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SARAT CHANDRA MISHRA AND ORS.

v.

STATE OF ORISSA AND ORS.

JANUARY 3, 2006

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[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

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Code of Civil Procedure, 1908—Section 11—Decision not challenged in appeal—Effect of—Held: It attained finality and was binding on all—Doctrine of res judicata would therefore apply—Parties cannot raise the same issue once again—Doctrines—Doctrine of res judicata.

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Some of the government employees were aggrieved by the 1984 Gradation list and made representation against it before the State of Orissa. The State issued Circular dated 21.2.1984 for fresh guidelines and consequently published the corrected Gradation List on 22.8.1990. This was challenged before the Tribunal which vide Order dated 9.3.1992 quashed the corrected Gradation list and upheld the validity of 1984 Gradation List. The correctness of this order was not questioned by the State and the applicants. Thereafter, State issued a Circular dated 12.8.1992 incorporating the terms of the order of the Tribunal. Meanwhile, appellant had filed SLP challenging the order of Tribunal. In view of Circular dated 12.8.1992, this Court on 5.1.1993 dismissed the SLP as infructuous and granted liberty to the appellant to pursue appropriate remedy. Thereafter, appellant filed OA before the Tribunal, which held that in view of its earlier decision and consequent dismissal of SLP by this Court, the issue could not be reopened. Appellant filed Writ Petition before High Court, which was dismissed. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1.1. The State of Orissa and other applicants did not file any special leave petition before this Court except appellant. The order of the Tribunal dated 9.3.1992 thus attained finality. The principle of *res judicata* would, therefore, apply. This Court while passing its order dated 05.01.1993 did not and could not have dispensed with the applicability of the principle of *res judicata*, as the right of the respondents derived from the order of the Tribunal dated 9.3.1992 could not have been taken away.

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1.2. The judgment and order dated 9.3.1992 would indisputably be binding on the State and the appellants and, thus, it is not open to them to raise the said question once again. [121-H]

2.1. The judgment of a court, cannot be read as a statute. While construing a judgment, it may be presumed that the same has been rendered in accordance with law. [122-B]

Ramesh Chand Daga v. Rameshwari Bai, [2005] 4 SCC 772 and *Gajraj Singh and Ors. v. State of UP & Ors.*, [2001] 5 SCC 762, referred to. [122-C]

2.2. The order of this Court dated 5.1.1993 must be construed having regard to the entire factual and legal backdrop. It is no doubt true that this Court refused to determine the matter on merit and came to the opinion that the special leave petition had become infructuous in view of the order of the State Government dated 12.8.1992, but the fact remains that even before this Court the said order of the State Government was not questioned. [122-G, H]

3. This Court moreover, granted liberty to approach the appropriate forum only in the event any distinct cause of action arises therefor, presumably meaning thereby, when an error had been committed by the State in implementing the said order in individual cases. This Court by its order, had no intention to give liberty to the appellants to reopen the question as regard the validity or otherwise of the Gradation List of 1984 which became final and binding. Once the said order attained finality, this Court could not have allowed the parties to approach the Tribunal once again indirectly. As the principle of *res judicata* was applicable, the Tribunal had no jurisdiction to reopen the issue. This Court could not and did not confer a jurisdiction upon the Tribunal which it did not have.

[123-A-C]

4. It is furthermore well-settled that this Court cannot exercise its jurisdiction under Article 142 of the Constitution of India in violation of the statutory provisions and that too at this distant time so as to unsettle a settled thing. [123-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5087 of 2002.

From the Judgment and Order dated 20.9.2001 of the Orissa High Court in O.J.C. No. 14151/99.

A Raju Ramachandran and Jana Kalyan Das for the Appellants.

Janaranjan Das, Swetaketu Mishra, S.B. Upadhyay, Sanjay K. Das and Ajay Choudhary for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. The appellants and the private respondents herein were appointed as Lower Division Assistants/Junior Assistants between the period 28.09.1966 and 05.09.1973. Recruitment process was undertaken by the Orissa Public Service Commission in terms of the Orissa Ministerial Service (Method of Recruitment & Conditions of Service of Lower Division Assistant in the

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Office of the Department of Secretariat) Rules, 1951 (for short, the OMS Rules, 1951'). After their appointments, the appointees were recruited in various departments. With a view to avail promotional opportunities, the appointees were required to pass an examination known as 'STC Examination'. All the employees admitted were promoted after they had passed the said

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examination. The private respondents passed the examination before the appellants herein and as such they were promoted earlier. On or about 01.01.1984, a Gradation List was published wherein the respondents were shown senior to the appellants herein. The appellants contended that having regard to the fact that seniority of the ministerial officers was to be reckoned on the basis of ranks obtained by them in PSC examination; only because some employees working in some departments were sent for training earlier than the others which enabled them to pass the STC examination before them, the respondents could not have been treated to be senior by reason of such fortuitous circumstances.

