



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6027 OF 2014

Samir Kumar Majumder ... Appellant (s)

Versus

The Union of India & Ors. ...Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Samir Kumar Majumder (the appellant) was a school teacher at the Railway Higher Secondary School, Alipurduar Junction. He taught mathematics to the school children. Aggrieved by the judgment of the High Court at Calcutta (hereinafter referred to as ‘the High Court’) dated 19.07.2011 in W.P.C.T. No. 130 of 2009, the appellant is before us in appeal. By the said judgment, the High Court denied him absorption as an Assistant Teacher in the Higher Secondary Section and also rejected his claim for continuity in service.

Relevant Facts:

2. The appellant was initially appointed as a Substitute Teacher on 05.12.1989. According to him, artificial breaks were created in his service by terminating him on the eve of the school vacations and thereafter reappointing him. The appellant states that he was terminated first before the summer vacations on 09.06.1990 and was re-engaged on 24.07.1990. His further case is that he was again terminated on 22.09.1990, on the eve of Puja Holidays. According to him, he was re-engaged on 01.11.1990.

3. When the matter stood thus, the appellant, fearing further creation of artificial breaks filed an application being O.A. No. 209 of 1990 before the Central Administrative Tribunal (for short 'the Tribunal') Guwahati Bench. He prayed for setting aside of the letters of termination dated 09.06.1990 and 19.09.1990 and also prayed for regularization of his service and for salary during the period of breaks.

4. The Tribunal passed an interim order on 03.12.1990 and it is an admitted fact that he continued till 12.11.1994 when his services were again terminated, after the Tribunal had dismissed his application on 31.10.1994.

5. The Tribunal, while dismissing his application on 31.10.1994, solely relied on another order of the same Tribunal, passed on the same day, in O.A. No. 149(G) of 1989 in the case of *Smt. Jayasree Deb Roy (Dutta)* vs. *The Union of India & Ors.* Para 4 of the order in the appellant's case is important, which we extract herein below:

“4. We have examined the question of regularization of substitute teachers in detail in our order on O.A. No. 149(G) of 1989 passed today. We have come to the conclusion that the substitute teachers cannot claim regularization as a matter of right. We have also held that selection by the Railway Recruitment Board is essential for regular appointment. For the same reasons we hold that the applicant is not entitled to be granted any relief of regularization. Moreover, in the instant case although the applicant had appeared before the Recruitment Board he was not selected. That does not entitle him to ask for any relief of regularization on the basis of his earlier service as substitute teacher.”

6. O.A. No. 149(G) of 1989 was carried in Appeal to this Court by way of Civil Appeal No. 9424 of 1995 along with the batch of matters of similarly situated candidates, which was disposed of on 13.10.1995. The operative portion of the said order reads as under:-

“... The appellants were, therefore, entitled to the benefit conferred under para 5.1 of the circular (Circular R.B. No. 12/91 M.C. No. 20/91 E(NG)/90/SC/Master) dated January 29, 1991, and on that basis the appellants are entitled to absorption on regular basis through the process of screening by the screening committee in accordance with the said provision and they are not required to face selection by the Railway Recruitment Board for the purpose of regular absorption. The judgment of the Tribunal holding otherwise cannot, therefore, be upheld and has to be set aside.

After the impugned Judgment of the Tribunal, the services of the appellants have been terminated.

In case the appellants are found suitable for absorption by the Screening Committee, they should be appointed on regular basis on the post that was held by them and they would also be entitled to continuity of service. The appeals are, therefore, allowed, the judgments of the Tribunal dated October 31,1994 in the applications filed by the appellants are set aside and the said applications are allowed with the direction that the appellants shall be considered for absorption on regular basis on the post of Assistant Teacher by the Screening Committee in accordance with para 5.1 of the master circular

dated January 29, 1991, and in case the appellants are found suitable for such absorption by the Screening Committee, they shall be restored to the post held by them with continuity of service.

The process of selection by the Screening Committee as per directions in this order shall be completed within a period of three months from the receipt of the copy of this order. A copy of this order be sent to the Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati.

