
(2022) 07 CAL CK 0057
In the Calcutta High Court
Case No : WP.ST No. 4 Of 2015

Swapan Kumar Das

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11

Citation : (2022) 07 CAL CK 0057

Hon'ble Judges : Harish Tandon, J;Shampa Dutt (Paul), J

Bench : Division Bench

Advocate : Usha Maiti, Sakya Maiti, Gaurav Kumar, Tapan Kumar Mukherjee, Debdooti Dutta

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The writ petition before this Court is against order dated 11th February, 2014 passed in O.A. 864 of 2013, by the State Administration Tribunal.

The writ petitioner prayed before the Tribunal for cancellation of the reasoned order dated 13.02.2013/14.02.2013 of the respondent no. 2, Director of Personnel and ex-officio Chief Engineer, Irrigation & Waterways Directorate, Government of West Bengal and further prayed for his regularization and absorption in a regular Group 'C' post, on the ground that the petitioner performs the official work in the post of Master Roll (Personnel) throughout the year and is getting the salary as per ROPA, 1990 of a Group 'C' staff.

The writ petitioner's case is that instead of absorbing the petitioner in Group 'C' post, he was illegally and arbitrarily absorbed in Group 'D' post.

That vide order dated 11th February, 2014 the Tribunal dismissed O.A. 864 of 2013, on the point of res judicata and also held that the case of the petitioner does not come within the purview of three categories i.e:

(a) In case non-P.S.C. post through examination conducted by the respective Department,

(b) In case of P.S.C. post through examination conducted by Public Service Commission and

(c) For giving promotion from eligible candidates from Group 'D' and being a Master Roll casual employee, he is only to be considered against a Group 'D' post and not Group 'C' post.

The case of the petitioner does not come within the purview of any of the above provision and he being a Master Roll casual employee, he is only to be considered a Group-D and not Group-C post and he has been considered against that post by the authority.

In view of the above observation, this application is dismissed.

It was the case of the petitioner that similarly circumstanced employees, who were engaged as Master Roll workers, 13 of them were absorbed in Group 'C' posts.

The writ petitioner has relied upon memo no. 3-6/88/4698 dated 27.11.1997 of the Executive Engineer Joynagar Irrigation Department wherein the Executive Engineer recommended the absorption of Master Roll workers who were qualified in Group 'C' service.

Memo no.12833 dated 26.12.1997 also was a recommendation for absorption of qualified Master Roll workers in the Group 'C' service bearing scale no. 6 of ROPA Rules, 1990. Vide memo no. 9183 dated 14.09.1998, the Superintending Engineer, Eastern Circle was pleased to inform the Director of Personnel & Ex-Officio Chief Engineer, I & W Directorate Irrigation & Waterways Directorate, Government of West Bengal that three persons had been allowed the higher rate of daily wages against Group 'C' posts as Master Roll typist, Master Roll L.D. clerk and Master Roll Personnel etc. The said workers were of Kakdwip (I) Division. In the self same memo, the Superintending Engineer, also informed the Directorate of Personnel & Ex-officio Chief Engineer that some qualified persons had been engaged as Master Roll labours but they have been allowed higher rate of wages beyond normal rules. The said persons were attached to Joynagar (I) Division and out of the said 15 personnels the writ petitioner Swapan Kumar Das was at no. 7. It has been further stated in the said memo that the concerned Executive Engineer has been asked to justify such irregular engagement but no reply had been received.

The series of cases filed by the petitioner before the tribunal started in the year 2004. In O.A.-1783 of 2004 filed by the writ petitioner, Swapan Kumar Das before the Tribunal, an order being no. 3 dated 01.08.2005 was passed. The Tribunal was pleased to dispose of the application directing the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal to dispose of the application filed before the Tribunal

by treating the same as representation of the applicant, after passing a reasoned and speaking order and giving an opportunity to the applicant of being heard within a period of 4 months from the date of communication.

As directed by the Tribunal, the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal then disposed of the application of the present writ petitioner Swapan Kumar Das by a reasoned order dated 4th September, 2006. The Director held as follows:

(i) The petitioner was engaged under the Office of the Executive Engineer, Joynagar Irrigation Division in 1989 as a Master Roll worker and was paid wages as admissible for such Master Roll staff from 1989 to 1992. From 1993 and up to 1998, the petitioner's daily wage was calculated on the basis of ROPA Rules 1990 marked for 'C' categories Government employees. This error was rectified during the implementation of ROPA Rules 1998.