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Representations were made by the appellants before the State of Orissa.

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The State issued a circular dated 21.02. 1989 purporting to set up new principles for fixing seniority in the cadre of Lower Grade Assistants in the higher grade and consequently a corrected Gradation List was published on 22.08.1990.

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The legality and validity of the said circular dated 21.02.1989 and the Gradation List dated 22.08.1990 came to be questioned by the respondents herein before the Orissa Administrative Tribunal (for short, 'the Tribunal') which was marked as O.A. No.1200 of 1990. Some of the appellants herein also filed an original application, which was marked as O.A. No.90 of 1990, praying for a direction that the common 1984 Gradation List be revised and

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consequently the 1990 Gradation List which was published pursuant to the

circular letter dated 21.02.1989 be upheld. Both the aforementioned original applications were disposed of by a judgment and order dated 09.03.1992, holding : A

“...We, therefore, have no hesitation in holding that the gradation list drawn up as per Home Department letter No.10535/F dated 21.2.1989 and consequently re-fixation of seniority in the Home Department’s letter in Memo No.24961/CC dated 22.5.1990 and by Home Department’s Memo No.56814 dated 22.8.1990 are illegal and hereby quashed. All the future promotions above the rank of Senior Assistants and Section Officer, Level-II shall be governed by the gradation list made in the year, 1984 and the promotions given effect to accordingly. The principle decided shall govern all the cases i.e. O.A. 1200/90, C.A. 1037/90, OA 817/90, OA 783/90, OA 516/90 and OA 90/90. B C

The prayer in O.A. 90/90 is dismissed relating to quashing of the Gradation list of 1984. The other five petitions are allowed and our order will govern the seniority of all Senior Assistants and Section Officer Level II...” D

The State of Orissa and the appellants herein did not question the correctness of the said order. Only one Suresh Kumar Chhotray filed an application for grant of special leave to appeal in this Court questioning the correctness of the said judgment and order dated 09.03.1992 passed by the Tribunal. During the pendency of the special leave petition, the State of Orissa issued a circular letter purported to be in terms of the said judgment and order dated 09.03.1992, stating : E

“In pursuant of the decisions of the Orissa Administrative Tribunal on 9.3.1992 in O.A. No.1200/90 the Gradation List of Senior Assistants issued in Home Department Memo No.24961 dated 22.5.1990 and No.56814 dated 22.8.1990 is hereby superseded and the Gradation List of Senior Assistants circulated in Home Department Memo No. 3 dated 1.1.1984 and Memo No.53218 (40)/CC dated 27.9.1984 is hereby restored. Home Department letter No.10535/CC dated 21.2.89 stands withdrawn.” F G

The application for grant of special leave filed by the aforementioned Suresh Kumar Chhotray came up for hearing before this Court on 05.01.1993. In view of the aforementioned Government Order dated 12.08.1992, this Court opined that the said special leave petition had become infructuous on H

A the premise that the State intended to issue the said circular letter dated 12.08.1992 as a matter of policy independent of the order of the Tribunal. It was, however, observed :

B “We may, therefore, observe that the right, if any, of the petitioner and other similarly situate to assail any action of the Government based on any distinct cause of action shall not be treated as conclusive by the dismissal of this Special Leave Petition as infructuous. The petitioner would be free to pursue such remedy as may be available to him in that behalf. The Special Leave Petition is dismissed as infurctuous.”

C Relying on or on the basis of the said purported observations made by this Court in the aforementioned Special Leave Petition (Civil) No. 10513 of 1992, original applications were filed by the appellants before the Tribunal. By its judgment and order, the Tribunal held that having regard to its earlier decision and consequent dismissal of the special leave petition by this Court, D the issue could not be reopened, particularly, when the applicants therein had not been able to show any distinct cause of action to agitate their case afresh other than stressing hard for maintaining their seniority as per the guidelines dated 21.02.1989 on the basis of which gradation list of the year 1990 was prepared.

E Aggrieved by and dissatisfied therewith the Appellants filed a writ petition before the Orissa High Court which was marked as O.J.C. No.14151 of 1999 and by an order dated 20.09.2001, the said writ petition was dismissed. In its judgment the High Court opined :

F “It is submitted by Dr. Misra appearing for the petitioners that they are entitled to raise the questions in view of the liberty given by the Supreme Court. We are unable to accept the said submission in as much as the reliefs prayed for by the petitioners, if granted, would amount to reversing the earlier judgment and order of the Tribunal even though special leave petition against the same had been dismissed by the Supreme Court. We do not find any illegality or infirmity in G the impugned order passed by the Full Bench of the Tribunal and as such there is no question of interference with the same.”

