Khem Chand Vs. S.K. Sarvaria and Another

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Court : Delhi

Decided On : Jul-07-2000

Reported in : 2000(55)DRJ60

Judge : A.K. Sikri, J.

Acts : Constitution of India - Articles 32 and 226; Industrial Disputes Act, 1947 - Sections 2(S)

Appeal No. : Civil Writ Petition No. 1405 of 1996

Appellant : Khem Chand

Respondent : S.K. Sarvaria and Another

Advocate for Def. : Mr. J.N. Aggarwal, Adv.

Advocate for Pet/Ap. : Mr. D.N. Vohra, Adv

Judgement :
ORDER

A.K. Sikri, J.

1. This petition raises short but interesting point of rest judicata or right to raise industrial dispute by the petitioner-workman after his writ petition challenging the same action was dismissed by this Court. The facts which give rise to the

aforesaid question may be narrated first.

2. Petitioner was appointed as Conductor with respondent No. 2 - Delhi Transport Corporation (hereinafter referred to as DTC, for short) on 15th June, 1984. On 13th November, 1985 he was served with charge-sheet for non-issuance of tickets to passengers after collecting due fare from them. Three charges were leveled against the petitioner. Enquiry was held and Enquiry Officer submitted his report giving the findings that all the charges leveled against the petitioner stood proved. Show cause notice was served upon the petitioner. At this stage, petitioner filed the writ peti-tion being Civil Writ Petition No. 1853 of 1988 which was dismissed (this fact was not disclosed in the present writ petition). Thereafter petitioner was removed from service w.e.f. 7th September, 1988. Petitioner filed another writ petition being Civil Writ Petition No. 2391 of 1988 challeng-ing the removal from service. This writ petition was also dismissed by the Division Bench of this Court by passing order dated 24th October, 1988. This is a one word order stating 'Dismissed'. After suffering dismissal in the aforesaid manner petitioner raised industrial dispute by pproaching appropriate Government. This resulted in referring the matter for adjudication by Delhi Administration vide its terms of reference dated 9th March, 1992 reading as under :-

'Whether the removal from service of Shri Khem Chand is legal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect.'

3. On receipt of the reference, Labour Court issued notice to both the parties. Petitioner filed his statement of claim to which written submission was filed by the DTC. Rejoinder was filed by the workman and after the pleadings were over the following issues were framed by the Labour Court on 12th August, 1993:-

1. Whether the enquiry conducted by the management was fair and proper?

2. To what relief, if any, is the workman entitled in terms of reference?

4. After framing of issues nobody appeared on behalf of DTC and it was proceeded ex-parte. Petitioner filed affidavit in evidence and argument were heard

and thereafter impugned award dated 2nd January, 1996 was im-posed. While deciding the issue no.1 the Labour Court held that when Civil Writ Petition No. 2391 of 1988 challenging the enquiry proceedings on identical grounds was dismissed by High Court a Contrary findings cannot be given by it and thereforee this issue was barred by principle of rest judicata. This issue was thereforee decided in favor of DTC and against the petitioner and as the enquiry was treated to be fair and proper. Labour Court held that petitioner was not entitled to any relief. The relevant observation of the Labour Court while deciding issue No. 1 may be reproduced at this stage:-

The management in the Para No.13 of the written statement has specifically stated that the workman filed a writ in the Hon'ble High Court of Delhi which was dismissed. All the contents raised in the statement of claim were also raised before the Hon'ble High Court of Delhi and as such the workman is debarred from seeking redressal of his grievances and/or reinstatement following the doctrine of principles of rest judicata. The workman has filed the copy of the writ petition bearing Civil Writ Petition No. 2391/1988 challenging the enquiry proceedings and his dismissal on identical facts with the prayer of issuance of order or direction to quash the order of removal from service. The management Along with documents have filed the copy of the decision dated 24.10.88 of Division Bench of Hon'ble High Court of Delhi in CW 2391/88 & CM 4923/88 by which the above writs petition of the workman was dismissed. During the course of arguments the factum of dismissal of writ petition of the workman with identical, plea by Hon'ble High Court is not disputed. When the writ petition challenging the enquiry proceedings on identical ground is dismissed by Hon'ble High Court, a contrary findings can not be given by this tribunal while passing the present award. The issues is directly and substantially involved before Hon'ble High Court in the said writ petition and in the present reference being same, the statement of claim of the workman, in respect of the validity of the enquiry proceedings which led to his removal from service is certainly barred by principles of rest judicata. The issue is decided in favor of the management and against the workman.