(ii) Since 1998 Shri Das has been drawing wage which appears to be less than that a Group-D employee is supposed to get as pay.

(iii) Shri Das in his petition referred to memorandum No. 100-EMP dt. 13.08.1996 along with memo no. 1700-EMP dt. 03.08.1979 and memo no. 1650-EMP dt. 28.08.1980 issued by the Labour Department, Government of West Bengal to establish his claim for absorption in regular Government service in a Group-C post.

(iv) There is another memorandum no. 1460-EMP dt. 09.07.1981 of Labour Department, Government of West Bengal which clarifies the matter of absorption of casual and other categories of workers in a Group-C or Group-D post or both against the Memo no. 1700-EMP dt. 03.08.1979 and 1650-EMP dt. 28.08.1980. This memorandum clearly states that casual and such other categories of workers who were originally engaged in such posts primarily for the purpose of performing the duties and responsibilities normally attached to a Group-D post shall be considered for absorption against vacancy to a Group-D post only. In no case shall such workers be considered for absorption against any vacancy to a Group-C post even if they possess the recruitment qualification prescribed for a Group-C post.

On the said findings the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal was of the opinion that the writ petitioner and the applicant therein Swapan Kumar Das had been engaged as a Master Roll Worker and that his claim for appointment in Group-C category post could not be accepted under the existing Government rules and orders but the petitioner was found eligible for appointment to Group-D post.

The writ petitioner then challenged the said order before the Tribunal. The Tribunal in O.A. 3013 of 2007, vide order no. 5 dated 17.02.2009 considered the said application challenging the order dated 4th September, 2006 and on

admitted position that the petitioner was engaged on casual basis on daily wage and also considering the relevant Government circulars relied upon by the Director and Ex-officio Chief Engineer was in total agreement with the observation of the Director and Ex-officio Chief Engineer, that the case of the petitioner for absorption in Group C post could not be considered. The Tribunal held that the petitioner must be absorbed against a Group D post subject to availability of regular sanctioned/post and directed the authority to consider the said case of the petitioner within a timeframe.

The petitioner again approached the West Bengal Administrative Tribunal and in O.A.-1103 of 2011 the Tribunal vide order no. 1 dated 09.04.2012 again considered the petitioner's application for absorption or regularization in a regular Group 'C' post. The Tribunal on going through the order passed in O.A.-3013 of 2007 again directed the authority (respondent no. 2) therein, to dispose of the application alongwith enclosures, by treating the same as representation within a period of 20 weeks from the date of communication, on giving an opportunity of hearing to the petitioner. That vide a reasoned order dated 13th February, 2013 the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate was pleased to hold that there is no scope of any promotion of Master Roll Worker to the higher post, as Group-C Clerks are appointed either through P.S.C. or through Employment Exchange or through Departmental Examination. The Director thus held that the petitioner is not eligible for absorption in Group-C post as per Labour Department's memo no. 1460-EMP dated 09.07.1981.

Vide memo no. 866 dated 04.04.2013 the Superintending Engineer Eastern Circle, I & W Department was pleased to appoint the petitioner Swapan Kumar Das as temporary Khalasi in the regular establishment.

The West Bengal Administrative Tribunal in O.A.-864/2013 vide order no. 3 dated 11.02.2014 again took up a fresh application by the petitioner wherein the petitioner prayed for quashing of the order of the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal dated 14.02.2013 and also prayed for a direction upon the authority to give him appointment to the post of Group-C (same prayer against the same authority as in O.A. 1103 of 2011 and other previous applications filed by him before the tribunal since the year 2004).

Considering the total history of the petitioner's case before the Tribunal at various stages and also in the department, the Tribunal held as follows:-

"The petitioner approached this Tribunal in the year 2004 by filing O.A.-1783/04 with the prayer of his appointment in Group-C post on the ground that he has been granted pay scale of Group-C post by his office and hence his case for appointment in Group-C post was substantiated.

