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(2016) 119 ALR 392

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

PRATAP SINGH RAWAT - PETITIONER

Vs.

**U.P. STATE AGRO INDUSTRIAL CORP. LTD. AND ANOTHER -
RESPONDENTS**

(Before : Shri Narayan Shukla and Ashok Pal Singh, JJ.)

Writ Petition No. 1260 (S/B) of 2014.

Decided on : 05-05-2016

- Constitution of India, 1950 - Article 226

A. Writ Petition Mandamus Post-Retirement Benefits Claim for Interest, Cost, and other benefits Petitioner sought mandamus for payment of interest, cost, and other benefits due to delayed payment of post-retirement dues Initial recovery order of Rs. 36,04,552/- was subsequently reduced to Rs. 20,276/- approximately eight years later Petitioner challenged the initial recovery order in a previous writ petition, which directed the Managing Director to pass an appropriate order Post-retirement dues were released after the modified recovery amount was deposited. (Paras 2, 3, 4, 10)

B. Res Judicata Constructive Res Judicata Applicability to Writ Proceedings Objection raised by respondents regarding the maintainability of the current writ petition on the grounds of constructive res judicata, as the relief for interest was sought in a previous writ petition which did not grant it Principles of constructive res judicata apply to writ proceedings, where matters which might and ought to have been litigated are deemed to have been adjudicated. (Paras 5, 6)

C. Res Judicata Conditions for Applicability Petitioner argued that the previous writ petition did not adjudicate the claim for interest on its merits, but rather directed an appropriate order from the Managing Director For res judicata to apply, the matter must have been directly and substantially in issue, heard, and finally decided by a competent court in the former suit. (Paras 7, 8)

D. Delay in Payment of Post-Retirement Dues Interest Claim Court's decision While there was a significant delay in the payment of post-retirement dues due to the protracted litigation over the recovery amount, the final order in the previous writ petition did not explicitly direct interest payment Therefore, the subsequent delay in payment after the court's order was not considered "considerable" enough to warrant interest. (Paras 11)

E. Litigation Costs Unjustified Litigation Recovery Order Modification The court found that the respondents' initial "hypothetical" recovery certificate and subsequent contest of the case were not bona fide, leading to the petitioner being "dragged into litigation" and suffering mental agony Consequently, the respondents were directed to pay Rs. 50,000/- as costs to the petitioner. (Para 12)

Counsel for Appearing Parties

Umesh Chandra Pandey, Advocate, for the Petitioner; S. Mirza, Advocate, for the Respondent

Cases Referred

- Amalgamated Coalfields Ltd. Vs. Janapada Sabha Chhindwara, AIR 1964 SC 1013
- Devilal Modi Vs. STO, AIR 1965 SC 1150
- [Direct Recruit Class II Engg Officers' Assn Vs. State of Maharashtra, \(1988\) 57 FLR 744 SC : \(1988\)-90 SCLJ 123 : \(1990\) 2 SCC 715](#)
- Jaswant Sing Vs. Custodian of Evacuee Property, New Delhi, AIR 1985 SC 1096
- Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332
- [Shiv Chander More Vs. Lieutenant Governor, \(2014\) 11 SCC 744 : \(2014\) 105 LR 22 SC Sum](#)
- Sri Jagannath Temple Managing Committee Vs. Siddha Math, (2016) 34 LCD 332
- [Syed Mohd Salie Labbai Dead by L Rs Vs. Mohd Hanifa Dead by LR's, \(1976\) 4 SCC 780](#)

Final Result : Disposed Off

JUDGMENT

Shri Narayan Shukla, J. - Heard Mr. Umesh Chandra Pandey, learned counsel for the

petitioner as well as Mr. S. Mirza, learned counsel for the respondents.

2. The petitioner has prayed for issuing a mandamus to the respondents to consider and take decision for payment of interest, cost and other benefits to which the petitioner is entitled.

3. The petitioner retired from service on 11.07.2003 while working on the post of Engineer. Before his retirement, a departmental proceeding was initiated against him by issuing a charge-sheet dated 28.01.2002 in which an order for recovery of a sum of Rs. 36,04,552/- was issued vide order dated 06.10.2005 and further the amount of gratuity and leave encashment was withheld. Aggrieved petitioner preferred a writ petition being writ petition no.1805 (S/B) of 2005 before this Court, which was disposed of finally vide order dated 31.07.2013. The operative portion of the order is quoted as under:

"Since final order is yet to be passed by Managing Director, we dispose of this writ petition directing the Managing Director of the Corporation to pass appropriate order in the matter in the light of note submitted on scrutiny, within 15 days, from the date of production of certified copy of this order. If the entire amount is found paid to have been paid, gratuity and leave encashment shall be paid to be petitioner within a month thereafter."

4. In the meanwhile, the charges levelled against the petitioner were re-examined and the amount to be recovered from the petitioner as above was reduced to the tune of Rs. 20,276/- and accordingly the recovery order was modified. The petitioner deposited the same with the respondents. Since the post retiral dues was paid to the petitioner after about thirteen years of his retirement, he had claimed interest accrued thereon in the meanwhile.

5. Per contra, learned counsel for the respondents has raised objection against the maintainability of the writ petition on the ground that the petitioner had already sought the relief for payment of interest through the relief no.2 of the writ petition no.1805 (S/B) of 2005. Since the Court declined to grant such relief, the petitioner's claim in the present case for payment of interest is barred by the principles of constructive res judicata. Further Chapter XXII Rule 7 of the Allahabad High Court Rules, 1952 also bars from entertaining the second application on the same facts, which provides that where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts. Third objection is that a writ of mandamus can be issued only when a demand was raised, which was a legal demand and was refused by the authority under duty to satisfy the demand.