By our order dated March 27, 1995, we had directed that appointment may not be made on six posts of school teachers. The said order shall continue till the Screening Committee completes the process of screening.”

7. The appellant too carried the matter from the Tribunal to this Court. His matter was disposed of on 15.02.1996 in the following terms:-

“These appeals relate to regular absorption of the appellants who are working as substitute teachers in the Railways. In the impugned judgment the Central Administrative Tribunal has observed that the appellants should be given an opportunity to appear before the Selection Board if they are otherwise eligible as and when such selection is made and has expressed the hope that the respondents would try to accommodate them even on temporary basis if there happens to be any casual vacancy available from time to time and for that purpose they may be placed on waiting list of substitute teachers.

The submission of Shri Puri, the learned counsel appearing for the appellants, is that the appellants who have crossed the age bar may not be eligible for such consideration. Having regard to the facts and circumstances of these cases, it is directed that if the appellants have crossed the prescribed maximum age, they may be considered for regular selection by giving relaxation in that regard. But such relaxation shall be confined to one opportunity for consideration for such selection. The appeals are disposed of accordingly. No order as to costs.”

8. Even though textually, the orders may appear different, the respondent-authorities rightly acted in terms of the true purport of the order. They subjected the appellant also to the process of screening by the Screening Committee in accordance with para 5.1 of the Master Circular dated 29.01.1991 (hereinafter referred to as ‘the Master Circular dated 29.01.1991’)

9. After subjecting the appellant for screening, by an order of 02.01.1998, the appellant was appointed as Primary Teacher (Bengali Medium) in the Railway Higher Secondary School, Alipurduar Junction against an existing vacancy.

10. Being aggrieved, the appellant filed Original Application No. 978 of 1998 before the Central Administrative Tribunal, Calcutta Bench.

11. The grievance was that *firstly*, the appellant should have been absorbed in the post of Assistant Teacher instead of being absorbed as a Primary Teacher with admissible continuity of service in the pay-scale of Rs.5500-9000 and not Rs.4500-7000 that was now offered under the 02.01.1998 order; *secondly*, the appellant is entitled to the pay-scale and allowance admissible to the post of Assistant Teacher Grade-I, namely, Rs.1640-2900 from 05.12.1989 instead of the pay-scale of Rs.1200-2040 that was offered. *Thirdly*, that under the Master Circular dated 29.01.1991, a Substitute School Teacher who acquires temporary status, after putting in continuous service for three months, is entitled to continuity in service as prescribed therein.

12. At this stage, we can profitably refer the order dated 28.12.1998 passed on the aspect of continuity of service with regard to these teachers who were currently absorbed. The order reads as under:

“Sub:- Continuity of Service on regular absorption

In compliance with Judgment of Hon’ble Supreme Court of India and CAT/Guwahati dated 13-10-95, 15-2-96, 2-1-96 and 7-10-96, the following substitute teachers are absorbed as Primary teacher (Bengali Medium) and posted in Railway Schools.

1. Smt. Jayashree Deb Roy (Dutta)
2. Smt. Ratna Roy.
3. Shri Subal Chandra Chakraborty
4. Smt. Anupama Bhowmick
5. Shri Pijush Kanti Das
6. Smt. Radha Chakraborty
7. Shri S. K. Majumder.

The past service rendered by (1) Smt. Jayashree Deb Roy (Dutta) (2) Smt. Ratna Roy (3) Shri Subal Chandra Chakraborty (4) Smt. Anupama Bhowmick and Shri Pijush Kanti Das as Substitute teacher in different spells may be taken into account for all purpose except Seniority from the date of acquiring of temporary status with treating breaks as Dies-non.

However, the Hon’ble Court has not directed any specific order regarding Continuity of service in favour of Smt. Radha Chakraborty and Shri S.K. Majumder and as such the date of appointment will be the date of regular appointment after regularization by Screening Committee.

This has the approval of Competent authority.”

