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**(2014) 10 GAU CK 0021**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4328/2014**

Sobina Sultana Mazumdar

APPELLANT

Vs

The State of Assam

RESPONDENT

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**Date of Decision :** 15-10-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Constitution of India, 1950 — Article 14

**Citation :** (2015) 144 FLR 649

**Hon'ble Judges :** Tinlianhang Vaiphei, J

**Bench :** Single Bench

**Advocate :** P. Mahanta, S.K. Jain and R.K. Jain, Advocate for the Appellant; R. Mazumdar, SC and R. Chakraborty, G.A, Advocate for the Respondent

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## Judgement

Tinlianhang Vaiphei, J.—The sole question which falls for consideration, on the facts and circumstances of this case, is whether the writ petition is hit by the principles of res judicata warranting its dismissal at the very threshold?

2. The material facts of the case, as pleaded by the petitioner, are that her father, namely, the late Basir Uddin Mazumdar, died on 5-5-2000 when he was serving as Chowkidar of F.B. memorial M.E. School under the Directorate of Elementary Education, Assam. At the time of his death, the petitioner was a minor: she did not mention her date of birth in the writ petition. Be that as it may, she claims that after the death of her father, she was engaged as Chowkidar against the post held by her father on some lump sum payment basis. She for the first time applied for compassionate appointment on 25-7-2005 before the District elementary Education Officer, Hailakandi through the Block Development Education Officer, Hailakandi vide Annexures 1 & 2 to the writ petition. She was subsequently interviewed in the year 2007 for the post of Chowkidar, Grade-IV but nothing happened thereafter whereupon she approached this Court in WP(C) No. 2407 of 2012 i.e. some twelve years after the death of her father. This Court by the order dated 24-5-2012 refused to grant any relief but granted her the

liberty to approach the authorities of the Education Department to pursue her case. When her representation to the Education Department apparently did not evoke positive response, she is now constrained to approach this Court again by way of this writ petition.

3. For better appreciation of the case, I will straightaway reproduce hereinbelow the said order passed by this Court in WP(C) No. 2407 of 2012:

"Date of Order: 24-05-2012

The petitioner's father was a Government employee, who died-in-harness on 05-05-2000. At that time, the petitioner was a minor. After attaining majority, she submitted application on 25-07-2005 before the Director of Elementary Education, Assam seeking appointment on compassionate ground. As there is no response, the petitioner is before the Court.

Having noticed the facts of the case, though unfortunate, no direction can be issued by the Court at this distant point of time to consider the case of the petitioner for appointment on compassionate ground. However, it will be open to the petitioner to pursue her case before the authorities of the Education Department.

Subject to the observations made above, the writ petition stands closed."

(Underlined for emphasis)

4. The order extracted above amply makes it clear that the writ petition was closed by this Court upon the finding that no direction i.e. the direction in respect of compassionate appointment for the petitioner, could be issued at that distant point of time: the relief claimed therein was deemed to have been refused though it did not expressly say so: writ petition was thus dismissed by this Court for all purposes on the ground of laches. In any view of the matter, it can be empathically said that relief was deemed to have been refused due to long passage of time: the writ petition was filed some seven years after the date of her father. This Court then was apparently not satisfied with the reasons given by the petitioner for the inordinate delay in filing the writ petition. Delay/laches defeats justice. Once a relief prayed for in the former writ petition has been refused, then the matter in respect of which the relief is claimed in the subsequent writ petition between the same parties, is barred by the principles of res judicata. This is what Explanation V to Section 11, Code of Civil Procedure said:

"Explanation V.--Any relief in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused."

Thus, if the relief claimed in a suit is not expressly granted in the decree, it will be deemed to have been refused, and the matter in respect of which the relief is claimed will be res judicata.

5. The question as to whether the principles of res judicata are applicable to a

writ proceeding is no longer res integra. If any citation is necessary in this behalf, I may conveniently cite the decision of the Apex Court in Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, . This is what it said:

"28. The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution. There is no question of overruling the provision of Article 14, as contended by the learned Attorney General. The judgment which is binding between the parties and which operates as res judicata between them, cannot be said to overrule the provision of Article 14 of the Constitution even though it may be, to some extent, violative of Article 14 of the Constitution."

6. In the instant case, this Court, in the former writ petition filed by the petitioner against the same respondents, has declined to pass any direction with respect to the relief of compassionate appointment claimed by the petitioner, which is the same relief now claimed by the same petitioner in this writ petition. In my judgment, this the relief for compassionate appointment claimed by the petitioner in this writ petition is unquestionably barred by the doctrine of res judicata.

7. For the reasons stated in the foregoing, this writ petition is not maintainable being barred by the principle of res judicata, and is, therefore, dismissed. Though the writ petition could have been dismissed with heavy compensatory costs for causing vexation to the respondents, I decline to do so with the hope that this type of writ petition is no longer filed in this Court in future.