

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2888 of 2015**

1. Neha Patel D/o Murli Dhar Patel Aged About 23 Years R/o Kailash Nagar, Rambhatha Raigarh, P S Raigarh, District Raigarh, (Chhattisgarh)
2. Satish Kumar Dewangan S/o Vinay Kumar Dewangan Aged About 23 Years R/o Near Post Office Banglabhata Bilaigarh, P O & P S Bilaigarh, District Balodabazar- Bhatapara, (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Throught The Secretary, Department Of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Director, The Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (A Y U S H), Directorate Old Nurses Hostel, Raipur, Raipur, Block-1, liird Floor, Indrawati Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
3. Chhattisgarh Rajya Scheduled Tribe Commission, Through Its President, 61, Jalvihar Colony, Raipur, District Raipur, (Chhattisgarh)

---- Respondents**WPS No.3130 Of 2015**

1. Hemraj Sahu S/o Budharu Ram, Aged About 25 Years R/o Village & Post Bakma, P.S. & Tahsil Baghbahra, District Mahasamund Chhattisgarh
2. Vinod Kumar Sahu S/o Sonu Ram Sahu Aged About 24 Years R/o Village Kurmadih, Post Rikokala, P.S. Sankara Jone, Block Pithora, District Mahasamund Chhattisgarh
3. Manohar Sahu, S/o Videshram Sahu, Aged About 24 Years R/o Gram & Post Badesajapali, Thana & P.S. Basna, District Mahasamund Chhattisgarh

---- Petitioners**Vs**

1. State Of Chhattisgarh Through The Secretary, Department Of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Director, The Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (A Y U S H) Directorate Old Nurses Hostel, Raipur, Block -1, Illrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (CG)

3. Chhattisgarh Rajya Scheduled Tribe Commission, Through Its President, 61, Jalvihar Colony, Raipur, District Raipur Chhattisgarh

---- Respondents

And

WPS No.3133 Of 2015

1. Deena Nath Sahu S/o Sita Ram Sahu Aged About 24 Years R/o Village- Misda, Via Sheorinarayan, P S Navagarh, District Janjgir- Champa (Chhattisgarh)
2. Rameshwar Prasad, S/o Chandrika Prasad, Aged About 26 Years R/o Village Gangajal, Post Misda, Via- Sheorinarayan, P S Navagarh, District Janjgir - Champa (Chhattisgarh)
3. Pratap Sahu, S/o- Dilchand Sahu, Aged About 26 Years R/o- Gram Chisda, Post Pendari, Thana- Hasoud, District- Janjgir- Champa (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director, The Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (Ayush), Directorate Old Nurses Hostel, Raipur, Block- 1, I I Rd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
3. Chhattisgarh Rajya Scheduled Tribe Commission, Through Its President, 61, Jalvihar Colony, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/12/2016

This order shall govern disposal of W.P.(S)Nos.2888, 3130 & 3133 of 2015.

2. By these petitions, the petitioners have challenged the correctness and validity of the decision taken by the respondents/State to cancel the selection process for appointment to the post of Ayurved Pharmacist. The petitioners have also challenged the legality and validity of communication dated 25-04-2015 made by the Chhattisgarh State Scheduled Tribe Commission, Raipur (In short "the Commission") to the Secretary, State of Chhattisgarh, Department of Health and Family Welfare.

3. Learned counsel for the respective petitioner submits that the State Government initiated the process of selection for appointment to the post of Ayurved Pharmacist, by issuing the advertisement (Annexure P/4). Without bringing the same to its logical conclusion, at the advance stage of selection when even merit list was also prepared, process was cancelled. The decision was challenged by filing petitions before this Court by the aforesaid petitioners. The aforesaid petitions were dismissed by this Court holding that the candidate appearing in a recruitment process has no right to the post and if the authorities decided to cancel the recruitment process for any substantial reason, the Court would not interfere with the said issue.

Learned counsel for petitioner submits that the State, in the earlier round of litigation, sought to justify the action of cancellation on the ground that the Commission issued communication addressed to the Secretary of the department that in the said advertisement, name of Surguja Division is not mentioned, which has the effect of ignoring reservation roster of Surguja Division and that non-adherence to the roster of Surguja Division vitiates the entire selection process. However, that statement was not correct, because the said communication does not recommend cancellation of selection on the ground as stated before the Court by the State in the earlier round of litigation.

He submits that the reasons, which have been assigned in the communication of the Commission and the reason assigned by the State for cancellation of process of selection, have no connectivity or proximity. Learned counsel for the petitioner further argued that the State, on the date when order was passed, had produced the copy of letter written by the Commission, which was supplied to the petitioner during the course of hearing. Later on, upon minute scrutiny and closure examination of the said recommendation, it was revealed that the statement made before this Court was not correct and based on misinterpretation and misconstruction of the letter of the Commission. Therefore, it is argued, in the circumstance, the petitioners have filed fresh petitions challenging the action of cancellation as also seeking quashment of recommendation of the Commission on the ground that the Commission had no jurisdiction to make that kind of recommendation to the government and therefore, the recommendation itself was in excess of jurisdiction.