13. As will be seen from the penultimate paragraph of the letter dated 28.12.1998, extracted hereinabove, the only reason that the appellant was denied continuity of service while others were granted was that this Court had not made any order regarding continuity of service. All other teachers, including Jayashree Deb Roy (Dutta) [applicant in O.A. No. 149(G) of 1989] were granted continuity of service and the past service rendered by them as substitute Teacher in different spells was taken into account for all purposes except seniority from the date of acquiring of temporary status by treating breaks as *dies non*. (A day on which no legal business is carried on).

14. The respondent-authorities defended their orders before the Central Administrative Tribunal, Calcutta Bench.

Findings of the courts below:

15. The Central Administrative Tribunal, Calcutta Bench, by its judgment of 28.11.2008, held that the appellant had only

been appointed as a primary teacher on 05.12.1989 in the pay-scale of Rs.1200-2040; that functioning as a mathematics teacher for Classes XI and XII, as a stop-gap measure, would not entitle him the rights of a regular appointee to the post of Post Graduate Teacher; that the orders of this Court did not, in the appellant's case, direct specifically regarding continuity of service, as was done in the other cases and the appellant's case being one of regular absorption, no continuity of service can be given to him. Holding so, the Central Administrative Tribunal, Calcutta Bench dismissed the application of the appellant.

16. The appellant filed a Writ Petition before the High Court at Calcutta. The High Court once again, relying on the order of this Court, held that the benefit of continuous service was specifically rejected in the case of the appellant. So holding, the High Court upheld the order of the Central Administrative Tribunal, Calcutta Bench.

17. The appellant is before us in Appeal.

Contentions:

18. We have heard Ms. Uttara Babbar, learned counsel for the appellant and Mr. Nachiketa Joshi, learned counsel for the Union of India. Both the learned counsel have painstakingly taken us through the records of the case and presented their respective points of view very ably.

19. Ms. Uttara Babbar, learned counsel for the appellant, contends that under the Master Circular dated 29.01.1991, Clause 4.3, 5.1 and 6 would apply to the case of the appellant. According to her, on completion of three months continuous service, the appellant acquired the temporary status under Clause 4.3; that under Clause 5, Substitutes, who have acquired temporary status were to be screened by a Screening Committee and not by Selection Boards for the purpose of absorption, and under Clause 6, the date of appointment of a substitute to be recorded in the service book against the column “date of appointment” should be the date on which the substitute attains a temporary status after

continuous service of three months, if the same is followed by his/her regular absorption. According to the learned counsel, only for those who do not acquire temporary status and who are regularly appointed, the date of appointment would be the date when they are absorbed.

20. According to the learned counsel, the appellant having completed three months of continuous service as a substitute teacher is entitled to reckon his date of appointment as 04.03.1990 (on completion of three months) since he now stands duly absorbed by the order of 02.01.1998.

21. According to the learned counsel, the appellant ought to have been absorbed as Assistant Teacher since he worked as a substitute Assistant Teacher and taught Classes XI and XII. Her further alternative case is if he has to be only considered as absorbed under the category of Primary Teacher, then he should be entitled to the benefit under the Master Circular dated 29.01.1991 and should be entitled to reckon his service under Clause 6 of the said Circular from 04.03.1990.

Learned counsel further contends that the order of this Court in the case of the appellant dated 15.02.1996 should be read in conjunction with the order of this Court dated 13.10.1995 in the case of Smt. Jayasree Deb Roy (Dutta) - applicant in O.A. No. 149(G) of 1989. Learned counsel lays particular emphasis on the fact that the Tribunal in the appellant's case in O.A. No. 209 of 1990 had wholly relied on the order in the case of O.A. No. 149(G) of 1989 (the case of Smt. Jayasree Deb Roy (Dutta)). Reiterating para 4 of the said order, learned counsel contends that O.A. No. 209 of 1990 of the appellant was dismissed for the same reasons that O.A. No. 149(G) of 1989 was dismissed. Learned counsel further emphasizes the fact that in C.A. No. 9424 of 1995, by order dated 13.10.1995, this Court in the case of Smt. Jayasree Deb Roy (Dutta) had specifically recorded that the judgment of the Tribunal in O.A. No. 149(G) of 1989 was set aside.

