

(2014) 01 CAL CK 0080
In the Calcutta High Court
Case No : Writ Petition 28583 (W) of 2013

Khokan Chandra Guin

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2014) 01 CAL CK 0080

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Priyabrata Ghosh, for the Appellant; Sujit Sankar Koley for Respondents Nos. 4, 5, 6 and 7 and Mr. N.C. Bhattacharya and Mr. Manas Kumar Sadhu for State, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—It is the fourth round of litigation before this Court. The petitioner was appointed as part time sweeper at a remuneration of Rs. 5/- per day. Since the said engagement was not regularised, the petitioner approached this Court by filing a writ petition, being C.O. 9945 (W) of 1992. The said writ petition came to be disposed of on 18th January 2001 by directing the authorities to consider the petitioner's candidature in the vacancy as and when the same would arise, after giving age relaxation. Despite the said order, the petitioner's candidature was not considered by the respondent Company which compelled the petitioner to file another writ petition, i.e. A.S.T. 1638 of 2006, before this Court. On 13th October 2006 this Court disposed of the said writ petition directing the respondent authorities to act in terms of the order passed in the earlier writ petition at the time of holding interview for regularisation of the petitioner as a Sramik. The matter did not rest there as the petitioner filed an application for contempt alleging wilful and deliberate violation of the order dated 18th January 2001 before this Court. The said contempt application came to be disposed of recently, i.e. on 1st March 2013, by directing the authorities to allow the

petitioner to participate in the recruitment process.

2. It can be deciphered from the recording made in the said order that an advertisement was published in the newspaper for recruitment of the Technical Support Hand. Though the petitioner initially alleges that the order dated 18th January 2001 was not complied with by the respondent authorities but subsequently submitted that he should be allowed to participate in the said recruitment process so undertaken in terms of the advertisement relating to Technical Support Hand.

3. The respondent authorities have brought to the notice of this Court that the petitioner had participated in the said recruitment process but could not emerge successful in the physical ability test. It is after the declaration that the petitioner is found to be unfit for being absorbed in the Technical Support Hand, the petitioner has approached this Court, seeking for the same relief, as he had sought in the first writ petition, but by taking a different approach. The petitioner not only complains of various unfair labour practices being perpetrated by the respondent authorities but also contends that he has a right to be absorbed by regularising his casual and/or contractual service in terms of the Circular dated 2nd August 1979.

4. Admittedly, the ultimate goal, which the petitioner tried to achieve, was one what is intended in the first writ petition. Mere different approach does not confer any further right when such right has already been decided finally in an earlier proceedings.

5. At the time of filing the first writ petition, the Circular dated 2nd August 1979 was in existence; any departure from the said Circular was very well available to petitioner when he moved the earlier writ petition in the year 1992. In this regard, reference can be placed on Explanation IV to Section 11 of the CPC which says that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue of such suit.

6. Since the said plea was available to the petitioner at the time of filing the first writ petition and the same having been finally decided and disposed of, the said issue cannot be reopened and/or taken by the petitioner in the present writ petition.

7. Furthermore, the other plea of unfair labour practice, invented and/or engineered for the first time in this writ petition, was also available to the petitioner at the time of filing the first writ petition.

8. In the contempt application, the petitioner himself offered to participate in the recruitment process undertaken by the respondent authorities for Technical Support Hand. It is only after being adjudged unfit and/or unsuccessful in the said recruitment process, the petitioner is taking rebound and falling upon his original right which is already foreclosed by an order of this Court passed in an

earlier writ petition.

9. This Court, therefore, does not find any merit in the writ petition. The same is accordingly dismissed. There shall, however, be no order as to costs.