This Tribunal disposed of that application by directing the authority to consider the case of the petitioner and to record a reasoned order.

The authority recorded its order on 04.09.2006 holding inter alia that petitioner was a Master Roll casual staff and he can never be considered against Group-C category and his case for permanent absorption against Group-D can be considered only when sanctioned post would be available.

The petitioner, thereafter, filed O.A.-3013/07 challenging that reasoned order of 04.09.2006 and this Tribunal while disposing of that application affirmed the reasoned order and found no merit in the claim of the petitioner.

The petitioner again like the proverbial story of Robert Bruce tried his luck by filing another application being O.A.-1103/11 and again this Tribunal directed the authority to consider his prayer in accordance with law.

Now, the Director of Personnel and Ex-Officio Chief Engineer, pursuant to the direction of the Tribunal, after giving hearing to the petitioner and having regard to the Government circular, ultimately held that petitioner is not entitled to get appointment in Group-C post, but, having regard to the vacancy position, he can be engaged against Group-D post w.e.f. 14.08.2009.

This time, the petitioner has come before us with the self same prayer and also for quashing of the order dated 14.02.2013.

Now, after hearing both the sides and having regard to the background of this case, we are of the firm view that this is a frivolous application which is barred on the face of record under principle of res judicata.

We must make it clear to the petitioner that there is no law in the Government to provide appointment in Group-C post except in the following cases:

- a) In case of non-P.S.C. post - through examination conducted by respective department.
- b) In case of P.S.C. post - through examination conducted by P.S.C. and
- c) For giving promotion from eligible candidate of Group-D and being a Master Roll casual employee, he is only to be considered against a Group 'D' post and not Group 'C' post.

The case of the petitioner does not come within the purview of any of the above provision and he being a Master Roll casual employee, he is only to be considered a Group-D and not Group-C post and he has been considered against that post by the authority.

In view of the above observation, this application is dismissed."

The present writ petition is against the said order no. 3 dated 11.02.2014 of the West Bengal Administrative Tribunal dismissing the application of the writ petitioner. The relief prayed for before this court is as follows:

- (a) Directing the respondent, their agents and subordinates to cancel, withdraw and rescind the purported order dated 13th February, 2013 passed by the

respondent no. 2 i.e. Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal and the office order dated 4th April, 2013 passed by the respondent no. 3 i.e. Superintending Engineer, Eastern Circle, Irrigation & Waterways Directorate;

(b) Directing the respondents, their agents and subordinates to extend the benefit of regularization and absorption in a regular Group 'C' post to the petitioner as granted to the Master Roll workers similarly circumstanced with the petitioner;

(c) Directing the respondents to continue disbursement of salary of the petitioner and also to pay arrear salary treating him as Group 'C' employee since the date of his initial appointment on 1st February, 1989, without any delay;

Considering the arguments rendered by the Ld. Counsels for both sides, the documents referred herein and the various orders of the Tribunals passed in O.A.-1783/04, O.A.-3013/07, O.A.-1103/11 and O.A.-864/13 and the reasoned orders dated 04.09.2006 and 13.02.2013 passed by the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal on the direction of the Tribunal, this court is of the view that the findings in the reasoned order passed by the Director of Personnel & Ex-officio Chief Engineer Irrigation & Waterways Directorate, Government of West Bengal is in accordance with law and needs no interference by this court. The document mainly relied upon by the writ petitioner at page 38 of the petition bearing memo no. 9183 dated 14.09.1998 is not a letter of appointment. It is only a statement by the Superintending Engineer to the Director of Personnel informing him about certain irregular engagement. The concerned authority considering the eligibility of the petitioner and other Government and Tribunal orders and rules and regulation was pleased to appoint the petitioner a Master Roll staff of Joynagar Irrigation Division as a temporary Khalasi.

The main contention of the writ petitioner is that as he had been granted pay scale of Group C post by his office, he should be appointed in the Group C post. The Tribunal in O.A. 864/2013 vide order no. 3 dated 11.02.2014 held that there was no law in the Government to provide appointment in Group C posts except in the following cases:-

(a) In case of non-P.S.C. post – through examination conducted by respective department.

(b) In case of P.S.C. post – through examination conducted by P.S.C. and

(c) For giving promotion from eligible candidate of Group-D.