22. Learned counsel further contends that even the authorities so understood the orders of this Court and it is for

that reason that they subjected the appellant also to a screening before the Screening Committee before the absorption on 02.01.1998. Learned counsel contends that, having done so, there was no plausible reason to discriminate the case of the appellant when it came to the grant of relief regarding continuity of service on the ground that this Court had not made any specific order regarding continuity of service.

23. Learned counsel contends that the grant of age bar relaxation can only be understood as a grant of additional relief and this cannot be read to mean that there was denial of the relief of continuity of service, if the appellants' were found entitled for absorption which they ultimately were found be entitled to.

24. Mr. Nachiketa Joshi, learned counsel for the Union of India, vehemently opposed the above submissions. Learned counsel, defending the orders of the courts below would submit that the claim for absorption as Assistant Teacher was totally unjustified. According to the learned counsel, the

appellant was appointed in 1989 only as a substitute primary teacher in the pay-scale of the primary teacher and hence merely on the basis of the claim that some stop-gap classes XI and XII were taken, no plea for absorption as Assistant Teacher could be justified/made. He defended the order of absorption dated 02.01.1998 and also contended that the authorities were justified in passing the order of 28.12.1998 denying continuity of service for the period before 02.01.1998, since there was a clear distinction between the judgment of this Court in the case of Smt. Jayasree Deb Roy (Dutta) and others in the case of the appellant.

25. Drawing attention to the orders of this Court in the case of Smt. Jayashree Deb Roy (Dutta) vs. Union of India and Ors. (C.A. No. 9424 of 1995) arising out of O.A. No. 149(G) of 1989, learned counsel contends that in the case of Smt. Jayasree Deb Roy (Dutta) (supra), there was a specific finding that the appellants in that case were entitled to continuity of service in accordance with para 5.1 of the

Master Circular dated 29.01.1991 in the event the Screening Committee found them fit for absorption.

26. Contrasting this with the judgment of this Court in the appellant's case, learned counsel would contend that no such direction for granting continuity of service in the event of absorption was given in the appellant's case.

27. Learned counsel would contend that even factually the case of the appellant was different from the case of Smt. Jayasree Deb Roy (Dutta) inasmuch as Smt. Jayasree Deb Roy (Dutta) was in service on the date of absorption, while the appellant was not. This submission is seriously disputed by Ms. Uttara Babbar. Nothing much however turns on this last submission of the counsel for the respondents.

Reasons and Conclusion:

28. We have considered the rival contentions and perused the records.

Claim for absorption as Assistant Teacher – Higher

Secondary Section:

29. We are of the view that the appellant's claim for absorption as Assistant Teacher in the Higher Secondary Section in the pay-scale of Rs.5500-9000 is not tenable. The appellant was appointed as a substitute teacher in the pay-scale of a primary teacher. In fact, when he filed the first round of proceedings in O.A. No. 209 of 1991, no plea was raised that he worked as an Assistant Teacher in the Higher Secondary Section. Even when he obtained interim orders from the Tribunal on 03.12.1990, it was only to the effect that the services of the appellant should not be dispensed with without the leave of the Court. Even before the Tribunal, the argument was only about regularization. Before this Court too, no claim for regularization as Assistant Teacher in the Higher Secondary Section was made.

30. The contention now raised in the present round of proceedings (O.A. No. 978 of 1998) for absorption as

Assistant Teacher in the Higher Secondary Section is strongly refuted by the respondents by pointing out that his engagement as a substitute teacher was only in the pay-scale of Rs.1200-2040 which was the scale for the primary teacher. They contend that his claim that he was allowed to take classes for XI and XII is unfounded. No doubt, the Central Administrative Tribunal, Calcutta Bench has recorded that the applicant had functioned as a mathematics teacher for Class XI and XII as a stop-gap measure.

