

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKHAT SRINAGAR**

Reserved on: 21.11.2023  
Pronounced on: 02.12.2023

**CFA No.05/2019**

**SMT. RANJEET KOUR** **...APPELLANT(S)**

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with  
Mr. Agha Faisal Ali, Advocate.*

Vs.

**STATE OF J&K & ORS.** **...RESPONDENT(S)**

*Through: - Mr. Mubeen Wani, Dy. AG.*

**CORAM:HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**1)** The appellant has challenged judgment and decree dated 19.01.2019 passed by learned Additional District Judge, Srinagar, whereby the suit for recovery of an amount of Rs.25,71,771/ along with interest @9% per annum filed by the appellant, has been dismissed.

**2)** Briefly stated, the facts emanating from the record are that the appellant was appointed as a Lecturer in the Discipline of Economics in Government College for Women, MA Road, Srinagar. She proceeded on leave on 11.03.1980 in connection with ailment of her husband and son. The appellant applied for extension of leave and after the leave period was over, she reported for duties to respondent No.3 but she was not allowed to join and was told that she has been transferred to Government Degree College, Badherwah.

3) The appellant is stated to have served a notice upon the respondents but when no response was received by her, she approached this Court by way of a writ petition bearing SWP No.385/1988. During pendency of the writ petition, the appellant was terminated from service vide order bearing No.217 of 1988 dated 20.06.1988. The termination order came to be challenged by the appellant by way of another writ petition bearing SWP No.544/1992.

4) Vide judgment dated 16.02.1999 passed in SWP No.544/1992, the termination order of the appellant was quashed and she was directed to be reinstated. It was further provided that the appellant shall start getting wages with effect from the date she produces the copy of the order of the Court before the Authority who passed the order of termination. The competent authority was given liberty to hold a fresh enquiry.

5) It seems that the aforesaid judgment of the Writ Court was challenged both by the appellant as well as by the respondent-State by way of two Letters Patent Appeals bearing LPA(SW) No.120/1999 and LPA(SW) No.149/1999. In the appeal filed by the appellant, it was prayed that with the quashing of the order of her termination from service, she is entitled to full back wages with effect from the date she was not allowed to join her duties and that order of the Writ Court is required to be modified to this extent while as in the LPA filed by the respondent-State it was prayed that the

order of the learned Single Judge is not sustainable in law. Both these LPAs came to be decided by a Division Bench of this Court by virtue of judgment dated 19.09.2002. The Division Bench, while upholding the judgment of the Writ Court to the extent it directed setting aside of the order of termination of the appellant, held her entitled to arrears of pay with allowances and all other consequential benefits with effect from 23.03.1985. It was further provided that if the arrears of pay are not paid within a period of six months from the date of service of certified copy of the order of the Division Bench, the respondents shall be liable to pay interest @9% per annum.

6) The respondent-State challenged the aforesaid judgment of the Division Bench by way of a Special Leave Petition before the Supreme Court. Vide order dated 16<sup>th</sup> February, 2004, the Supreme Court while holding that the order of termination passed by the State is not in accordance with law, agreed with the view taken by the Writ Court that the respondent-State is at liberty to initiate a fresh departmental enquiry. It was further provided that payment of back salary from 23<sup>rd</sup> March, 1985, is not in conformity with law. Accordingly, it was directed that the appellant herein would be entitled to her salary with effect from the date of passing of the order by the learned Single Judge i.e., 16.02.1999.

7) It seems that when the judgment passed in favour of the appellant was not implemented by the respondents, she was compelled to file a contempt petition bearing COA(LPASW)

No.22/2003. The said petition was disposed of by this Court in terms of order dated 24.10.2005 by observing that the appellant shall accept the amount offered by the respondents without prejudice to her rights and in the event the amount is less than the amount payable under the judgment, she will have a liberty to make representation to the respondents who will consider and decide the same within six weeks.

8) It seems that the appellant filed another contempt petition bearing COA(SW) No.82/2006 contending therein that the judgment of the Court has not been implemented in full, and during the pendency of said contempt petition, the respondents filed their statement of facts in which they took a stand that they have released all the back wages of the appellant and that they have implemented the judgment. Upon consideration of the statement of facts filed by the respondents and the submissions of the appellant, the Court vide its order dated 07.11.2007 observed that there is complete compliance of the judgment and, accordingly, the contempt proceedings were dropped.

9) After the closure of the contempt proceedings by this Court, the appellant filed a Civil Suit before the learned Additional District Judge, Srinagar, seeking recovery of an amount of Rs.25,71,771/ with interest @9% per annum. In the plaint the appellant after narrating the events stated hereinbefore, pleaded that she is entitled back wages with effect from 23.03.1985. According to her, in the

statement of facts filed by the respondents/defendants during the contempt proceedings, they have admitted that a sum of Rs.19,88,818/ is still outstanding against them. It was pleaded that the appellant/plaintiff is entitled to recover the aforesaid amount along with interest @9% per annum and after taking into account the amount of interest calculated upto ending May, 2008, the total outstanding amount comes to Rs.25,71,779.

