Supreme Court of India

Commissioner Of Income Tax, ... vs T.P. Kumaran on 16 August, 1996

Equivalent citations: JT 1996 (8) 98

Author: K Ramaswamy

Bench: Ramaswamy, K.

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                    PETITIONER:
        COMMISSIONER OF INCOME TAX, BOMBAY


                Vs.

        RESPONDENT:
        T.P. KUMARAN

        DATE OF JUDGMENT:        16/08/1996

        BENCH:
        RAMASWAMY, K.
        BENCH:
        RAMASWAMY, K.
        G.B. PATTANAIK (J)

        CITATION:
         JT 1996 (8)     98


        ACT:



        HEADNOTE:



        JUDGMENT:
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O R D E R Leave granted.

We have heard learned counsel for the parties. This appeal by special leave arises against an order of the Central Administrative Tribunal, Ernakulam made on 16.8.1994 in OA No.2026/93. The admitted position is that while the respondent was working as Income-tax officer, he was dismissed from service. He laid a suit against the order of dismissal. The suit came to be decreed and he was consequently reinstated. Since the arrears were not paid, he filed a writ petition in the High Court. The High Court by order dated August 16, 1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came be paid. Then the respondent filed an OA claiming interest at 18% p.a. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.

The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation TV, CPC which envisages that any matter

which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not set and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2, CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable.

The appeal is accordingly allowed. No costs.