

(2020) 08 MP CK 0301

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10338 Of 2020

Sajeev Garg

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2020) 08 MP CK 0301

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : MPS Raghuvanshi

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

"7(i) That, the impugned action on the part of respondents be held to be illegal and respondents be commanded by issuing appropriate writ to present the de-empanelment list maintained by them and they be directed to remove the name of petitioner from the de-empanelment list and to submit corrected de-empanel list to honorable High Court.

(ii) That, the respondents be further directed not to publish the name of the petitioner by including the his name in the de-empaneled list and not to circulate the said list to the other banks, R.B.I, I.B.A & other institutions.

(iii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted."

It is not out of place to mention here that earlier, the petitioner had filed a Writ Petition No.3808/2017 seeking the same relief although it was worded differently. The said writ petition was dismissed by order dated 12/03/2019 passed in Writ Petition No.3808/2017. The order passed by the Single Judge was

put to test before the Division Bench of this Court in Writ Appeal No.575/2019, which was dismissed by order dated 05/04/2019.

The counsel for the petitioner could not point out any fundamental/statutory right in favour of the petitioner for getting himself empanelled.

Further, the principle of Res Judicata/Constructive Res Judicata applies to Writ petitions also.

The Supreme Court in the case of S. Bandopadhyaya Vs. Union of India by order dated 15-March-2019 passed in C.A. No. 3149 of 2019 has held as under :

8.7. The decision in S.V. Vasaikar & Ors. v. Union of India & Ors. [2003 (2) Mh. L.J. 691 : 2003 (4) Bom CR 79] was not challenged before the Supreme Court, and has since attained finality. Therefore, the relief sought by the Appellants before the High Court was barred by the principle of res judicata.

Reference can be made to the decision of the Constitution Bench in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors. (AIR 1990 SC 1007) wherein Sharma, J., on behalf of the five judge bench, held:

"35...It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of UP 3 held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32..."

(emphasis supplied)

Albeit the decision of the Constitution Bench was in the context of a Writ Petition filed under Article 32, it would apply with greater force to bar a Writ Petition filed under Article 226, like the one filed by the present Appellants, by the operation of the principle of res judicata.

As this petition is barred by principle of Res Judicata/Constructive Res Judicata, therefore, it is dismissed.