5. This writ petition is filed challenging the aforesaid award and contending that the Labour Court erred in holding that issue No. 1 was barred by rest judicata. Mr.

D.N. Vohra, learned counsel for the petitioner argued that since the writ petition was dismissed in liming without passing a speaking order principles of rest judicata did not apply. He further submitted that dismissal of the writ petition was no bar on raising the dispute by invoking the machinery provided under the Industrial Disputes Act (hereinafter referred to as the Act, for short). He submitted that writ petition was infact dismissed as alternate remedy was available to the petitioner to raise industrial dispute and relied upon the judgment in the case of Jitendra Nath bids was v. M/s. Empire of India & Cyclone Tea Company and another reported in 1989 (2) LLJ 572; Daryao and others Vs . State of U.P. and others : [1962]1SCR574 : Pujari Bai Vs . Madan Gopal : [1989]3SCR383 ; The Premier Automobiles Ltd. Vs . Kamlakar Shamtaram Wadke and others : (1975)IILLJ445SC .

6. He also submitted that u/s. 11-A of the Act, Labour Court had the powers of appellate Court as per the decision contained in the case of Delhi Transport Corporation Vs . Ram Kumar reported in : (1982)IILLJ191Del and relied upon the following observation of the aforesaid judgment :-

'By virtue of powers under Section 11-A of the Industrial Tribu nal has now full power to re-appreciate the evidence and to satisfy whether the evidence justifies the finding of misconduct. The Tribunal is now even competent to give and impose lesser punishment even if it agrees with the finding of the management as to the guilt of the employee. The scope of enquiry under Section 10 is now much wider than the scope of enquiry for ac-cording or refusing approval under Section 33(2)(b). Section - 11A now permits a Tribunal even in case where enquiry has been held by an employer and a finding of misconduct arrived at to differ from that finding is proper course, and hold that no misconduct is proved. The Tribunal may hold that the proved misconduct does not merit punishment by ways of discharge or ismissal and it can even impose lesser punishment instead. The power to even interfere with the punishment is conferred on the Tribunal by Section 11A.'

7. On the other hand Mr. J.N. Aggarwal, learned counsel for the DTC submitted that raising of the dispute by the petitioner was misuse and abuse of the process of law inasmuch as petitioner was not entitled to agitate the same cause of action

in another forum i.e. before the Labour Court after his writ petition challenging the same order of removal was dismissed by this Court vide its order dated 6th September, 1988. He fur-ther submitted that even otherwise writ petition deserves to be dismissed on the ground that alleged dispute was belated having been raised after a lapse of more than three years.

8. I may say at the outset that DTC, respondent herein, being a statutory authority is amenable to writ jurisdiction of this Court. After the termination of the petitioner's services he had option to either file writ petition challenging the said order and he being a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, could also raise industrial dispute challenging his termination. He had more than one fora to redress his grievance and he could choose from any of these fora. However, once having elected to choose remedy under one forum, again the same cause of action cannot be challenged before another forum. This is based on doctrine of election. 'Doctrine of Election' is based on the maxim 'that a person cannot approbate or reprobate at the same time'. This same principle is stated in White and Tudor's Leading Cases in Equity Vol. 1 and Eds. at page 444 as follows:-

'Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.'

9. This doctrine has been applied in India also, based on sound public policy (refer Beepathuma Vs . Shankaranarayana : [1964]5SCR836 , R.N. Gosain Vs . Yashpal Dhir : AIR 1993 SC352 , Shankar Ramchandra Abhyankar Vs . Krishnaji Dattatreya Bapat : [1970]1SCR322

