

Shyama Devi Vs H.P. State Electricity Board Ltd. & Anr

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 7, 2025

Acts Referred: Constitution of India, 1950 " Article 226
 Code of Civil Procedure, 1908 " Section 11, 141

Hon'ble Judges: Tarlok Singh Chauhan, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Archana Dutt, Anil Kumar

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J

1. This case has a chequered history.

2. The petitioner initially approached the learned erstwhile Himachal Pradesh State Administrative Tribunal by filing Original Application No.1693 of

2005 praying inter alia praying therein for the following relief:-

“That the respondent-Board may be directed to consider the case of the applicant for appointment on compassionate ground keeping in view the genuineness of

the case in the interest of justice.”

3. Before the case could be decided, the petitioner was appointed as clerk on daily wage basis under Employment Assistance Scheme vide order

dated 02.02.2006, pursuant to which, she joined on 14.02.2006 without any protest and demure.

4. Later on upon closure of the State Administrative Tribunal, the Original Application filed by the petitioner came to be transferred to this court and

registered as CWP (T) No.12055 of 2008, titled as Ms. Shyama Devi vs. HPSEB Ltd., and the same came to be disposed of on 13.05.2011, in the

following terms:-

“It is evident from the facts enumerated hereinabove that the respondent-Board has delayed the consideration of the case of petitioner vis-a-vis Ms. Anita

Mahajan, which has resulted in great miscarriage of justice to her. The petitioner has been discriminated against by the respondent-Board by giving her appointment

as Clerk on daily rated basis. The petitioner was required to be given appointment as Clerk on regular basis at par with Ms. Anita Mahajan. The decision of the

respondent-Board is arbitrary. There has been nonapplication of mind by the respondent-Board.

Accordingly, in view of the observations and discussion made hereinabove, the petition is allowed. In normal circumstances, the Court could have directed the

respondent-Board to consider the case of the petitioner for the post of Clerk on regular basis. However, since Ms. Anita Mahajan has already been offered

appointment as Clerk on regular basis, through she lost her father on 6.10.2003, there shall be a direction to the respondent Board to offer appointment to the

petitioner as Clerk on regular basis from the due date, with all consequential benefits. The pending application(s), if any, also stands disposed of, no costs.Ã¢â€

5. The judgment passed by the learned Writ Court was assailed by the respondent-Board by filing LPA No. 495 of 2011. The aforesaid LPA came to

be allowed on 06.10.2015 and the operative portion of the judgment reads as under:-

Ã¢â€ Judgments rendered by the learned Single Judge are the subject matter of these appeals, whereby appellants were directed to offer appointment to the writ

petition(s) on regular basis from due date with all consequential benefits. The appellants have challenged the impugned judgments mainly on the ground that learned

Single Judge has erred in directing the appellants to offer appointment to the writ petitions on regular basis from due date with all consequential benefits since the

writ petitioners were offered appointment on daily wage basis as per the Policy in vogue and the petitioners also joined the said posts without any protest.

In view of our findings recorded on points No.(iv) to (vi) above, the appeals are allowed, the impugned judgments are set-aside and the writ petitions are dismissed.Ã¢â€

6. As a consequence of LPA being allowed, the writ petition filed by the petitioner, whereby she was directed to be given appointment on regular

basis, came to be dismissed. Later on, pursuant to a policy decision that the services of the petitioner were ordered to be regularized w.e.f.

19.02.2014.

7. In the aforesaid backdrop, we really fail to understand how the instant petition filed by the petitioner seeking regular appointment w.e.f. 14.02.2006

is maintainable, as not only the findings rendered by this court in LPA No. 495 of 2011 have attained finality but even the review Petition filed by the

writ petitioner herein being Review Petition No. 55 of 2015, titled Shyama Devi versus H.P.S.E.B. Ltd and Another, has been dismissed on

26.05.2016, and this judgment too has also attained finality.

8. Clearly, in such circumstances, what the petitioner is seeking is re-litigation on the issue which has attained finality and, thus, this petition is barred

by the principle of res judicata. We are aware of the explanation inserted in Section 141 of Code of Civil Procedure; that Section 11 of the Code does

not in turn apply to any proceedings under Article 226 of the Constitution. But nonetheless the principle of res judicata does apply to writ petition under

Article 226, as held by Hon'ble Supreme Court in G.K. Dudani and Ors. vs. S. D. Sharma & Ors., AIR 1986 SC 1455.

9. Reference may also be made to the judgment of Hon'ble Constitution Bench of the Supreme Court in Direct Recruit Class-II Engineer

Officers' Association & Ors. vs. State of Maharashtra & Ors. AIR 1990 SC 1607, Har Swarup vs. The General Manager, Central Railway &

Ors. AIR 1975 SC 202, Ashok Kumar Srivastava vs. National Insurance Co. Ltd. & Ors., AIR 1998 SC 2046, and State of Karnataka & Anr. vs. All

India Manufacturers Organisation & Ors. 2006 (4) SCC 683.

10. In view of the aforesaid discussion and for the reasons stated above, the writ petition is not maintainable and barred by the principle of res judicata

as it is established that;

(i) the litigating parties in earlier litigation were the same

(ii) the subject matter of the lis was identical.

Ã, (iii) the matter was heard and finally decided between the parties.

(iv) the lis was decided by a competent court of jurisdiction.

11. Accordingly, the writ petition is ordered to be dismissed as not maintainable. Parties are left to bear their own costs. (Tarlok Singh Chauhan)

Judge