The Tribunal also held that the petitioner does not come within the purview of any of the above provision and he being a Master Roll, casual employee can only be considered for a Group 'D' post and not a Group 'C' and he has been duly considered and appointed as a temporary Khalasi.

The Tribunal also held that the application filed before the Tribunal being O.A. no. 864/13 was barred under the principle of res judicata, (As the same prayer of the writ petitioner was considered on merit and disposed of by the Tribunal in O.A. 1783/2004, O.A. 3013/2007 and O.A. 1103/2011).

Res Judicata is a phrase which is defined in Section 11 of the Civil Procedure Code has evolved from a Latin maxim, which stands that the thing has been judged which means if an issue is brought in the court and it has already been decided by another court, or in an earlier case between same parties and which has the same cause of action then the court will dismiss the said case as has already been finally decided.

The relief prayed for by the petitioner against the authority had already been finally decided in O.A. 1103 of 2011 vide order no.1 dated 09.04.2012 and the said order obtained finality as no petition was preferred therefrom.

Provision of Section 11 of the CPC enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The basic object and operation of Section 11 was rightly pointed and observed by the Supreme Court in the case of Satyadhan Ghosal Vs. Deorajin Debi (Supreme Court 1960 AIR page 941).

The Principle of Res-Judicata is based on the matter of giving finality to judicial decisions, what it says is that once a res judicata, it shall not be adjudicated again. Primarily, it applies as between past litigation and future litigation, on the basis of the question of facts or the question of law as has been decided between the two parties in one suit or proceeding and the decision is final, either because no writ petition was taken to a higher court or because the writ petition got dismissed, or no writ petition lies.

Neither party will be allowed for the execution of future suit or proceedings between the same parties to canvas the matter again.

If we breakdown the words of Res Judicata, here the word Res means a subject matter or dispute between the parties and the other word Judicata means adjudged or decided or adjudicated, that is the matter is adjudicated or a dispute is decided.

Principle and Scope of Section 11:

The rule of Res Judicata is intended not only to prevent a new decision but also to prevent a new investigation, so that the same person cannot be harassed again and again in various proceedings upon the same question.

The rule of res judicata is based on two important grounds namely:

- a. The hardship to an individual, who could otherwise be vexed twice for the same cause, and
- b. Public policy, which requires that there should be an end to litigation.

The conditions which must be satisfied to avail the plea and constitute a matter as res judicata are as follows:

- (i) The matter directly and substantially is in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit;
- (ii) The former suit must have been a suit between the same parties or between the parties under whom they or any of them claim.
- (iii) Such parties must have been litigating under the same title as in the former suit.
- (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised;
- (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by a court in the former suit.

In order that a matter maybe said to have been heard and finally decided, the decision in the former suit must have been on merits, as in the present case O.A. 1103 of 2011 was disposed of on merits on the self same cause of action between the self same parties.

The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principles of res judicata. The technical principle of res judicata would not be operative more so, if there is substantial change in circumstances and found prima facie justified.

The principle of res judicata and the O.A's filed before the Tribunal by the writ petitioner.

First Application - O.A.-1783/2004.

Here in, the petitioner approached the Tribunal with a prayer for his appointment in Group 'C' post on the ground that he had been granted pay scale of Group 'C' by his office. The Tribunal in the said case directed the authority to consider the prayer of the petitioner. The authority held vide order dated 04.09.2006 that as the petitioner was a Master Roll casual staff, he could never be considered against Group 'C' category but he could be considered for permanent absorption against Group 'D' post when sanctioned post would be available.

Second Application-O.A.-3013/2007.

The petitioner challenged the said order dated 04.09.2006 of the authority and the Tribunal affirmed the said order of the authority and found no merit in the claim of the petitioner.

Third Application-O.A.-1103/2011.

The petitioner again filed an application before the Tribunal with the same prayer,

against the same authority and the Tribunal directed the same authority to again consider the same prayer of the petitioner in accordance with law. The authority considering the Government circulars and hearing the petitioner again held vide order dated 13.02.2013/14.02.2013 that the petitioner was not entitled to get appointment in Group C post. But having regard to the vacancy position, he could be engaged against Group D post.

Fourth Application-O.A.-864/2013.

