

2022 LiveLaw (SC) 53

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Dr. Dhananjaya Y. Chandrachud; A.S. Bopanna, JJ.

January 10, 2022

Civil Appeal Nos 289-290 of 2022 (Arising out of SLP(C) Nos 6427-6428 of 2021)

Nagar Panchayat, Kymore *Versus* Hanuman Prasad Dwivedi

Summary : Appeal against High Court judgment which directed the reinstatement of an employee with back-wages - Allowed - A stale claim cannot be revived by a representation.

(Arising out of impugned final judgment and order dated 20-02-2020 in WP No. 2903/2010 and 01-09-2020 in WA No. 812/2020 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Manoj Kumar Sahu, Adv. Ms. Supriya Juneja, AOR Mr. Sheik F Kalia, Adv.

For Respondent(s) Mr. Vijay Kumar, Sr. Adv. Mr. Rajiv Kumar, AOR Mr. Sanjeev Gupta, Adv.

ORDER

1. Leave granted.

2. These appeals arise from a judgment of a Division Bench of the High Court of Madhya Pradesh dated 1 September 2020 in Writ Appeal No 812 of 2020 and a judgment of a Single Judge dated 20 February 2020 in Writ Petition No 2903 of 2010. The Division Bench has dismissed the Writ Appeal against the judgment of the Single Judge, setting aside the termination of the respondent and directing reinstatement with all consequential benefits and back wages from the date of termination until reinstatement.

3. The respondent was appointed as a casual employee by the Nagar Panchayat, Kymore, the appellant before this Court, in 1982. The respondent was allotted the work of issuing ration cards for which he was to collect money and deposit it with the appellant. After the issuance of a show cause notice, the services of the respondent were terminated on 4 June 1990. The respondent instituted a petition under Article 226 of the Constitution, Writ Petition No 3009 of 1991, to challenge his termination from service. The petition was dismissed by the High Court on 6 January 1994. The order dismissing the petition attained finality.

4. On 3 December 2008, a communication was issued by the Regional Deputy Director Insurance and Local Finance Audit to the Chief Nagar Palika Officer holding that a cashier had been found responsible and that the amount should be recovered and be deposited in the Panchayat treasury. Based on the communication, the respondent instituted a petition under Article 226 of the Constitution, being Writ Petition 10285 of 2009, claiming reinstatement in service. The petition was disposed of on 6 November 2009 by directing the appellant to dispose of the representation of the respondent within three months. On 9 February 2010, the representation was disposed of by a speaking order and the claim for reinstatement was rejected.

5. A fresh writ petition was then instituted by the respondent, being Writ Petition (C) No 2903 of 2010, which resulted in the order of the Single Judge dated 20 February 2020. The Single Judge granted reinstatement with full back wages and consequential benefits. The order of the Single Judge has been upheld in appeal by the Division Bench by its judgment dated 1 September 2020.

6. Mr Manoj Kumar Sahu, counsel appearing on behalf of the appellant, submits that the validity of the termination of the services of the respondent attained finality when the writ petition challenging the termination was dismissed on 6 January 1994. Hence it has been submitted that it was not open to the respondent to institute a fresh writ petition in 2009, nearly 15 years thereafter on the basis of the communication dated 3 December 2008 of the Regional Deputy Director Insurance and Local Finance Audit. In this backdrop, it has been submitted that the respondent was only a casual employee. The Single Judge, it has been submitted, erred in directing full back wages with consequential benefits.

7. On the other hand, Mr Vijay Kumar, senior counsel appearing on behalf of the respondent, submitted that it was in 2008 when the communication was addressed by the Regional Deputy Director that it came to light that it was not the respondent but some other employees who were responsible. Hence, it has been submitted that the High Court correctly entertained the writ petition initially in 2009 and thereafter in 2010 since the termination of the respondent was found to be invalid.

8. The respondent was admittedly a casual employee who had worked from 1982 to 1990. The termination of the services, by an order dated 4 June 1990, was admittedly the subject matter of a challenge before the High Court in exercise of its jurisdiction under Article 226 of the Constitution. The petition was dismissed on 6 January 1994. The order of termination was upheld and the dispute attained finality. On the basis of a communication of the Regional Deputy Director of 3 December 2008, the respondent instituted a fresh petition in 2009, which was disposed of on 6 November 2009 by directing the appellant to dispose of the representation of the respondent within three months. The representation was rejected by the Chief Nagar Palika Officer. The High Court in the fresh writ petition instituted by the respondent enquired into the validity of the termination and ordered reinstatement with back wages. The earlier order of the High Court dated 6 January 1994, by which the writ petition challenging the termination was dismissed, continues to operate between the parties. The High Court ought not to have entertained a second round of proceedings instituted nearly fifteen years after the challenge to the order of termination attained finality by the dismissal of the writ petition. That order would operate as *res judicata* between the parties. Both the Single Judge and the Division Bench, in appeal, have erred for the simple reason that once the termination was placed in contest and had been upheld by the dismissal of the writ petition in 1994, a stale of action could not have been revived, first, by a direction to dispose of the representation and, second, in a subsequent writ petition by directing reinstatement with back wages. The impugned order cannot co-exist with the earlier order upholding the termination.

9. For the above reasons, the impugned order of the High Court is unsustainable. We accordingly allow the appeals and set aside the impugned judgment and order of the High Court dated 1 September 2020 in Writ Appeal No 812 of 2020. As a consequence of setting aside of the judgment of the Division Bench, the writ petition filed by the respondent under Article 226, being Writ Petition No 2903 of 2010 shall stand dismissed. In the circumstances of the case, however, there shall be no order as to costs.

10. Pending application, if any, stands disposed of.