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Court : Andhra Pradesh

Decided On : Mar-07-2001

Reported in : 2001(3)ALD515; 2001(3)ALT600; (2001)IILLJ928AP

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

Acts : Constitution of India - Article 226

Appeal No. : W.P. No. 258/2001

Appellant : Rahman Khan P.

Respondent : Assistant General Manager, Region-vi, Sbi Zonal Office and anr.

Advocate for Def. : K. Srinivasa Murthy, Standing Counsel

Disposition : Appeal partly allowed

Judgement :
ORDER

Satyabrata Sinha, C.J.

1. This appeal is directed against the judgment and order dated December 7, 2000 whereby and whereunder the writ petition filed by the petitioner praying the following relief was dismissed:

' ..... the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for the records relating to F.No. 383, dated February 8, 2000, issued by the 1st respondent herein and quash the same as illegal, arbitrary and unjust and consequently direct the respondents to pay the gratuity of the petitioner (i. e. mine) and the interest applicable to Special Fixed Deposits forthwith and direct the 2nd respondent to furnish the copies of the rejected Government Loan Application, as alleged in the Charge 'B' within a week'

2. A peep into the matter reveals that the appellant was subjected to a disciplinary enquiry, and an order of removing him from service was passed as far back as November 7, 1983. The appellate authority confirmed the said order. While the appeal was pending before the appellate authority, the appellant filed W.P. No. 4869 of 1984 impugning the order of the disciplinary authority, and it was dismissed on July 23, 1986. The appellant again filed W.P. No. 9339 of 1986 questioning the order passed by the appellate authority seeking reinstatement, but the same was dismissed on January 29, 1987. There against, the appellant filed SLP before the Supreme Court, and it was also dismissed. The appellant again filed W.P. No. 8948 of 1987 questioning the action of the management in refusing to sanction pension and gratuity to him. The said writ petition was dismissed on October 7, 1991. The appellant, thereafter, filed W.P. No. 17038 of 1991 seeking for a writ of mandamus directing the respondents to reinstate him into service, and consequently direct the respondents to furnish the enquiry report on the ground that the enquiry for non-supply of enquiry report is vitiated in terms of the judgment of the Supreme Court in Union of India v. Mohd. Ramzan Khan : (1991)ILLJ29SC . The said writ petition was dismissed on April 7, 1993.

3. Despite the same, the appellant filed W.P.No. 7584 of 1996 praying for issuance of a writ of mandamus for a declaration that one of the charges i.e., Charge 'B', as illegal, unjust and arbitrary. The said writ petition was disposed of at the admission stage directing the appellant to file a petition seeking review of the order in W.P. No. 17508 of 1991, dated October 5, 1993. Yet again, the appellant filed W.P. No. 19610 of 1997 praying for a writ of mandamus to set aside the order of termination dated November 7, 1983, and it was dismissed on August 20, 1997.

4. The writ petition, the order passed wherein is impugned in this writ appeal, has been filed praying for the reliefs already adverted to above. The learned single Judge invoking the principles of res judicata, dismissed the writ petition.

5. The appellant, who appears in person, placing reliance on the decision of the Apex Court in Managing Director, ECIL, v. B. Karunakar : (1994)ILLJ162SC submitted that it was obligatory on the part of the employer to supply a copy of the report to the employee, and that the non-supply thereof vitiated the entire disciplinary proceedings. But the question as to whether in the Service Rules governing the appellant, any condition as regards obligation of the employer to supply a copy of the enquiry report, existed or not having regard to the principles of res judicata, the same cannot be reopened now, particularly when the appellant herein in the writ petition has only 'sought a direction to the respondents to pay him the amount of gratuity. It is well known that the general principles of res judicata apply in a writ proceedings also. The appellant has approached this Court on several occasions by filing writ petitions and in one of the cases also approached the Supreme Court, which upheld the order impugned therein.

6. For the reasons, aforementioned, we are of the opinion that the appellant cannot be permitted to reagitate the question inasmuch as the principles of constructive res judicata squarely apply in this case even if it is assumed that the aforementioned question had not been raised in earlier writ proceedings. It is also well settled that a party cannot be permitted to raise a question collaterally in a proceeding where the same cannot be raised directly.

7. Having regard to the past history, we would not have interfered with the order of the learned single Judge imposing costs, but keeping in view the fact that the appellant has not been advised correctly on the legal side, we feel it appropriate to delete that portion of the order whereby costs have been awarded. Hence, the part of the order of the learned single Judge, which imposed costs, stands set aside.

8. The writ appeal is partly allowed to the extent indicated above. No costs.

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