

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.09.2005

Coram:

The Honourable Mr. MARKANDEY KATJU, The Chief Justice
and
The Honourable Mr. Justice A. KULASEKARAN

W.A. No.1401 of 2004

and

W.A.M.P. Nos.2584/04 & 495/05

1. The Director General,
Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi.

2. Union of India,
Reptd. By the Secretary,
Ministry of Defence,
New Delhi.

... Appellants

vs.

Md.Abbas Mohideen
Asst. Commdt. (4063-J)
Pollution Response Team (East),
C/o.Coast Guard Regional
Headquarters (East),
Near Napier Bridge,
Chennai.

... Respondent

Appeal under Cl.15 of the Letters Patent against the order dated
18.08.2003 made in W.P. No.14388 of 2003.

For Appellants

::

Mr.V.T.Gopalan, Addl.
Solicitor General, for
Mr.R.Santhanam, Sr.C.G.S.C.

For Respondent

::

Mr.G.Rajagopalan, Sr.
Counsel for Mr.S.Chandrasekaran.

JUDGMENT

(Delivered by the Honourable The Chief Justice)

This Writ Appeal has been filed against the impugned order
of the learned single Judge dated 18.08.2003 made in W.P. No.14388
of 2003.

2. Heard the counsel for the parties and perused the records.

3. This case discloses a gross abuse of process of the court. The respondent herein/writ petitioner had earlier filed a writ petition in Orissa High Court, being O.J.C. No.12775 of 1999 for the same relief which he has claimed in the Writ Petition out of which the present Writ Appeal arises. Before the Orissa High Court the respondent herein had challenged the re-convening of the Coast Guard Court, but that Writ Petition was dismissed by the Division Bench of the Orissa High Court on 05.03.2003.

4. Surprisingly, Writ Petition No.14388 of 2003 was filed in this Court by the same petitioner and for the very same relief as claimed before the Orissa High Court, and yet, surprisingly, the Writ Petition was entertained in violation of the well settled principle of res judicata which applies to writ jurisdiction.

5. In our opinion, the learned single Judge should have dismissed the Writ Petition filed in this Court with a single sentence that it is barred by res judicata and also observing that it is hence not maintainable in this Court. Instead, surprisingly the learned single Judge not only entertained the petition but went on to make long observations including the observation in paragraph No.8 of the impugned order, which reads as follows:-

" 8. In the circumstances, while directing the petitioner to raise or re-state the plea of jurisdiction or other objections as to the preliminary issue, the respondents are directed to hear the preliminary objections or the issue as to the plea of jurisdiction in terms of Rule 63 of the Discipline Rules and pass orders. After passing such an order as to the jurisdiction, in case the Coast Guard Court disagrees or overrules the jurisdictional issue or preliminary objections that may be raised under Rule 63, before proceeding with the merits of the charges or imputations, the petitioner shall be granted at least four weeks' time to work out his remedy, if any, under the Act or as may be open to him in law. However, it is made clear that this Court has not decided any of the contentions advanced by the learned counsel for the petitioner on merits and it is for the Coast Guard Court to examine the plea of jurisdiction or limitation, as the case may be, on merits and in accordance with law."

6. In our opinion, the learned single Judge was not justified in making any observation, since the matter was barred by the principle of res judicata. Hence, we set aside the impugned order of the learned single Judge by allowing this Writ Appeal. Connected Miscellaneous Petitions are closed. The Writ Petition is dismissed as it is not maintainable in view of the bar of res judicata. Since the writ petitioner/respondent has abused the process of court, we impose costs of Rs.10,000/- (Rupees ten thousand only) which he shall pay to the appellants within two months from today failing which it will be recovered from him as arrears of land revenue.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director General,
Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi.

2. The Secretary,
to the Union of India,
Ministry of Defence,
Sarth Block, New Delhi.

+1cc to Mr.R.Santhanam, Advocate, (SR.40641)
+1cc to Mr.S.Chandrasekaran, Advocate, (SR.40797)

MM(co)
rvr/5.10.

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