31. This issue, however, need not detain the Court any longer as at no point in the first round of proceedings, the appellant made such a claim; the Screening Committee having considered him, pursuant to the orders of this Court, has thought it fit to absorb him only as a primary teacher; the Screening Committee itself was pursuant to the orders of this Court and based on the Master Circular of 29.01.1991 wherein the claims of the candidates like the appellant were examined; the records of his appointment as a substitute

teacher admittedly show that he was only appointed as a substitute primary teacher; it is on the completion of three months as substitute primary teacher that he acquired temporary status and on absorption now he became entitled to certain benefits under the Circular which we have elaborated herein above.

32. In the earlier round of proceedings culminating in the order of this Court dated 15.02.1996, this issue was never raised. His claim for absorption as an assistant teacher in the Higher Secondary Section is clearly barred by constructive *res judicata*.

Law on Constructive *Res Judicata*:

33. Almost two centuries ago, in **Henderson** vs. **Henderson**, (1843) 3 Hare, 100, the Vice-Chancellor Sir James Wigram felicitously puts the principle thus:-

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward

their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

34. This principle popularly known as the doctrine of *constructive res judicata*, based on the might and ought theory, has been recognized by this Court in several judgments. In *Maharashtra Vikrikar Karamchari Sangathan* vs. *State of Maharashtra and Another*, (2000) 2 SCC 552, this Court held as under:-

“22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies falling in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a contention was available to the appellants in the earlier proceedings, namely, Transfer Application No.

822 of 1991 and the same was not put in issue. That not having been done, it must follow that such a contention is barred by the principles of constructive res judicata. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No. 822 of 1991. It would, therefore, be too late to raise such a contention when the seniority list has been finalized pursuant to the judgment of MAT, Bombay Bench in Transfer Petition No. 822 of 1991.”

Interest reipublicae ut sit finis litium:

35. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium* which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause (See **M. Nagabhushana** vs. **State of Karnataka and Others**, (2011) 3 SCC 408.

36. The contention raised on behalf of the appellant that he should at least be paid the salary and allowances as paid to the Assistant Teachers in the Higher Secondary Section for the time he functioned should also fail for the reason as set out herein above.

Claim for continuity of service:

37. The appellant however cannot be denied continuity of service under the Master Circular dated 29.01.1991 read with the orders of this Court in Smt. Jayasree Deb Roy (Dutta) (supra) [C.A. No. 9424 of 1995] and the order in the appellant's own case i.e. C.A. No. 3557 of 1996 dated 15.02.1996. This is a fresh cause of action, which has arisen in view of his absorption on 02.01.1998, subsequent to the culmination of the earlier round of proceedings.

38. The conduct of the authorities themselves in subjecting the appellant to screening before the Screening Committee, like they did for Smt. Jayasree Deb Roy (Dutta) and Others, also clearly indicates that even they wanted to treat the appellant's case on par with the case of Smt. Jayasree Deb Roy (Dutta) and Others. It is on that basis that the appellant was found fit for absorption as a primary teacher and he was so absorbed. The only reason given in the order denying continuity for the appellant while granting continuity of the

same for the others is that, in the case of the appellant, this Court had not directed any specific order regarding continuity of service.

Rights under the Master Circular:

39. The appellant's right first of all flows from the Master Circular dated 29.01.1991, as has been rightly contended by learned counsel for the appellant. For the sake of convenience, we extract herein below the relevant clauses:-

“4. BENEFITS.

4.1. Substitutes engaged should be paid regular scales of pay and allowances admissible to the post against which they have been appointed irrespective of the nature of duration of the vacancy.

4.2. They be allowed all the rights and privileges as are admissible to temporary railway employees on completion of four months continuous Service.

4.3. Substitute school teacher may, however, be afforded temporary status after they have put in continuous service of three months. Their service to be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

4.4 The conferment of temporary status after completion of four months continuous service in the case of others and three months continuous service in the case of substitute teachers mentioned in paras - 4.2 and 3 above does not entitle them to automatic absorption/appointment to Railway service unless they are selected

in the approved manner for appointment or absorption to regular posts.

