
(2017) 06 CAL CK 0024
In the Calcutta High Court
Case No : 26817 of 2016

Sribrata Deb

APPELLANT

Vs

Bank of India and others

RESPONDENT

Date of Decision : 16-06-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 11](#)/
[Order 2](#)[Rule 2](#) - Res Judicata

Citation : (2017) 06 CAL CK 0024

Hon'ble Judges : Sambuddha Chakrabarti

Bench : SINGLE BENCH

Advocate : Pratik Majumder, Sourav Chakraborty

Judgement

1. Let the affidavit-in-reply filed in court today be kept with the record.
2. The short point involved in the present writ petition is more legal than factual. However, the essential facts may be summarised in a nutshell.
3. The petitioner was an officer of the Bank of India and he was compulsorily retired in the year 2014. Since the bank authorities did not release the leave encashment in his favour he filed a writ petition being WP 24983(W) of 2015. That writ petition was disposed of by a learned single judge on December 3, 2015 directing the bank to release the privileged leave encashment benefits to the petitioner to the extent he was entitled to in accordance with law within a certain period as mentioned in the order.
4. The bank filed an appeal against that order and a division bench of this court had by an order dated September 8, 2016 declined to admit the appeal as the issue whether leave encashment was payable to compulsorily retired employees had already been decided by the Supreme Court.
5. The bank authorities had admittedly released the privileged leave encashment in favour of the petitioner thereafter.

6. Then comes the second round of litigation, i.e., the present writ petition where the petitioner has prayed for a Mandamus upon the bank authorities to disburse interest to the petitioner at the rate of 18 per cent. per annum on the privileged leave encashment benefit released by the bank.

7. This is a case where both the petitioner as well as the bank authorities addressed each other on the permissibility of leave encashment in respect of a compulsorily retired officer which was no longer the *res integra* as the issue had already been decided. It was particularly the bank which had raised various issues about the alteration in the service regulation, the circulars issued from time to time by the Indian Bank Association, so on and so forth. I had given opportunity to the bank to file a report in the form of an affidavit where issues have been raised which were not relevant for the disposal of the writ petition in view of the settled position of law.

8. Reading the affidavit on behalf of the bank authorities one has to conclude that the main issues were missed by them. The very major issue so far as this writ petition is concerned appears to have been missed by the bank, i.e., the permissibility of asking for interest on delayed payment of leave encashment in this writ petition. It may be mentioned that in the earlier writ petition also the petitioner had prayed for interest at the rate of 18 per cent. per annum on the leave encashment. As a matter of fact, prayer (b) in the earlier writ petition is almost identical with the principal prayer (a) in the present writ petition, with the only difference that in the present one the petitioner is praying interest on the amount disbursed by the bank and in the earlier petition he had mentioned the number of days for which he claimed himself to be so entitled.

9. Thus the question to be decided is on the effect of not granting the interest in the earlier writ petition. Mr. Majumder tried to impress upon the court that all said and done that the learned single judge while disposing of the writ petition did not refuse interest in so many words. He has referred to the provisions contained in Order 2 Rule 2 of the Civil Procedure Code which says that a suit, or for that matter an original petition, should contain the whole claim and if the petitioner had failed to sue in respect of any part of the claim he shall be debarred from suing the respondent on the part so relinquished by him. According to Mr. Majumder that is the reason why he had to pray for interest.

10. Had the reverse been the position the court perhaps would not have had any difficulty in granting interest on the amount disbursed as leave encashment. After all it is a settled position of law that the principle analogous to Order 2 Rule 2 of the Code of Civil Procedure does not apply to a writ proceeding. So if he had omitted it in the first petition he could have asked for it in the present one.

11. But since he had asked for the relief in the form of an interest in the earlier petition he cannot ask for the same in a subsequent petition if the same was not granted while disposing of the first petition. The principle analogous to constructive *res judicata* shall straight away apply to a case like this. Explanation

(v) to Section 11 of the Civil Procedure Code says any relief claimed in the plaint which is not expressly granted by the decree shall, for the purposes of that provision, be deemed to have been refused.

12. Thus, this is a case where though the prayer for interest was not specifically declined by the court the relief claimed by him when not granted shall be deemed to have been refused. And this deemed refusal bars a party to bring a fresh proceeding as being hit by the principle of res judicata. It is a settled principle of law that the principle of res judicata applies to writ proceedings also. This point has been decided on series of judgements by the Supreme Court. Of them reference may be made to the case of State of Punjab -Vs.- B. D. Kaushal, reported in AIR 1971 SC 1676. If the principle contained in Section 11 applies to a writ petition the Explanations to Section 11 should also apply to a writ petition with equal force.

13. That apart Order 2 Rule 2 and Section 11 of the Code of Civil Procedure very fundamentally differ in their respective fields of operation. In the case of Inacio Martins - Vs.- Narayan Hari, reported in AIR 1993 SC 1756 the Supreme Court held that the doctrine of res judicata differs from Order 2 Rule 2 in that the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim while the latter requires him to claim all reliefs emanating from the same explanation. Since the petitioner had claimed all reliefs in the earlier writ petition and a very major part of relief was not granted. By operation of Explanation (v) to Section 11 of the Code of Civil Procedure that must be deemed to have been refused by the earlier judgement and this is or was directly and substantially an issue involved in both the proceedings. The deemed refusal of the relief in the earlier judgement bars the jurisdiction of the court to grant the same relief, once deemingly refused in a subsequent proceeding.

14. The writ petition is dismissed.

15. There shall, however, be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.