
(2019) 09 CAL CK 0272

In the Calcutta High Court

Case No : Wp. State Admin Trib (WPST) No. 113 Of 2019

Dr. Sandeep Kumar De

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0272

Hon'ble Judges : Protik Prakash Banerjee, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Juli Dey, Chaitali Bhattacharya, Kartik Chandra Kapas

Final Decision : Dismissed

Judgement

Protik Prakash Banerjee, J

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has impeached an order passed by West Bengal Administrative Tribunal dated 12th December, 2018 in O.A. No. 884 of 2018 and an order dated 28th March, 2019 in review application, R.A. 1 of 2019, passed for review thereof.

2. The short case of the petitioner is that the review application was dismissed on the ground that no ground had been made out for review of the order dated 12th December, 2018; the original order was impeached on the ground that there was a wrong recording on fact in it leading to the dismissal of the original application. The wrong recording of fact as stated by the petitioner is that W. P. 9765 (W) of 2016 which was pending before this High Court was in respect of the transfer of the petitioner. The petitioner submits that on the face of the said writ petition, the copies whereof she has been at some pains to press on our attention relates to culpable inaction by the police authorities.

3. Unfortunately, the petitioner has not been able to satisfy the Court as to how in view of the facts and circumstances of the case as made out before us, the petitioner can escape from being hit by the principles of res judicata. It appears

from the records and what has been alleged in the petition that the petitioner had been agitating for transfer nearer home at Durgapur instead of serving at Sonamukhi despite the fact that quarters are available to him at Sonamukhi. The first representation of 10th February, 2016 and the second representation of 28th April, 2016 were disposed of by the learned tribunal by an order dated 24th August, 2016 directing the respondents to take a decision regarding the matter and conclude the same within a stated time to the petitioner. Admittedly, the petitioner was granted a hearing and a medical board was constituted on 24th October, 2016 and the findings of the medical board were not of a nature as would warrant a transfer as claimed by the petitioner.

4. Be it mentioned that the place to which the writ petitioner was seeking to be transferred was only 60 km. away from his present posting and it is a matter of record that for the last four years and more, he has been commuting in an overcrowded bus on a regular basis and to and fro from home.

5. Accordingly, by an order dated 30th June, 2017, the respondents rejected the petitioner's application for transfer. The petitioner represented against this of 20th July, 2017 and thereafter, moved the learned tribunal once again on 16th August, 2017 challenging the order of the respondents on 30th June, 2017 which was marked as O. A. No. 713 of 2017. By Order No. 3 dated 5th February, 2018 on merits, the learned tribunal was pleased to dismiss the original application on a clear finding that the applicant was not serious about the disease suffered by him and had been travelling regularly distance of 120 km. in a crowded bus without submitting application for allotment of new quarters for residing in his place of posting at Sonamukhi. The decision of the medical board was accepted by the learned tribunal. The writ petitioner then moved the writ petition before this Court and it appears from the list of dates and paragraph 26 of the writ petition, this writ petition was dismissed on 23rd July, 2018. Therefore, this would have been a material fact to have been considered in the event that the writ petitioner took out any further proceedings challenging the transfer whether or not it was for deterioration of the health of the petitioner or otherwise. Unfortunately, in the new representation dated 13th August, 2018 based on new prescription and doctors' advice dated 8th August, 2018 made by the petitioner, there was no reference to the said O.A. 713 of 2018 or its dismissal on 2nd February, 2018. On the basis of this grievous suppressions of a material fact, a new original application being O.A. 682 of 2018 was taken out by the petitioner before the learned tribunal and initially, the petitioner was successful in persuading the learned tribunal to pass an order for disposal of the representation of the petitioner dated 13th August, 2018 by passing a reasoned order. However, the said order shows that after it was passed, the learned advocate for the respondent who was not present in the first round when the matter was being disposed of, requested that the learned tribunal revisits the order since there was suppression of the aforesaid material fact and that O.A. 713 of 2017 which challenged the selfsame refusal of transfer being a selfsame cause of action stood dismissed on 2nd February, 2018. On that occasion, the

petitioner did not submit that this was a mistake in drafting or that a chance be given to supplement the pleadings as has been attempted to be urged before this Court. But the petitioner's learned advocate clearly took the point that the incident of 24th January, 2016 which had been stated in the representation dated 13th August, 2018 was a fresh cause of action. It was not explained by the petitioner why if this was a fresh cause of action, the earlier action for the petitioner to move the learned tribunal on the selfsame question of transfer and its dismissal on 2nd February, 2018 were not brought to the notice of the tribunal.

6. After searching queries from the petitioner's learned counsel, we have ascertained that at the new application stage when the petitioner alone was being heard, the petitioner did not feel it important to bring this to the notice of the tribunal. When the other side appeared it was the duty of the other side to acquaint the tribunal with the same, according to the petitioner and, therefore, when the other side came back after having suffered the order of consideration of the matter, it was also not fault of the petitioner.

7. We have not been able to appreciate this rather convoluted attempt to shirk his responsibility for suppression of material fact, particularly, when that material fact would show that the petitioner was estopped by records and by judgment from challenging the order of transfer which is a species of *res judicata*.

8. In such view of the matter, when the petitioner approached the learned tribunal in yet another round after yet another representation by way of O.A. 884 of 2018, it was not merely multiplication of proceedings but a continuous abuse of process which ought to be strongly discouraged. The fact that this abuse of process was nipped in the bud was not merely because of pendency of W. P. 9765 (W) of 2016; as appears from the 2nd paragraph of the order dated 12th December, 2018 one of the factors which weighed with the learned tribunal was also that the earlier application on the selfsame cause of action being O.A. 682 of 2018 was dismissed on 3rd October, 2018, *id est*, for suppression of material facts.

9. In that view of the matter, we find no infirmity in the order dated 12th December, 2018 dismissing O.A. 884 of 2018.

10. Coming now to the petition for review, the grounds of review made out is that the recording of W.P. 9765 (W) of 2016 as being in respect of the transfer of the petitioner was erroneous in fact and this is something which is apparent from the face of the records. However, the learned tribunal was not pleased to merely dismiss the review petition only on the ground that no such ground had been made out but also on a holistic consideration of the said position of law that transfer is a part of one's service career and cannot be allowed to be interfered very lightly and also because the original order was passed on the basis of suppression by the petitioner of material facts. In the light of the view we have taken of the conduct of the petitioner as also of the serial suppression of material facts and the inability of the petitioner to counter the question of *res judicata*, we

find no infirmity in the order of the learned tribunal dated 28th March, 2019 rejecting the application for review being R.A. 1 of 2019.

11. This is a case where we choose not to exercise the discretion of interfering with the order passed in review on the ground of wrong recording since the decision is in consonance with what we consider to be just.

12. The writ petition is dismissed. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.