**10)** The respondents/defendants filed their written statement in which they have submitted that the issue raised and relief prayed for by the appellant/plaintiff in the suit has already been decided by the High Court in the contempt proceedings, as such, the suit is barred by the doctrine of *res judicata*. It has been submitted that the appellant/plaintiff has been paid salary with effect from 16.02.1999 to 31.03.2005 amounting to Rs.9,96,126/ vide cheque No.1225230 dated 10.09.2005, whereafter she has been regularly paid the salary with effect from July, 2006 to March, 2007 till the date of her superannuation. It has been submitted that since the matter in issue stands already decided in Contempt Petition No.82/2006, as such, there is nothing outstanding against the respondents. The defendants along with their written statement produced copy of the due drawn statement of the appellant.

**11)** It seems that the defendants/respondents did not contest the suit after filing the written statement and, as such, they were proceeded *ex parte*. The learned trial court proceeded to record

*exparte* evidence of the appellant/plaintiff who, besides examining herself as a witness, has examined PWs Rajpal Singh and Dhiraj Singh as witnesses in support of her case. The learned trial court, after appreciating the evidence and the pleadings on record, came to the conclusion that once it has been held by the High Court that all pay dues of the appellant have been released in her favour, no relief can be granted in her favour. Accordingly, vide impugned judgment and decree, the suit of the appellant/plaintiff has been dismissed.

**12)** The appellant/plaintiff has challenged the impugned judgment and decree on the ground that no issues were framed by the trial court before passing the impugned judgment. It has been further contended that the trial court was influenced by the observations of the High Court made in the contempt petition. According to the appellant, an order passed in a contempt petition is not a judgment, as such, the same cannot operate as a *res judicata* in a subsequent suit. It has been further contended that the Division Bench of this Court had held the appellant entitled to interest but no interest has been paid by the respondents to the appellant.

**13)** I have heard learned counsel for parties and perused the impugned judgment, the grounds of appeal and the record of the trial court.

**14)** As already stated, while narrating the facts of the case, the appellant by virtue of the judgment passed by the Writ Court has been held entitled to reinstatement and back wages from the date of

order of the Writ Court i.e., 16.02.1999. Although while deciding the LPAs against the aforesaid judgement, the Division Bench did modify the order of the Writ Court and held the appellant entitled to back wages with effect from 23.03.1985 along with interest @9% per annum but the said direction was modified by the Supreme Court vide its order dated 16.02.2004 passed in SLP Nos.12392-12393 of 2003. Vide the aforesaid order of the Supreme Court, it was made clear that the appellant would be entitled to salary with effect from the date of passing of the order by the Writ Court i.e., 6.02.1999. No direction with regard to grant of interest was passed by the Supreme Court. Therefore, there is no confusion as regards entitlement of the appellant to back wages, inasmuch as she has been found entitled to back wages with effect from 16.02.1999.

**15)** The first contempt petition bearing COA(LPSW) No.22/2003 filed by the appellant came to be disposed of by the Contempt Court on 24.10.2005 by providing that cheque dated 10.09.2005 shall be accepted by the appellant and if it is found that she has been paid less amount, she would be at liberty to make a representation to the respondents which shall be considered and decided by the respondents within six weeks. Another contempt bearing COA(SW) No.82/2006 filed by the appellant came to be disposed of by the Contempt Court vide order dated 07.11.2007. The operative portion of the said order is reproduced as under:

*“The respondents have filed a statement of facts. As per the statement of facts, the*

*Government order dated 23.06.2004, the consequential arrears of pay have been released in favour of the petitioner. The salary statement has also been placed on record as per the directions of the Hon'ble Supreme Court. The learned counsel for the petitioner virtually failed to point out from the record, how the order has not been complied with. He made a statement that the respondents have made delayed payment, therefore, the petitioner is entitled to interest.*

*I have considered this statement. There is no direction by the Writ Court or by the Apex Court in SLP aforementioned that the petitioner is also to be entitled to interest. There is complete compliance of the judgment. Therefore, the contempt proceedings are dropped. Rule discharged."*

**16)** From a perusal of the afore-quoted directions of the Contempt Court, it is clear that it has been unequivocally observed that there is complete compliance of the judgment. It has been further observed that the appellant has failed to point out from the record as to how the judgment has not been complied with. It seems that the only contention that was urged by the appellant before the Contempt Court was that interest on delayed payments was not paid. Since there was no direction by the Supreme Court with regard to payment of interest, therefore, there was no occasion for the Court to direct payment of interest on delayed payments.