H Mr. Raju Ramachandran, the learned Senior Counsel appearing on behalf of the appellants, submitted that in view of the fact that the special leave petition filed against the judgment and order dated 09.03.1992 passed by the

Tribunal had not been disposed of on merit and as thereby liberty had been granted to the petitioner therein to question the said order dated 12.08.1992 afresh, the Tribunal and consequently the High Court committed a manifest error in not entertaining the original application and the writ petition, respectively. A

The learned counsel would submit that it is a fit case where this Court should exercise its discretionary jurisdiction under Article 142 of the Constitution of India so as to enable the appellants to obtain at least the monetary benefits as most of them have since retired. B

We are not persuaded to accept the said submission of the learned counsel. Two sets of applications were filed before the Tribunal at the first instance; one questioning the legality of the Common Gradation List of the year 01.01.1984; and another questioning the legality of the circular letter dated 21.02.1989 and consequent publication of the Gradation List dated 22.08.1990. Both the sets of applications were heard together. Whereas the original applications filed by the respondents were allowed, those filed by some of the Appellants were dismissed. One special leave petition was filed against that part of the judgment and order of the Tribunal, whereby only O.A. No.90 of 1990 was dismissed. The State of Orissa or for that matter, the appellants herein did not file any special leave petition before this Court questioning the said order except one Suresh Kumar Chhotray. The judgment and order of the Tribunal dated 09.03.1992 passed in O.A. No. 1200 of 1990, thus, attained finality. The principle of *res judicata* would, therefore, apply in the instant case. The applicability of the principle of *res judicata* in a proceeding before the Tribunal is not disputed. It is also not a case where the jurisdiction of the Tribunal is in question. C
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This Court while passing its order dated 05.01.1993 did not and could not have dispensed with the applicability of the principle of *res judicata*, as the right of the respondents derived from the judgment and order of the Tribunal dated 09.03.1992 could not have been taken away. In any event, the decision of the Tribunal in O.A. No.90 of 1990 wherein, as noticed supra, some of the appellants had questioned the validity or otherwise of the Gradation List as contained in Home Department's letter dated 27.09.1984 attained finality. F
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The judgment and order passed in the said O.A. No. 90 of 1990 would indisputably be binding on the State and the appellants herein and, thus, it is not open to them to raise the said question once again. Furthermore the H

A seniority list which was revised following the Home Department's letter dated 21.02.1989 and consequent fixation of seniority in terms of Home Department's letters dated 22.05.1990 and 22.08.1990 were declared to be illegal.

B It is in the aforementioned backdrop, the order of this Court dated 05.01.1993 is required to be construed. The judgment of a court, it is well settled, cannot be read as a statute. While construing a judgment, it may be presumed that the same has been rendered in accordance with law.

C In *Ramesh Chand Daga v. Rameshwari Bai*, [2005] 4 SCC 772, this Court held :

D "A judgment, as is well known, is not to be read as a statute. A judgment, it is trite, must be construed upon reading the same as a whole. For the said purpose the attendant circumstances may also be taken into consideration. (*Islamic Academy of Education v. State of Karnataka, Zee Telefilms Ltd. v. Union of India and P.S. Sathappan v. Andhra Bank Ltd*)"

E In *Gajraj Singh and Ors v. State of UP and Ors.*, [2001] 5 SCC 762, this Court held :

F "...A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically."

G The jurisdiction of this Court under Article 142 of the Constitution of India is not meant to be exercised in a situation of this nature. Mr. Ramachandran is not correct in contending that the appellants did not get any opportunity to canvass their case at all. They had such an opportunity before the Tribunal. They, it will bear repetition to state, except one did not assail the findings of the Tribunal. The order of this Court dated 05.01.1993 must be construed having regard to the entire factual and legal backdrop. It is no doubt true that this Court refused to determine the matter on merit and came to the opinion that the special leave petition had become infructuous in view of the order of the State Government dated 12.08.1992, but the fact remains that even before this Court the said order of the State Government was not

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questioned.

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This Court moreover, as noticed hereinbefore, granted liberty to approach the appropriate forum only in the event any distinct cause of action arises therefor, presumably meaning thereby, when an error had been committed by the State in implementing the said order in individual cases. This Court by its order, in our considered opinion, had no intention to give liberty to the appellants herein to reopen the question as regard the validity or otherwise of the Gradation List of 1984 which, as noticed hereinbefore, became final and binding. Once the said order attained finality, this Court could not have allowed the parties to approach the Tribunal once again indirectly it could not have done so directly. As the principle of *res judicata* was applicable, the Tribunal had no jurisdiction to reopen the issue. This Court could not and did not confer a jurisdiction upon the Tribunal which it did not have.

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It is furthermore well-settled, this Court cannot exercise its jurisdiction under Article 142 of the Constitution of India in violation of the statutory provisions and that too at this distant time so as to unsettle a settled thing.

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For the reasons aforementioned, there is no merit in this appeal which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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Appeal dismissed.

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