

Union Of India vs Nanak Singh on 31 January, 1968

Equivalent citations: 1968 AIR 1370, 1968 SCR (2) 887

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
NANAK SINGH

DATE OF JUDGMENT:
31/01/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1968 AIR 1370 1968 SCR (2) 887
CITATOR INFO :
F 1971 SC1676 (4)
R 1981 SC2198 (13)

ACT:
Res Judicata-Petition under Art. 226 allowed by single Judge of High Court on two grounds-Division Bench dismissing petition by adversely deciding first ground and not considering second ground-Second ground whether can be basis of civil suit-Whether barred by res-judicata.

HEADNOTE:
The respondent was a temporary Field Inspector of the Office of the Custodian of Evacuee Property, Delhi. By an order passed in January 1958 the Additional Settlement Commissioner, Mr. Kane, who was also holding the office of Additional Custodian terminated the employment of the respondent after giving him one month's salary in lieu of notice. The order was confirmed by the departmental authorities in appeal. The respondent filed a writ petition in the High Court on two grounds, namely: (i) that the order

terminating the employment amounted to punishment and could not be made without affording opportunity to be heard; (ii) that Mr. Kane was not competent under s. 5 of the Central Services (Temporary Service) Rules, 1949 to pass the order. The single Judge who heard the petition upheld both the grounds and granted the petition. In appeal, the Division Bench reversed the order and dismissed the petition observing that the order in question did not amount to punishment. The Division Bench observed that the second point was not before them, because arguments were advanced mainly on the first point and on a decision of the first point the appeal could be disposed of. The respondent's petition under Art. 136 of the Constitution for special leave to appeal to this Court was dismissed. The respondent thereafter instituted a suit in the Civil Court. The trial Court dismissed the suit but the first appellate court held that the order terminating the respondent's service was void. A second appeal by the Union of India was dismissed by the High Court on the view that the order of termination of services was passed by an incompetent authority and this issue was not barred by res judicata. The Union of India appealed.

HELD : The single Judge who decided the respondent's writ petition decided both the grounds in his favour. When in appeal the High Court reversed the judgment and dismissed the petition it must be deemed to have rejected both the grounds on which the petition was founded. In rejecting the first plea the High Court gave detailed reasons. The second plea must also be deemed to have been negatived by the High Court, for the High Court could not, without reversing the judgment of the single Judge, on that plea have dismissed the petition. The suit was therefore barred by res judicata.

It could not be said that the High Court reserved to the respondent the right to agitate the question about the authority of Mr. Kane to pass the order, in a separate suit. There was no such express reservation and it could not be implied, for such an implication was plainly inconsistent, with the final order passed by the High Court.

Gulabchand Chhotal Parikh v. State of Gujarat, A.I.R. 1965. S.C. 1153, referred to.

Abdullah Ashgar Ali Khan v. Ganesh Dass, A.T.R. 1917 P.C. 201 held not applicable.

L3 Sup Cl/68-14

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 280 of 1967.

Appeal by special leave from the judgment and order dated September 29, 1966 of the Punjab High Court Circuit Bench at Delhi in Regular Second Appeal No. 74-D of 1966. B. Sen, R. N. Sachthey and S. P. Nayar, for the appellant. Pritam Singh Safeer, for the respondent.

The Judgment of the Court was delivered by Shah, J. Nanak Singh-respondent in this appeal-held in August 1957 the post of Field Inspector in the Office of the Custodian, Evacuee Property, Delhi, as a temporary employee. By order dated January 10, 1958, K. S. Kane, Additional Settlement Commissioner who was also holding the office of Additional Custodian terminated the employment of the respondent after giving him one month's salary in lieu of notice. The order of Mr. Kane was confirmed in appeal. Nanak Singh then moved the High Court of Punjab by a petition under Art. 226 of the Constitution for an order declaring that the determination of his employment was "void, illegal and unconstitutional" on two grounds-(1) that the order terminating the employment amounted to imposing punishment and could not be made without affording opportunity to the employee to show cause against the action proposed to be taken in regard to him; and (2) that Mr. Kane was not competent under r. 5 of the Central Civil Services (Temporary Services) Rules, 1949 to terminate his employment. Gurdev Singh, J., upheld both the grounds and granted the petition. The High Court of Punjab in appeal reversed that order and directed that the petition be dismissed. The High Court observed that by the order determining the employment of Nanak Singh no punishment was imposed. In dealing with the authority of Mr. Kane to terminate the employment of Nanak Singh the High Court observed :

"In the second place it was urged that the Officer who had passed the order of dismissal was not competent to do so. The second point is not before us because arguments have been advanced mainly on the first point and on a decision of this point the appeal can be disposed of."

A petition preferred to this Court against the order of the High Court for leave to appeal under Art. 136 of the Constitution was rejected.