6. In support of his submissions, he cited following cases: (i) **Shiv Chander More & others v. Lieutenant Governor & others**, (2014) 11 SCC 744 : 2014 (105) LR 22 (SC) (Sum.), in this case the Hon'ble Supreme Court held that the principles of constructive res judicata have been held to be applicable to writ proceedings. Another Constitution Bench decision of the Supreme Court in **Devilal Modi v. STO**, AIR 1965 SC 1150, had taken the same view. Next case referred to is of **Amalgamated Coalfields Ltd. v. Janapada Sabha**

Chhindwara, AIR 1964 SC 1013, in which the same view has been taken. The Supreme Court in another Constitution Bench decision i.e. **Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, 1988 (57) FLR 744 (SC) : (1988-90) SCLJ 123 : (1990) 2 SCC 715**, reiterated that the principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but in every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject matter of the litigation. The Supreme Court observed as under:

"35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

7. In reply, learned counsel for the petitioner has submitted that a bare perusal of the order passed in writ petition no.1805 (S/B) of 2005 shows that the petitioner's claim for payment of retiral benefits including gratuity and leave encashment and also the interest payable thereon was not adjudicated upon by the Court on merit, rather the writ petition was disposed of directing the Managing Director of the Corporation to pass appropriate order in the matter. It was provided that if the entire amount is found to have been paid, gratuity and leave encashment shall be paid to be petitioner within a month thereafter, therefore, the principles of res judicata has no application in the present case, since no direction was made for payment of interest.

8. In support of his submission, he cited some decisions: In **Syed Mohd. Salie Labbai (Dead) by L. Rs. & others v. Mohd. Hanifa (Dead) by L.Rs. & others, (1976) 4 SCC 780**, the Supreme Court held that before a plea of res judicata can be given effect to, the following conditions must be proved; (i) that the litigating parties must be the same; (ii) that the subject-matter of the suit also must be identical; (iii) that the matter must be finally decided between the parties; and (iv) that the suit must be decided by a court of competent jurisdiction. In **Jaswant Sing v. Custodian of Evacuee Property, New Delhi, AIR 1985 SC 1096**, the Supreme Court held that it is well settled that in order to decide the question whether a subsequent proceeding is barred by res judicata it is necessary to examine the question with reference to the (i) forum or the competence of the Court, (ii) parties and their representatives, (iii) matters in issue, (iv) matters which ought to have been made ground for defence or attack in the former suit and (v) the final decision. In **Sri Jagannath Temple Managing Committee v. Siddha Math & others, 2016(34) LCD 332**, the Supreme Court held as under:

"15. We are unable to agree with the contention advanced by Mr. M.L. Varma, the learned

senior counsel appearing on behalf of the respondent Math. The decision of this Court in the case of Lord Jagannath (*supra*) does not bar the present case by *res judicata*. The principle of *res judicata*, codified in Section 11 of the Code of Civil Procedure has been examined in a catena of cases by this Court. A Constitution Bench of this Court in **Sheodan Singh v. Daryao Kunwar**, AIR 1966 SC 1332, held as under:

"A plain reading of section 11 shows that to constitute a matter *res judicata*, the following conditions must be satisfied, namely - (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit; (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim; (iii) The parties must have litigated under the same title in the former suit; (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.".

9. Through supplementary affidavit filed by the respondents, it has been submitted that the petitioner had accepted actual payment on 03.10.2013 and did not raise any objection of any nature muchless of interest nor had he raised any demand for interest through his representation dated 24.09.2013.

10. The facts of the case reveal that though the order dated 06.10.2005 for recovery of a sum of Rs. 36,04,552/- was issued but on reconsideration it was modified to the tune of Rs. 20,276/- in 2006. The writ petition no.1805 (S/B) of 2005 filed by the petitioner challenging the order of recovery of a sum of Rs.36,04,552/- was allowed on 31.07.2013 with direction to the Managing Director of the Corporation to pass appropriate order in the matter in light of the note submitted on scrutiny. On scrutiny, admittedly the amount of recovery was reduced to the tune of Rs.20,276/- though this fact has not been brought to the notice of the Court when the petitioner had deposited the amount i.e. Rs.20,276/- but its deposition with the respondents has been admitted by the respondents with the submissions that as soon as the said money was deposited by the petitioner, the retiral dues withheld by the respondents were released in his favour without committing any delay.

11. In view of the facts of the case, it is obvious that the petitioner was dragged into litigation by the respondents by issuing a hypothetical recovery certificate. After about eight years of battle, he succeeded to get the retiral dues. Admittedly, the dispute of payment of retiral dues was under litigation till 31.07.2013 i.e. till the order passed by this Court in writ petition no.1805 (S/B) of 2005. The Court observed that if the entire amount is found to have been paid, gratuity and leave encashment shall be paid to be petitioner within a month thereafter. Indisputably there was no order for payment of interest though it was claimed through relief no.2 of the writ petition, therefore, the delay committed in payment of post retiral dues to the petitioner cannot be said to be deliberate on part of the respondents. After the aforesaid order of the Court, the petitioner had deposited the amount

and he was paid the retiral dues thereafter within reasonable time. Thus, after order passed by this Court on 31.07.2013, there was no considerable delay in making the payment of post retiral dues, which may give rise to the claim of the petitioner for payment of interest.

12. Since recovery order was modified by the respondents, their contest of the case cannot be said to be bonafide on account of which the payment of post retiral dues was delayed, therefore, we feel it appropriate to issue direction to the respondents to pay Rs.50,000/- as cost to drag the petitioner into litigation as well as for his mental agony.

13. With the aforesaid observations/directions, the writ petition stands disposed of finally.