**17)** The question that arises for determination is as to whether the civil suit filed by the appellant for recovery of alleged outstanding



dues is maintainable in the face of the observations of the Contempt Court that the judgment of the Writ Court stands complied with and that nothing is outstanding against the respondent-State.

**18)** The learned counsel appearing for the appellant has, while relying upon the judgment of the Supreme Court in the case of **Comorin Match Industries (P) Ltd. vs. State of Tamil Nadu**, (1969) 4 SCC 281, contended that the order passed by a Contempt Court does not operate as *res judicata* and, therefore, it was open to the appellant to file a civil suit for recovery of the balance dues.

**19)** In the instant case, the cause of action for filing the suit before the trial court is the direction of the Writ Court, as upheld by the Supreme Court, according to which the appellant was held entitled to back wages with effect from the date of passing of the order by the Writ Court i.e., 16.02.1999. The cause of action for filing the contempt proceedings against the respondents is also the same judgment of the Writ Court, as upheld by the Supreme Court. Therefore, the cause of action for filing two proceedings i.e., the contempt proceedings and civil suit is identical. The issue involved before the Contempt Court and before the Civil Court was as to whether the appellant has been paid salary dues in accordance with the judgment of the Writ Court, as upheld by the Supreme Court. The parties to the suit as well as to the contempt proceedings are also the same. The Contempt Court has, after hearing the parties and after

considering the material on record, come to the conclusion that the judgment of the Writ Court has been complied with.

**20)** Section 11 of the Civil Procedure Code, which deals with the principle of *res judicata*, provides that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court.

**21)** The object of principle of *res judicata* as contained in Section 11 of the CPC is to uphold the rule of conclusiveness of the judgment as to the points decided either of fact or of law or of fact and law in every subsequent suit between the same parties. The Supreme Court in the case of **Swamy Atmananda vs. Sr. Ramakrishna Tapovanam**, (2005)10 SCC 51 has held that once the matter which was the subject matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. The Court went on to observe that such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment. The doctrine of *res judicata* is conceived not only in larger public interest which requires that all litigation must, sooner than later, come to an end but is also founded on equity, justice and good conscience. The Supreme Court has, in the case of **Ishwar Dar vs. Collector LA**,

(2005) 7 SCC 190, held that *res judicata* is applicable to writ proceedings also.

**22)** As per Explanation (VIII) to Section 11 of the CPC, an issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

**23)** Contempt Court is a court of limited jurisdiction which is, primarily, concerned with the implementation of directions of a Court and in the event of its non-compliance in initiating contempt proceedings against a party responsible for the contumacious conduct. The Contempt Court is competent to decide an issue as to whether or not judgment of the Court has been complied with and once such a question has been decided on merits by the Contempt Court, it would not be open to a party to raise the same issue in a subsequent suit or any other proceeding as the same would be barred under Section 11 read with Explanation (VIII) of the Civil Procedure Code.

**24)** Adverting to the facts of the instant case, this Court while exercising its contempt jurisdiction was competent to decide the issue whether or not the judgment of the Writ Court relating to payment of back wages to the appellant has been complied with. The

Court has, after taking into account the contentions of the parties and the material on record, come to a conclusion that the judgment has been complied with and nothing remains to be paid to the appellant. In the face of the fact that this issue has been heard and decided by the Contempt Court, the appellant could not have filed the subsequent suit for agitating the same issue. The suit of the appellant/plaintiff itself is barred by the principle of *res judicata*.

25) So far as the reliance placed by learned Senior counsel appearing for the appellant on the judgment of the Supreme Court in **Comorin Match Industries Ltd's** case (supra) is concerned, the same is misplaced for the reason that in the said case the Court has held that merely because an order was passed in the contempt proceedings to make the payment, the respondents therein are not estopped from claiming the amount of tax raised by an assessment order validated by a subsequent legislation i.e. Act of 1969. It was a case where during the contempt proceedings, an order of payment was made to the appellant therein but subsequently a legislation was passed whereby earlier tax raised by the assessment order was validated. It was in these circumstances that the Supreme Court held that the directions given in contempt proceedings would not operate as *res judicata*. The facts of the instant case are entirely different, inasmuch as the Contempt Court has given a finding that whole amount has been paid to the appellant. Therefore, the appellant

cannot file a subsequent suit to reopen the said finding given by this Court.

**26)** For the foregoing reasons, I find no merit in this appeal. The judgment passed by the learned trial court is, therefore, upheld and the appeal is dismissed.

**27)** The trial court record along a copy of this judgment be sent to the learned trial court.

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**  
**02.12.2023**  
**“Bhat Altaf, PS”**

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*

