Allahabad High Court
Bharat Pump And Compressors ... vs Jagdish Singh And Ors. on 30 July, 2004
Equivalent citations: (2004) 3 UPLBEC 2848
Author: U Pandey
Bench: M Katju, U Pandey
JUDGMENT Umeshwar Pandey, J.

1. By filing this intra Court appeal, the respondent has challenged the judgment and order dated 4.3.2004 of the learned Single Judge passed in Civil Misc. Writ Petition No. 18891 of 1988.

2. The brief facts giving rise to this appeal arc that the petitioner-respondents while presenting the writ petition before the learned Single Judge had prayed for issue of a writ in the nature of mandamus commanding the respondent to pay the petitioners the pay scale of Rs. 665-22-1017, as it had been granted in the case of similarly situated typists recruited and appointed prior to 8.3.1976 in the respondent company-M/s. Bharat Pump & Compressors Ltd. It is contended that in Writ Petition No. 5557 of 1981, certain typists had made their prayers before this Court challenging their placement in the lower pay scale of the typist and had further prayed for their placement in the higher pay scale granted to other typists appointed before 8th March, 1976. The aforesaid Writ Petition was taken up by a Division Bench of this Court which after taking into consideration the entire aspects of the matter was of the view that since the recruits of the period prior to March, 1976 were being paid higher pay scale as typists in the Company, the petitioners who are similarly placed and are performing the same work should also be given the same pay scale. Accordingly, the Division Bench allowed the Writ Petition and directed the appellant to place those petitioners in the same pay scale as was being given to the typists being recruits of the period prior to 8th March, 1976. This judgment of the Division Bench, as per the statement given at bar and as also observed in the impugned judgment of the learned Single Judge, was affirmed by the Apex Court while dismissing the Special Leave to Appeal No. 4794/1986 preferred by the present appellant vide order dated 8.2.1988. Accordingly, the learned Single Judge relying upon the judgment of the Division Bench in the aforesaid Writ Petition No. 5557 of 1981 vide judgment dated 10.12.1985 and also relying upon the judgment of another Writ Petition No. 23265 of 1988, Baij Nath Tripathi v. M/s. Bharat Pumps, and Compressors Ltd., decided on 29.7.1999, has hold that the present petition should also be decided in the same terms and accordingly, reliefs, as were prayed for, were granted in the impugned judgment.

3. Aggrieved with the aforesaid judgment and order, the present intra Court appeal has been preferred.

4. We have heard Sri. Manish Goyal, learned Counsel for the appellant and Sri K.P. Agrawal, who has put in appearance for the petitioners-respondents.

5. At the very outset, it has been mentioned before us by the learned Counsel for the parties that the petitioner-respondent Nos. 3, 4, 6, 7, 9, 10 and 12 to 14 and withdrawn their petitions whereas petitioner-respondent No. 15 has died. The petition of petitioner Nos. 1, 2, 5, 8 and 11 alone survived which was decided by the learned Single Judge. A reference to this effect has also been made in the

impugned judgment.

6. While placing the appellant's contentions, the learned Counsel, Sri Manish Goyal has stressed that the recruitment of the petitioners in the present case had been done under a policy which was framed in the background of a settlement arrived at between the Management of the Company and the Employees Union of M/s. Bharat Pump & Compressors Ltd. This Union of the employees entered into such settlement with the Management as representative of all workers and no individual workers was supposed to raise a finger against any action taken by the Management of the Company in pursuance to the policies formulated under such settlement. The learned Counsel has further tried to emphasize that the case of the petitioners of Writ Petition No. 5557 of 1981 cannot be said to be on the same footing as that of the present petitioners. They cannot be held to be entitled to the reliefs, which were granted by the Division Bench of this Court in favour of those petitioners. The present petitioners also cannot be said to be similarly situated as those petitioners of the earlier petition. On the basis of the policies formulated in accordance with the settlement arrived at by the workers Union and the Management of the Company, the present petitioners who are the typist recruited from the Years 1982 to 1984, will be supposed to have acquiesced to the said policy finalized in the meeting of Board of Directors held on 8th March, 1976. According to the cadre specified in the policy, the petitioners fall in non-technical skilled group B-III'. The pay scale provided to such grade at the initial stage was only Rs. 290-389. Referring to Clause 17 of the counter affidavit filed in the Writ Petition, the learned Counsel has submitted that this grade has been revised from time to time and it is presently Rs. 620-16-892. As such these workers (typists-petitioners) could not be granted the pay scale of Rs. 665-1017 as claimed in the petition. The learned Counsel for the appellant further submits that so far as the decision given by the learned Single Judge in the other Petition No. 23265 of 1988 is concerned, it is already under challenge in another special appeal, which is still pending disposal.

