
(2019) 01 CAL CK 0097

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 14363 (W) Of 2018

Sri Bhanu Charan Kuila

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 11

Citation : (2019) 01 CAL CK 0097

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Manas Kumar Ghosh, Susmita Dey, Amal Kumar Sen, . Sabyasachi Mondal

Final Decision : Dismissed

Judgement

The petitioner was an employee of Calcutta State Transport Corporation being the respondent No.2. Disciplinary proceeding was initiated against him, which culminated in the imposition of punishment of reduction of rank by four stages with cumulative effect. The petitioner challenged such order of punishment by filing W.P. 18148 (W) of 2001. In the said writ petition, the petitioner prayed for quashing of the order of punishment and for all service benefits. The writ petition was allowed. The order of punishment was quashed and the respondents were directed to pay the entire amount of salary by deducting the suspension allowance to the writ petitioner and to give all service benefits in favour of the writ petitioner.

Calcutta State Transport Corporation preferred an appeal against the said order dated 23rd July, 2012 of the Learned Single Judge being FMA 865 of 2013. The appeal was dismissed and the order of the Learned Single Judge was affirmed.

In the present writ petition, the petitioner claims interest on the delayed payment of service benefits. Mr. Sen, learned counsel appearing for the respondent Corporation submits that this writ application is barred by the

principle of constructive res judicata. He relies on explanation IV under Section 11 of the Code of Civil Procedure.

Mr. Ghosh, learned counsel appearing for the writ petitioner submits that the main prayer in the earlier writ petition was for quashing of the order of punishment. Although no prayer for interest was made, once the order of punishment was quashed and direction was given for payment of all service benefits, subsequently the petitioner is entitled to claim interest on the delayed payment of the service benefits.

I have considered the rival contentions of the parties. Section 11 of the Code of Civil Procedure reads as follows:-"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

Explanations IV and V of the Code of Civil Procedure reads as follows:-

"Explanation IV: 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 in such suit.

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

Had there been a prayer for interest in the earlier writ petition, then clearly the present writ petition would have been barred by reason of Explanation V referred to above since no order for interest was passed by the Court on the earlier writ application. However, there was no prayer for interest in the earlier writ petition. Even then, in my opinion, the present writ petition is hit by Explanation IV referred to above since the prayer for interest could have been made in the earlier writ petition. Such prayer was not made and would be deemed to have been a matter directly and substantially in issue in the earlier writ petition.

In view of the aforesaid, I am unable to grant any relief to the writ petitioner. The present writ application, in my opinion, is barred by the principle of constructive res judicata. Although the provisions of the Code of Civil procedure in terms may not apply to writ petitions, to the writ rules of this Court have made applicable the said provisions to the extent possible. I have not gone into the merits of the petitioner's case.

W.P. 14363 (W) of 2018 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.