

Babban Singh Vs. Union of India and ors

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Court : Jharkhand

Decided On : Apr-15-2013

Appellant : Babban Singh

Respondent : Union of India and ors

Judgement :

INTHEHIGHCOURTOFJHARKHANDATRANCHI W.P.(S)No.2329of2011
BabbanSingh Petitioner Versus
UnionofIndiathroughtheSecretary,MinistryofHomeAffairs& Ors.
....Respondents CORAM :HON'BLETHECHIEFJUSTICE
HON'BLEMRS.JUSTICEJAYAROY ForthePetitioner :Mr.S.Mitra,Advocate
FortheResp.2(UPSC):Mr.FaizUrRahman,Advocate FortheResp.1
:Mr.T.N.Mishra,Advocate FortheRespondents :Mr.RahulKumar,Advocate
Mr.PrabhatSingh,Advocate th OrderNo.08 Dated,15 April,2013
Heardlearnedcounselfortheparties.

2. ThepetitionersO.A.No.260of2010wasdismissedby the Central Administrative Tribunal, Patna Bench, Patna, Circuit BenchatRanchivideorderdated12thJanuary,2011onthe ground thatthepetitionerearlierpreferredO.A.No.101of2009,whichwas dismissedbythesameBenchvideorderdated9thMarch,2010and therefore, petitioners second O.A. is barred by Principle of resjudicataaswellasonthegroundofdelay.

3. Learned counsel for the appellant submitted that the petitioner in O.A. No. 101 of 2009 prayed that his case may be considered for promotion to the Indian Police Service and the petitioner did not challenge the promotion of other persons who were given promotion in Indian Police Service. It is also submitted that those selected candidates were not party in O.A. No. 101 of 2009 and that the Principle of res judicata as provided under Section 11 of the Code of Civil Procedure, it applies in case where earlier decision is between the same parties.

4. Learned counsel for the petitioner also submitted that it is true that the Tribunal has made certain observations in Para 24 of the order but subsequently, the petitioner came to know that the respondents suppressed the important material facts from the Tribunal and misrepresented that the petitioner's case was considered and the petitioner was not found to be a suitable candidate for promotion. The petitioner when got relevant document, then the petitioner found that in fact his case was recommended for promotion. Learned counsel for the petitioner, therefore, submitted that the impugned order dated 12th January, 2011 deserves to be set aside.

5. So far as question of res judicata is concerned, we are of the considered opinion that in the petitioner's earlier O.A. No. 101 of 2009, the Tribunal observed that the applicant has filed the O.A. against the selection list dated 18th December, 2007 and the petitioner's candidature and his eligibility was also considered in various paras of the impugned order passed in petitioner's earlier O.A. No. 101 of 2009 including his candidature for vacancies of the year 2007 in Para 21.

6. Without going deep in the plea of res judicata, we are of the considered opinion that even if necessary parties were not in the earlier O.A. No. 101 of 2009 even then the petitioner's second O.A. was not maintainable till order in O.A. No. 101 of 2009 stands. The petitioner did not challenge the order passed in O.A. No. 101 of 2009 and challenged the same order in a coordinate jurisdiction Bench by indirect way. The plea that the order dated 9th March, 2010 is not binding is not available to petitioner and this plea can be taken only by the

persons who were necessary parties in the proceeding i.e. O.A.No.101 of 2009 and were not impleaded in O.A.No.101 of 2009.

7. The petitioner's claim was considered and in the earlier round of litigation as apparent from the copy of the order dated 9th March, 2010, which we have already perused, the Tribunal also quoted the part of the portion of the observation made in O.A.No. 101 of 2009. Unless, these findings are set aside, for any of the reasons, the petitioner was not entitled to maintain second O.A.No. 260 of 2010 which has been dismissed though on the ground of Principle of res judicata and as barred by limitation.

8. The only remedy before the petitioner was to challenge the order dated 9th March, 2010 passed in O.A. No.101 of 2009 before appropriate forum which could have been by filing writ petition as well as by moving appropriate application for review of the order passed in O.A.No.101 of 2009 after submitting relevant material documents before the Tribunal showing that by suppressing relevant material documents fraud have been committed and practiced by the respondent which has vitiated the earlier order. The petitioner could have taken the benefit of law that the fraud vitiates everything.

9. Therefore, we are of the considered opinion that the petitioners should have first challenged the order dated 9th March, 2010 and petitioners second O.A. is not maintainable.

10. In view of the above reasons, this writ petition is disposed of with the liberty to the petitioner to move the appropriate review application before the Tribunal with relevant material documents so that he can demonstrate that fraud has been committed in Tribunal's proceeding by suppressing of the materials and relevant documents by the respondents.

11. In case the petitioner files the review petition and is barred by time by now then, he may move application for condonation of delay and the Tribunal may consider the prayer for condonation of delay sympathetically. (Prakash Tatia, C.J.) (Jaya Roy, J.) SI/Anit