10. thereforee once the petitioner had filed the writ petition being Civil Writ Petition No. 2391 of 1988 which was dismissed by order dated 24th October, 1988, normally petitioner could not raise industrial dispute challenging the order of dismissal passed against him. However in the instant case it is seen that Civil Writ Petition No. 2391 of 1988 was dismissed by a non-speaking order with one word 'dismissed' that too with-out even notice to the respondents. thereforee, even

when it was dismissed in limine, if there were reasons given for dismissal of the writ petition in the order dated 24th October, 1988 the petitioner would not have been entitled to invoke the remedy provided under the Industrial disputes Act thereafter and such proceedings would have been barred on the principle of constructive rest judicata also. However, this principle would not be applicable when the dismissal of writ petition is by non-speaking order and thereforee one does not know as to whether writ petition was dismissed on merits or on technical grounds. It is the contention of the petitioner that the writ petition was infact dismissed as the petitioner had alternate efficacious remedy available to raise industrial dispute through the machinery provided under the Industrial Disputes Act. However, as no reasons were stated in the order dated 24th October, 1988, as already observed above, it is not possible to ascertain as to what were the reasons which prompted Division Bench of this Court to dismiss the writ petition.

11. The position in law materially changes when the writ petition is dismissed in liming by a non-speaking, one word order viz. 'Dismissed'. It as been held that principles of rest judicata would not apply in such a situation. In Daryao case (supra) the proposition of law was stated by the Apex Court in the following words:-

'We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is other wise modified or reversed by appeal or other appropriate proceedngs permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the high Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in liming and an order is pronounced in that behalf,

whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar except in cases which we have already indicated. If the petition is dismissed in liming without passing a speaking order than such dismissal cannot be treated as creating a bar of rest judicata. It is true that, prima facie, dismissal in liming even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all: but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the court and that makes it difficult and unsafe to hold that such a sum mary, dismissal is a dismissal on merits and as such constitutes a bar of rest judicata against a similar petition filed under Art. 32.'

12. To the same effect is the judgment of the Supreme Court in the case of ujari Bai (supra) the following pertinent observations were made:-

'This takes us to the question of rest judicata. The question is whether the suit of the appellant was barred by rest judicata in view of the summary dismissal of her writ petition earlier. It is not disputed that the writ petition filed by the appellant against the order of the Assistant Consolidation Officer was dismissed in limine. This order dated April 14, 1969 was passed by the Division Bench of Punjab and Haryana High Court. It was a one word order. The question of rest judicata apparently arises when a controversy or an issue between the parties has been heard and decided.

But the technical rule of rest judicata, although a wholesome rule sed upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of rest judicata to such an extent so as to found it on mere guesswork. To illustrate our view point, we may take an example. Suppose a writ petition is filed in a High Court for grant of a writ of certiorari to challenge some order or decision on several grounds. If the writ petition is dismissed after contest by a speaking order obviously it will operate as

rest judicata in any other proceeding, such as, of suit, Article 32 or Article 136 directed from the same order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principles of rest judicata. It thus becomes clear that when a writ petition after contest is disposed of on merits by a speaking order, the question decided in that petition would operate as rest judicata, but not a dismissal in liming or dismissal on the ground of laches or availability of alternative remedy. The High Court and the courts below, thereforee, were not right in throwing out the suit of the appellant on the ground of rest judicata.

13. The position of law which emerges from the aforesaid judgment can be summarised as under :-

i. If a workman files a writ petition on a particular cause of action and the said writ petition is entertained and decided on merits and disposed of/dismissed even in liming but by passing a speaking order, on the same cause of action the concerned employee is precluded from raising industrial dispute. This would be so on the 'doctrine of election' as well as on the 'principles of rest judicata'.

ii. In case the writ petition is dismissed in liming by a nonepeaking order it would be unsafe to presume that writ petition was dismissed on merits and thereforee in such a case it could not operate as rest judicata and thereforee would not be a bar from raising industrial dispute.

14. The present case falls in the second category enumerated above. The writ petition filed by the petitioner was dismissed by one word 'dismissed'. thereforee, it cannot be said that petition was decided on merits. In these circumstances, the Labour court was wrong in holding that the writ petition was barred by rest judicata. Accordingly, the writ petition succeeds and is allowed. Rule is made absolute. Order dated 2nd January, 1996 passed by the Labour Court is hereby set aside. The matter is remanded back to the Labour Court to decide the same on merits after giving opportunities to both the parties. Parties may appear before the Labour Court on 1.8.2000. Since the dispute was referred for adjudication in the

year 1992, Labour Court should endeavor to decide the same expeditiously.

15. There shall be no order as to costs.