4.5 Service of substitutes will count for Pensionary benefits from the date of completion of four months (3 months in the case of teachers) continuous service provided it is followed by absorption in regular Group-'C' (Class III)/Group-'D' (Class -IV) Service without break.”

... ..

“5. Screening of the substitutes for their absorption in regular service:-

5.1 Substitutes, who have acquired temporary status should be screened by screening Committees and not by Selection Boards, Constituted for this purpose before being absorbed in regular Group -'C' (Class-III) and Group-'D' (Class-IV) posts.

Such a screening Committee should consist of at least three members, one of whom should belong to the SC/ST Communities and another to minority communities.”

... ..

5.11 Gaps which may occur in service of substitutes between two engagements should be ignored for the purpose of temporary status on completion of four months services and in case of teachers, on completion of 3 months service.”

... ..

“6. Date of appointment.

The date of appointment of a substitute to be recorded in the service book against the column "date of appointment" should be the date on which he /she attains temporary status after continuous service of four months if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed/absorbed.

This applies to substitute teachers also who attain the temporary status after a continuous service of three months only.”

40. A reading of the above clearly shows that on completion of three months of continuous service as substitute teacher, the incumbent acquires temporary status. It is also clear that substitutes who have acquired temporary status should be screened by the Screening Committee and not by Selection Board. It is also clear that under Clause 5.11, gaps which may occur in service of substitutes between two engagements should be ignored for the purpose of temporary status on completion of four months service and in case of teachers, on completion of three months service. Further, it is clear that the date of appointment should be the date on which they attained temporary status in the event they are regularly absorbed. As is clear from the dates mentioned hereinbelow that the appellant having acquired temporary status on 04.03.1990 is entitled to count his service from 04.03.1990 in view of his absorption in the service as a primary teacher on 02.01.1998.

41. The authorities are wrong in stating that in the case of the appellant this Court had not directed any specific order regarding continuity of service. This Court's order of 15.02.1996 has to be read with the order in the case of Smt. Jayasree Deb Roy (Dutta) dated 13.10.1995. Nowhere in the order of this Court in the appellant's appeal had the benefits available to the appellant under the Master Circular been taken away. In the case of Smt. Jayasree Deb Roy (Dutta), by abundant caution, the Master Circular was referred to and the rights granted therein were reiterated expressly in this Court's order. On the facts of the present case, we are not persuaded to accept the contention of the respondent that the order of this Court in the appellant's case should be so read as having denied him the benefits of Master Circular dated 29.01.1991.

42. The appellant being identically situated with the other absorbees in the order of 02.01.1998 could not have been

discriminated and denied the benefit of his service from 04.03.1990 to the date of his absorption.

43. The Tribunal and the High Court have grossly erred in denying the relief by wrongly understanding the orders of this Court and the legal position.

44. We direct that the appellant will be entitled to take into account the past service rendered by him as substitute teacher in different spells, from the date of obtaining temporary status (04.03.1990). The appellant should be extended the same benefits as were extended to others, who were granted continuity by the letter of 28.12.1998.

45. The appellant has superannuated now. The pay of the appellant shall be re-fixed after granting continuity of service with all consequential benefits in accordance with Clause 6 of the Master Circular dated 29.01.1991. All the necessary increments and allowances due on that basis also should be granted. The retrial benefits also should be consequently reworked. The unpaid arrears amount be paid

to the appellant with six percent interest from the respective dates the various amounts fell due. Let the payment be made within eight weeks from today.

46. Accordingly, the impugned order of the High Court dated 19.07.2011 passed in W.P.C.T. No. 130 of 2009 is set aside. The Appeal is partly allowed in the above terms. There shall be no order as to costs.

.....J.
(J.K. Maheshwari)

.....J.
(K.V. Viswanathan)

**New Delhi;
September 20, 2023.**