7. Sri Goyal has also emphasized that a ground was taken in the counter affidavit before the learned Single Judge that the respondents' petition suffers from laches and they approached the Court at a belated stage in the year 1988 whereas they were appointed in the cadre of typist way back in years 1982-1984. This aspect of the matter has been all together left over by the learned Single Judge without attaching any importance to such important arguable point. In this context, he has made reference to the case law of E. Parmasivan and Ors. v. Union of India and Ors., reported in 2002 (4) ESC 3 and Jagdish Lal and Ors. v. State of Haryana and Ors., reported in (1997) 6 SCC 538.

8. As regards the appellant's objections in respect of petition suffering from laches, the same does not find discussion in the judgment of the learned Single Judge. That obviously goes to reflect to the fact that the appellant corporation actually did not press this petition before the learned Single Judge. It is settled proposition of law that a party may take large number of grounds, but unless it is argues before the Court, the Court has no obligation to decide, nor it can be pressed as a ground to be adopted in the appeal also.

9. In the aforesaid case of Jagdish Lal (supra), the principle1 of law is that the delay disentitles the party to the discretionary relief under Article 226 of the Constitution. But that plea once not pressed, should be deemed to have been waived by the party taking it. In Union of India and Ors. v.

N.V. Phaneedran, (1995) 6 SCC 45, the Apex Court has held that if a large number of contentions have been raised on merit but the Tribunal has dealt with only some of the issues, the Appellate Court may remand the case for reconsideration, provided it is satisfied that the left out submissions had been specifically agitated /argued before the Tribunal and in case the controversy was limited to the particular point before the Tribunal, there can be no justification for remand/remit the matter. The same view has been reiterated by the Hon'ble Supreme Court in Kanwar Singh v. State of Haryana. (1997) 4 SCC 662, and in State of Maharashtara v. Ramdas Shrinivas Nayak, AIR 1982 SC 1249, the Apex Court placed reliance upon large number judgments, particularly, Saratchandra v. Bibhabali Debi, AIR 1921 Cal. 584; King Emperor v. Baremitra Kumar Ghose, AIR 1924 Cal 257 (FB), and Madhusudan v. Chandrabati, AIR 1917 PC 30, and observed as under :-

"We are afraid that we cannot launch into an inquiry as what transpired in the High Court. It is simply not done. Public policy bars us, judicial decorum restrains us. The matters of judicial record are unquestionable. They arc not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation, (per Lord Atkinson in Simasundaran v. Subramaniam, AIR 1926 PC 136 ) We arc bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court, We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by the affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statement of fact as to what transpired at the hearing, recorded in the judgment of the Court, are concessive of the facts so stated and no one can contradict such statements by affidavit or other evidence."

10. In view of the above propositions of all different Courts indulging the Apex Court when it is found that this point of delay /laches was not pressed before the learned Single Judge, the point cannot be agitated in this intra Court appeal also.

11. So far as the second point of argument, raised by the appellant, is concerned, we arc convinced that the same too has hardly any strength. There is no scope for the appellant corporation to resile from their position, which they had taken in the earlier Writ Petition No. 5557 if 1981, The petitioners in that petition were also post 1976 recruits, who has claimed their parity in pay scale with pre 1976 recruits working as typists.

12. Learned Counsel for the appellant has laid much emphasis upon the fact that the recruitment of the present petitioners as typists had been done in terms of the policy recruitment framed in the background of a settlement arrived at between the Management of the appellant company and the employees Union. They had joined the service in accordance with that policy only knowing it fully well that they would start getting pay scale which was disclosed in their appointment letters. This peace of argument docs no appear to have much relevance in view of the fact that certain typist of post 1976 recruitment had challenged against their discriminatory treatment given by the corporation and had succeeded in the litigation which lasted up to the Apex Court. In Writ Petition No. 5557 of 1981, the Division Bench of this Court in very clear terms had held that the corporation Management could not legally discriminated in matters of pay scale between the typists of pre-1976 recquitments and post 1976 recruitment's and this would amount to unreasonable discrimination.

Such treatment given to two groups of similarly situated employees should have to be removed. The appellant's argument that the typist, recruited under the recruitment policy formulated after 8th March, 1976 can claim the higher pay scale only after putting in 4 years of service in the lower grade. This policy was adopted by the Management with a view to create two categories of typists having qualitative difference in their out put. This argument of the appellant will also not be of any avail in view of the fact that the petitioners of the earlier Writ Petition No. 5557/1981 had been given the similar pay scale which was granted to pre 1976 recruits. Thus, there is hardly any scope, propriety or justification of keeping lower and higher scales among the typists creating unreasonable discrimination between the similarly situated employees kept in two categories. As such, the judgment given by the Division Bench and as affirmed by the Apex Court in the aforesaid earlier Writ Petition appears to have been very rightly accepted by the learned Single Judge for giving relief to the present petitioners by keeping them on the same rung of the ladder. As such, if the judgment rendered in Writ Petition No. 5557/1981 decided on 10.12.1985 has been adopted for granting relief claimed by the petitioners, we find that no illegality has been committed by the learned Single Judge while passing the impugned judgment.

13. In view of the aforesaid, the present intra Court appeal, being devoid of merit, is hereby dismissed with no order as to costs.