460 of 1990. We do not know under what circumstances the learned Tribunal issued the aforementioned directions, despite the fact that not only the OA., but also the MA had been dismissed. No such interim order in the review petition was called for.

6. It is now a well settled principle of law that nobody can suffer prejudice of any act of the Court as *actus curiae neminem gravabit*, a well known principle of law which, in our opinion, should be applied in this case. The petitioner further more cannot be permitted to take advantage of his own wrong; nor can he be permitted to derive benefit from the wrong orders passed by the learned Tribunal.

7. For the reasons aforementioned, We do not find merit in this writ petition, which is accordingly dismissed. No order as to costs.