Nanak Singh thereafter instituted suit No. 218 of 1963 in the Court of the Senior Sub-Judge, Delhi, for a declaration that the order terminating his employment was made by an authority lower than the authority competent to pass that order, and that the order was "wanting in bona fides" and was on that account "illegal, null and void", and for an order declaring him entitled to be treated as continuing in employment and on duty and entitled to all the benefits of service as if he had not been removed from employment. This suit was dismissed by the Court of First Instance. In appeal, the Additional District Judge, Delhi, reversed the decree passed by the Court of First Instance, and declared that the order of Mr. Kane dated January 10, 1958, terminating the employment of Nanak Singh was void and inoperative, and that Nanak Singh was entitled to be treated as in service and on duty since the date of the order. A second appeal against that judgment by the Union of India was dismissed by Bedi, J. The learned Judge was of the view that the judgment of the Division Bench of the High Court in the writ petition did not operate to prevent Nanak Singh from reagitating the question about the authority of Mr. Kane to terminate his employment, and that on the materials placed before the Court there was no evidence that authority had been delegated to Mr. Kane to exercise that power. Against that order, with special leave, the Union of India has appealed to this

Court.

The first question which falls to be determined in this appeal is whether the judgment of the High Court in the writ petition operated as *res judicata* in the Civil Suit filed by Nanak Singh. Nanak Singh, it may be recalled, claimed relief on two alternative grounds-(1) infringement of the protection under Art. 311 of the Constitution; and (2) absence of authority in the Officer who terminated his employment under r. 5 of the Central Civil Service', (Temporary Service) Rules, 1949. Each ground, if successful, was sufficient to support an order in his favour. Gurdev Singh, J., decided both the grounds in favour of Nanak Singh. The High Court reversed the judgment of Gurdev Singh, J., and dismissed the petition filed by Nanak Singh : thereby the High Court must be deemed to have rejected both the grounds on which the petition was founded. On the plea that the order of termination of hi.-, employment amounted to dismissal, the High Court gave detailed reasons and observed that by the termination of his employment Nanak Singh was not visited with any punishment. The second plea about the authority of Mr. Kane also must be deemed to have been negatived by the High Court, for the High Court could not, without reversing the judgment of Gurdev Singh, J., have dismissed the petition. It is true that in the judgment of the Court of Appeal some obscure statement has been made, and it is difficult to appreciate the true purport thereof. But what operates as *res judicata* is the decision and not the reasons given by the Court in support of the decision. We are unable to agree with counsel for Nanak Singh, that the High Court reserved to Nanak Singh the right to agitate the question about the authority of Mr. Kane in a separate suit. There is no such express reservation, and it cannot be implied, for such an implication is plainly inconsistent with the final order passed by the High Court. Even assuming that the High Court was in error in holding that the appeal could be decided only on the first point, the order dismissing the petition must still operate as *res judicata* in respect of both the points on which the petition was founded.

This Court in *Gulabchand Chhotalal Parikh v. State of Gujarat*(1) observed that the provisions of s. 11 of the Code of Civil Procedure are not exhaustive with respect to an earlier decision operating as *res judicata* between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of *res judicata*, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as *res judicata* in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Art. 226 or Art. 32 of the Constitution from operating as *res judicata* in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decision after full contest. The Court in *Gulabchand's* case(1) left open the question whether the principle of constructive *res judicata* may be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding but was not so raised therein, must still be deemed to have been decided.

If the order of the High Court in appeal from the order in the writ petition operated constructively as *res judicata*, it might have been necessary to consider the question which was left open by the Court

in Gulabchand's case⁽¹⁾. But in our view the judgment in the previous case operates by express decision as res judicata. It is true that in order that the previous adjudication between the parties may operate as res judicata, the question must have been heard and decided or that the parties must have an opportunity of raising their contentions therein. In the present case, Gurdev Singh, J., dealt with the question in some detail and held that Mr Kane had no authority to terminate the employment of Nanak Singh. The High Court in appeal thought that the appeal could be disposed of only on the first ground, and they recorded no express finding on the second ground. But once the

(1) A. 1. R. 1965 S. C. 1153.

appeal was allowed and the petition was dismissed, the dismissal of the petition operated as a rejection of both the grounds on which it was founded. The judgment of the Privy Council on which reliance was placed by counsel for Nanak Singh-Abdullah Ashgar Ali Khan v. Ganesh Dass⁽¹⁾, has, in our judgment, no application. In that case a suit was dismissed by the Court of the Judicial Commissioner on the view that its constitution was defective, and no opinion on the merits of the dispute between the parties was expressed. The judgment of the Judicial Commissioner was held not to operate as res judicata in a subsequent suit between the parties to the previous suit, because the dispute was not decided on its merits in the previous suit expressly or even by implication. It is unnecessary on that view to adjudicate upon the question whether Mr. Kane had authority to determine the employment of Nanak Singh. The appeal is allowed and the decree passed by the High Court is set aside. The decree passed by the Court of First Instance is restored.

When special leave to appeal was granted to the Union, this Court passed an order that the Union of India will pay the costs of the appeal in any event. The Union of India must, therefore, pay the costs of the respondent in this appeal. There will be no order as to costs in the Court of the First Instance, the District Court and the High Court.

G.C.

(1) A.I.R. 1917 P.C. 201.

Appeal allowed.