

(1963) 03 RAJ CK 0006
In the Rajasthan High Court
Case No : Writ Petition No. 44 of 1963

Smt. Rita Mazumdar

APPELLANT

Vs

University of Rajasthan and Another

RESPONDENT

Date of Decision : 12-03-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : AIR 1964 Raj 64 : (1963) RLW 408

Hon'ble Judges : J.S. Ranawat, C.J; V.P. Tyagi, J

Bench : Division Bench

Advocate : M.M. Vyas, for the Appellant;

Final Decision : Dismissed

Judgement

Ranawat, C. J.

1. An application was made by the petitioner Smt. Rita Mazumdar on the 12th of November 1962 under Article 226 of the Constitution. It was alleged that the petitioner appeared at the M.Sc. Final Examination held by the Rajasthan University in the year 1961 and that Professor Haldar who was internal examiner failed to give marks on each question and instead he put 66 marks in all for the practical chemistry examination out of a total of 200 marks. It was also alleged by the petitioner that she did do very well in her sessional work and may have obtained as many as 40 to 45 marks out of a total of 50 marks reserved for sessional work. The petitioner did not allege that 40 or 45 marks for the sessional work were not included in the total of 66 marks and at the time the petition was heard, the counsel for the petitioner, Mr. Mathur, expressed his inability to enlighten the Court whether the total of 66 was inclusive or otherwise of the marks for the sessional work. The Court dismissed the application on the ground that there was no merit in it. It was the only relief prayed for that the total marks that were given should have been arrived at by giving marks for individual questions.

It was considered not of any use to issue a direction for break up of the total marks for each question, for that would not make any difference in the result of the petitioner. The petitioner has now come again to this Court and has moved a second petition under Article 226 of the Constitution on the same allegations with the addition that in the total of 66 marks obtained by "the petitioner on the answer book in chemistry practical, the marks of the sessional work were not added. An affidavit has also been filed in which it has been stated that the Vice Chancellor enlightened the petitioner and told her that marks for the sessional work were not added to make up the total of 66 marks. The question arises whether a second petition with some additions relating to facts which were within the knowledge of the petitioner should be permitted and regarded as maintainable. Mr. Vyas has referred to the judgment of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, The Supreme Court considered the question of the applicability of the principle of *res judicata* for applications under Article 32 of the Constitution in cases where petitions on the same facts under Article 226 had been heard and decided by the High Courts. The Supreme Court, after having considered the problem before it in full, made the following observations in this behalf:

"We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar could depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of *res judicata*. It is true that, *prima facie*, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of *res judicata* against a similar petition filed under Article 32. If the petition is

dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court."

The argument of the learned counsel is that the previous decision of the Court does not amount to a speaking order and it cannot, therefore, be assumed that the dismissal was on merits, and the petitioner therefore had a right to come a second time before this Court. We have carefully considered the argument of the learned counsel. The petition was no doubt dismissed in limine and the order which was made runs as follows :

"Heard Mr. Mathur for the petitioner. We do not think that the petitioner has a good case for issue of a writ under Article 226 of the Constitution of India. The petition, is dismissed summarily."

It is evident that the petition when it was heard was considered on merits and the Court dismissed it on the ground that there were no merits to justify issue of a writ under Article 226. The petition that was made did not speak anything about the total marks being exclusive of the marks for the sessional work. Paragraphs 9 and 10 of the petition make a mention of the total marks and the marks for the sessional work and it has not been specifically stated in that petition that the marks of the sessional work were not added to the total number of marks that were given to the petitioner on her paper-book. It was also not mentioned specifically whether she was given 66 marks out of the total of 200 or out of 150 excluding the marks allotted for sessional work. From the perusal of the entire petition it appeared that the case of the petitioner was that she was given 66 marks out of the total of 200 marks. In this view of the matter, the Court came to the conclusion that) there was no justification for issue of a writ.

The petitioner has now modified the fact and has asserted that 66 marks were obtained by her out of a total of 150 only and that marks for the sessional work which she obtained out of a total of 50 were not added to them. This averment is a change in the facts that were given last time in the previous petition. " These facts were within the knowledge of the petitioner and no explanation is forthcoming why they were not mentioned in the petition when it was made on the previous occasion and what prompted the petitioner to make a statement in this behalf in the second petition. We think the decision that was given by this Court in dismissing the application in limine was on merits and not on account of other reasons of there being alternative remedy or on account of laches on the part of the petitioner. The second petition, in this view of the matter, is barred by the principle of *res judicata* and cannot be entertained. The petition fails and is dismissed.