The petitioner again approached the Tribunal with the self same prayer against the same authority praying for quashing the order dated 14.02.2013 of the authority. The Tribunal finally came to the finding that on the face of record, the case was barred by the principle of res judicata and also held that the case of the petitioner does not come within the purview of three categories i.e:

- (a) In case non-P.S.C. post through examination conducted by the respective Department,
- (b) In case of P.S.C. post through examination conducted by Public Service Commission and
- (c) For giving promotion from eligible candidates from Group 'D' and being a Master Roll casual employee, he is only to be considered against a Group 'D' post and not Group 'C' post.

The case of the petitioner does not come within the purview of any of the above provision and he being a Master Roll casual employee, he is only to be considered a Group-D and not Group-C post and he has been considered against that post by the authority.

In view of the above observation, this application is dismissed.

Admittedly the writ petitioner has all along in all the four applications before the Tribunal prayed for the same order and against the same authority and none of the orders in the first three applications have been appealed against, by the petitioner. It is against the order in the 4th application that is O.A. 864 of 2013 that the writ petitioner has come up before this court challenging the order no. 3 dated 11.02.2014 wherein the application was held to be barred by principle of res judicata by the Tribunal and disposal was also on merit, on the same findings as that in the previous applications.

Supreme Court on Res Judicata

Civil Appeal no. 10946 of 2014 (The Jamia Masjid vs. Sri K.V. Rudrappa (since dead) by L.Rs & Ors.)

In the said judgment, the 3-judge bench of Dr. DY Chandrachud*, Vikram Nath and Hima Kohli, JJ has held that the issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact.

"Issues that arise in a subsequent suit may either be questions of fact or of law

or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it."

"Best method" to decide the question of res judicata:

The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable.

In Syed Mohd. Salie Labbai (dead) by L.Rs v. Mohd. Hanifa, (1976) 4 SCC 780, it was enunciated that before a plea of res judicata can be given effect, the following conditions must be proved:

- (1) That the litigating parties must be the same;
- (2) That the subject-matter of the suit also must be identical;
- (3) That the matter must be finally decided between the parties; and
- (4) That the suit must be decided by a court of competent jurisdiction.

The verdict in Alka Gupta v. Narender Kumar Gupta, (2010) 10 SCC 141, further made clear that

"The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same."

Twin test for the identification of whether an issue has been conclusively decided in the previous suit is:

1. The necessity test: Whether the adjudication of the issue was 'necessary' for deciding on the principle issue.
2. The essentiality test: Whether the judgment in the suit is based upon the decision on that issue.

The court further held:

"The technical principle of res judicata would not be operative more so, if substantial change in circumstances is averred and found prima facie justified."

In the present case the right of the petitioner relating to his prayer and cause of action against the same authority attained finality as admittedly no writ petition was preferred against the said orders.

In O.A. 864 of 2013 the relief claimed for by the petitioner was on the same cause of action against the same authority and there has been absolutely no change in circumstances and the issue in O.A. 1103 of 2011 and O.A. 864 of 2013 is the same and between the same parties and same cause of action and the said issue has been finally decided on merit in the previously instituted in O.A. 1783/2004, O.A. 3013/2007 and O.A. 1103/2011 and as such the Tribunal had no other option but to dismiss the O.A. 864 of 2013 vide order dated 11.02.2014 on the ground of res judicata and also on merit, on the same findings as in the orders in the previous applications before it.

Conclusion

In the present case, the right of the petitioner relating to his prayer and cause of action against the same authority attained finality as admittedly no writ petition was preferred against the orders in O.A. 1783/2004, O.A. 3013/2007 and O.A. 1103/2011. Thus in view of the said orders, the tribunal rightly held that O.A. 864/2013 was barred by the principle of Res Judicata and came to the same findings as in the previous cases.

For the above reasons, we find no merit in this writ petition.

The writ petition thus stands dismissed.

No order as to costs.

The impugned judgment and order of the Tribunal dated 14.02.2013 in O.A. is hereby affirmed.

The concerned authority is hereby directed to look into the matter of any difference in pay of the writ petitioner, during his tenure as Master Roll casual employee to that of a temporary Khalasi and the writ petitioner be paid the due (difference) if any at the earliest.

Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree,