

2022 Scej 1052

Supreme Court of India

JUSTICE INDIRA BANERJEE JUSTICE J.K. MAHESHWARI

CENTRAL BANK OF INDIA v. DRAGENDRA SINGH JADON

CIVIL APPEAL NO. 5036 OF 2022

2nd August 2022

Service matter -

Industrial Disputes Act, 1947, S.17B - Reappointment and reinstatement - Reinstatement means to return a person or thing to its previous position or status - An order of reinstatement puts a person back to the same position - Respondent was granted the relief of reinstatement - Tribunal and the High Court have in effect and substance found the termination of service of the Respondent to be wrongful - Tribunal held that the Respondent had not actually rendered service to the Appellant-Bank and that he had been earning in the intervening period, denied him back wages - Appellant-Bank cannot take advantage of its own wrong of wrongfully dismissing the Respondent from service, to deny him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties - Division Bench of the High Court rightly directed that the Respondent would have to be treated in service from the date of removal till the date of actual reinstatement in service and would accordingly be entitled to seniority and the right to be considered for promotion, but would not be entitled to back wages. [Para 18 - 21]

Practice and procedure - Maintainability - Where an objection to the maintainability of any application/suit on an issue of law is not expressly dealt with, but the application/suit is entertained and disposed of on merits, the objection is deemed to have been rejected - The mere fact that an issue may not specifically have been dealt with, or reasons not specifically disclosed for decision on that issue, would not vitiate a judgment and order, that is otherwise correct. [Para 13]

Res judicata and issue estoppels - The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction - Res judicata debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties - There is a distinction between res judicata and issue estoppels - In the case of issue estoppel, a party against whom an issue has been decided would be estopped from raising the same issue again - Where an issue could have been raised in earlier proceedings, but has not been raised, the principle of constructive res judicata would be attracted to deny relief, for it is not the policy of law that multiple proceedings should be initiated in Court in relation to the same cause of action - Where the cause of action for initiation of proceedings is a distinctive cause of action, the principles of res judicata would not apply. [Para 16, 17]

Petitioner Counsel: MEERA MATHUR, Respondent Counsel: PASHUPATHI NATH RAZDAN

JUDGEMENT

INDIRA BANERJEE J. - Leave granted.

2. This appeal is against a judgment and order dated 3rd April 2017 passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior dismissing Writ Appeal No. 310 of 2015 filed by the Appellants against an order dated 7th August 2015, passed by the Single Bench, allowing the Writ Petition under Article 226 of the Constitution of India being Writ Petition No. 1571 of 2013, filed by the Respondent.

3. On or about 23rd April 1975, the Respondent was appointed to the post of Agricultural Assistant in the Appellant-Bank and posted at its Kailaras Branch in Madhya Pradesh.

4. Over four years after his appointment, the Respondent was served with a chargesheet dated 18th September 1979 alleging that he had impersonated his brother in a Written Test conducted by the Bank through the Banking Service Recruitment Board, Lucknow on 6th May 1979 and answered the questions on his behalf. Pursuant to the chargesheet, Disciplinary Enquiry was held after which the services of the Respondent were terminated by the Appellant-Bank by an order dated 29th January 1982.

5. The Respondent raised an industrial dispute. By Notification No. L- 12012/135/84-D.II(A) dated 7th April 1988, the Government of India, Ministry of Labour referred to the Central Government Industrial Tribunal cum Labour Court, hereinafter referred to as the "Tribunal", the dispute of "Whether the action of the management of the Central Bank of India, Gwalior in dismissing from service Shri Dragendra Singh Jadon, Agricultural Assistant with effect from 29.01.1982 is justified? If no, to what relief is the workman entitled?"

6. By an Award dated 10th September 2008, the Tribunal held that the Appellant-Bank was not able to prove the charge of impersonation against the Respondent and therefore, the dismissal was unjustified. The Tribunal, however, found that the Respondent had gainfully been employed throughout the interregnum period after termination, and, therefore, limited relief to reinstatement without back wages. The Appellants contend that there was no specific or general direction for continuity of service of the Respondent or consequential benefits.

7. On or about 12th July 2009, the Respondent filed a writ petition being Writ Petition No. 3091 of 2009(S) in the High Court of Madhya Pradesh at Gwalior, challenging the Award of the Tribunal insofar as the Respondent had been declined back wages. In the said Writ Petition, the Respondent sought the relief of modification of the Award dated 10th September 2008, by giving the Respondent the benefit of full back wages, continuity in service and other consequential benefits and such other relief as might be necessary for doing justice including costs.

8. The Appellants also filed a Writ Petition being Writ Petition No. 621 of 2009(S) against the Award dated 10th September 2008, insofar as the Respondent was directed to be reinstated in service. By a common judgment and order dated 8th May 2012, the High Court dismissed both the writ petitions. The Appellants states that, in compliance of the order dated 8th May 2012, the Appellant-Bank reinstated the Respondent with effect from his date of reporting i.e. 18th August 2012.

9. Sometime in March 2013, the Respondent moved a Writ Petition being Writ Petition No. 1571 of 2013 in the High Court of Madhya Pradesh at Gwalior, seeking orders on the Appellant-Bank to reinstate the Respondent to the post of Agricultural Finance Officer with notional fixation of pay upto 10th September 2008 i.e the date of the Award of the Tribunal and for payment of actual salary from 10th September 2008, being the date of the Award.

The Respondent also prayed that the Appellant-Bank be directed to fix the seniority and the current salary of the Respondent, taking into consideration his past services.

10. The Appellant-Bank contested the Writ Petition and filed a reply, raising a preliminary objection to the maintainability of the Writ Petition on the ground of the Writ Petition being barred by principles of res judicata.

11. By a judgment and order dated 7th August 2015, the learned Single Judge of the High Court, allowed the Writ Petition. The Single Judge held :-

“The Tribunal, upon reference made to it by the Central Government to adjudicate as to whether the respondents were justified in removing the petitioner from service, has answered the reference in negative and in favour of the petitioner-workman holding that petitioner was wrongly removed from service. Accordingly, the Tribunal ordered for reinstatement, but without back wages. Legal meaning attributed to word “reinstatement” is beyond any cavil of doubt as by catena of decisions of Hon’ble the Apex Court and various High Courts, word “reinstatement” has been unequivocally explained to the effect that once the Authority or Court orders for reinstatement of an employee, then the position of that employee is restored back to the date on which he was removed from services. As such, the respondents were not justified having excluded the period from the date of removal of the petitioner to the date of his reinstatement and treating the same as completely dies non and also in not allowing the petitioner to get the service benefits attributable to him by virtue of the aforesaid length of service. In the opinion of this Court, the order (Annexure P/1) passed by the Respondent-Bank is not in conformity with the order passed by the Tribunal. Hence, the impugned order, so far as it relates to denying benefits to the petitioner for the intervening period (the period from the date of removal of the petitioner from service to the date of his reinstatement), excepting denial of back wages is quashed and it is held that the petitioner shall be held entitled for all the benefits except back wages construing him to be in service from the date of removal till the date of actual reinstatement in service. Needless to mention that consequent upon the reinstatement, petitioner is entitled to regular salary from the date of Award subject to adjustment of the amount already paid under Section 17B of the Industrial Disputes Act.”

12. Mr. Debal Banerji, Senior Advocate, appearing on behalf of the Appellant- Bank rightly argued that the principles of res judicata apply to writ proceedings under Articles 226 and 227 of the Constitution of India. There can be no dispute with the proposition. It is also true that the learned Single Judge of the High Court has not specifically dealt with the issue of res judicata raised by the Appellant-Bank.

13. Where an objection to the maintainability of any application/suit on an issue of law is not expressly dealt with, but the application/suit is entertained and disposed of on merits, the objection is deemed to have been rejected. The mere fact that an issue may not specifically have been dealt with, or reasons not specifically disclosed for decision on that issue, would not vitiate a judgment and order, that is otherwise correct.

14. It is not correct to say that the Respondent obtained the order of this Court by suppressing the fact that an earlier Writ Petition moved by the Respondent had been dismissed. In Paragraph 5.5 of the Writ Petition, the Respondent clearly stated that both the parties had challenged the Award of the Tribunal before the High Court – the Management of the Appellant-Bank against the entire Award and the Respondent against the part of the Award refusing back wages. Both the Writ Petitions i.e. W.P. No. 621 of 2009(S) filed by the Respondent and W.P. No. 3091 of 2009(S) filed by the Appellants were heard analogously and dismissed by a common order dated 8th May 2012. The Respondent not only

mentioned the fact that he had initiated a Writ Petition earlier, but also annexed a copy of the common judgment and order of the High Court in the earlier Writ Petitions as Annexure P-4.

15. Even though, the Court may not have specifically dealt with the issue of res judicata raised by the Appellant-Bank as a preliminary issue, it is clear from the judgment and order of the Single Bench as also the impugned judgment and order of the Division Bench, that the second writ petition was not barred by the principles of res judicata or analogous principles.

16. The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Res judicata debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties. There is a distinction between res judicata and issue estoppel. In the case of issue estoppel, a party against whom an issue has been decided would be estopped from raising the same issue again.

17. Where an issue could have been raised in earlier proceedings, but has not been raised, the principle of constructive res judicata would be attracted to deny relief, for it is not the policy of law that multiple proceedings should be initiated in Court in relation to the same cause of action. Where the cause of action for initiation of proceedings is a distinctive cause of action, the principles of res judicata would not apply.

18. What was in issue in the earlier writ petition being Writ Petition No. 3091 of 2009(S) was the legality of the Award and other consequential benefits. The cause of action for Writ Petition No. 1571 of 2013 arose subsequently. The issue in the later writ petition was not whether the Respondent was entitled to back wages for the period prior to the date of the Award, which issue had been decided in the earlier writ petition, but the issue of fixation of pay and seniority upon reinstatement in service. The question in the second writ petition was, whether, for the purposes of seniority and fixation of pay, the Respondent was to be treated as a newly appointed employee and that too with effect from 18th August 2012, when the Award directing his reinstatement was dated 10th September 2008.

19. In our considered view, the learned Single Bench of the High Court rightly granted relief to the Respondent. By the impugned judgment and order, the Division Bench of the High Court dismissed the Appeal of the Appellants and directed that the Respondent would have to be treated in service from the date of removal till the date of actual reinstatement in service and would accordingly be entitled to seniority and the right to be considered for promotion, but would not be entitled to back wages.

20. We find no infirmity with the concurrent findings of the Single Bench and the Division Bench of the High Court. There is a difference between reappointment and reinstatement. Reinstatement means to return a person or thing to its previous position or status. An order of reinstatement puts a person back to the same position.

21. The Tribunal had granted the Respondent, the relief of reinstatement. Considering that the Respondent had not actually rendered service to the Appellant-Bank and that he had been earning in the intervening period, the Tribunal denied him back wages. The Tribunal and the High Court (both the Single Bench and the Division Bench) have in effect and substance found the termination of service of the Respondent to be wrongful.

22. The Appellant-Bank cannot take advantage of its own wrong of wrongfully dismissing the Respondent from service, to deny him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties.

23. The appeal is, accordingly, dismissed.