4. Per contra, learned State counsel would submit that these petitions are not maintainable and barred by the principles of *res judicata*. He submits that the challenge to the cancellation of very same selection, was raised in earlier round of litigation and this Court taking into consideration the reason assigned by the State, dismissed the petition. By these petitions, the petitioners, in substance, seek review and re-consideration of the same decision, which is impermissible under the law. He submits that earlier the issue has been decided, therefore, the petitioners cannot be permitted to file fresh petition raising new grounds of challenge to the action of the State. He also submits that since the recommendation of the Commission was prior to the date of order passed by this Court, it was open for the petitioner to challenge the said recommendation, but it was not done, therefore, by operation of principle of constructive *res judicata*, as far as challenge to recommendation of the

Commission is concerned, these petitions are liable to be dismissed.

5. It is vividly clear that the petitioners had earlier filed petitions, challenging the decision of the government to cancel the process of selection to the post of Ayurved Pharmacist. In the said case, the State came out with a definite stand that in view of the recommendation made by the Commission, the government formed a view that non-inclusion of Surguja Division has the effect of ignoring reservation roster of Surguja Division and consequent non-adherence to the roster of Surguja Division, vitiating the selection process. It is clear stand of the State as is reflected from para 3 of order dated 17-06-2015 passed by this Court in earlier round of litigation. The aforesaid reason was considered by this Court to be substantial reason to justify cancellation. The order also records that the copy of the letter written by the Commission to the government was supplied to the learned counsel for the petitioner.

6. The issue, which is now being raised before this Court, is that there is no connectivity between the recommendation of the Commission and the decision taken by the government and that the Commission had no jurisdiction to make such type of recommendation.

In the considered opinion of this Court, this issue cannot be raised by the petitioners in respect of the same cause of action by filing separate petition. At the most, what is now being submitted before the Court, could be a ground to challenge the decision of the State Government. Not only this, if the case of the petitioners are that the Commission had no jurisdiction to make such recommendation and therefore, the government was not justified in accepting such recommendation and cancel the process of selection, this ground ought to be raised in the earlier round of litigation itself. It is noticed that the recommendation of the Commission is dated 25-04-2015, whereas the order

has been passed by this Court on 17-06-2015. Therefore, by these petitions, the petitioners are raising the same grievance against cancellation of the selection process on certain grounds, which they could not raise at the time of hearing in the earlier round of litigation.

7. In view of above, I am of the considered opinion that in the second round of litigation, challenge to the same decision of the State Government, by raising new grounds, is not maintainable and barred by principles of res judicata. In view of the judgment of the Supreme Court in the case of ***Daryao and others vs. State of UP and others***¹, wherein it has been held that the principles of res judicata would be applicable in writ proceedings, as below:-

11. “The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: “subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences. Similar is the statement of the law in *Corpus Juris*: “the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. This rule is subject

1 AIR 1961 SC 1457

to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon. In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res Judicata should not be allowed to be invoked cannot be sustained."

8. In the case of ***Devilal Modi vs. Sales Tax Officer, Ratlam and others***², it was held as under:

10. "As we have already mentioned, though the courts dealing with the questions of the infringement of fundamental rights must consistently endeavor to sustain the said rights and should strike down their unconstitutional invasion, it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. Considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by this Court are binding and must be regarded as final between the parties in respect of matters covered by them, must receive due consideration.

11. The result of the decision of this Court in the earlier appeal brought by the appellant before it is clear and unambiguous and that is that the appellant had failed to challenge the validity of the impugned order which had been passed by the Assistant Commissioner against him. In other words, the effect of the earlier decision of this Court is that the appellant is liable to pay the tax and penalty imposed on him by the impugned order. It would, we think, be unreasonable to suggest that after this judgment was pronounced by this Court, it should still be open to the appellant to file a subsequent writ petition before the Madhya Pradesh High Court and urge that the said impugned order was invalid for some additional grounds. In case the Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been plainly inconsistent with the earlier decision of this Court, and that would be inconsistent with the finality which must attach to the decisions of this Court as between the parties before it in respect of the subject-matter directly covered by the said decision. Considerations of public policy and the principle of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another.”

Further, the challenge to recommendation of the Commission is also barred by principles of constructive res judicata, in view of the judgment of the Supreme Court in the case of **Devilal Modi** (supra), where it was held as under :

12. “The present proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the tax by prolonging legal proceedings interminably. We have already seen that in the present case the appellant sought to raise additional points when he brought his appeal before this Court by special leave; that is to say, he did not take all the points in the Writ petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court had decided against him on the merits of those points, he has come to this Court; but that is not all. At the hearing of this appeal, he has filed another

petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That' clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata."

9. In a subsequent decision in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others***³, the Constitution Bench of the Supreme Court authoritatively settled the legal position with regard to application of principles of res judicata as well as constructive res judicata in writ proceedings, as below:

35. "Writ Petition No. 1327 of 1982 was argued by J.H. Bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959 and has challenged the constitutional validity of the 1978 Rules. Mr. Singhvi, the learned counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of res judicata. Admittedly, he was represented in W.P. No. 672 of 1981, filed before the Bombay High Court which was dismissed on 7.9. 1981, upholding 1978 Rules. An application under Article 136 of the Constitution being numbered as S.L.P. No. 8064 of 1981 was filed from this judgment in representative capacity and was dismissed by this Court on 29.12. 1981. These facts were not denied by the petitioner before us, and it was therefore contended on behalf of the respondents that so far the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to be well founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this

³ (1990) 2 SCC 715

Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryav and Others v. The State of U.P. And Others*, [1962] 1 SCR 574, held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is rounded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at page 595 of the reported judgment, thus:

"We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."

The decision in ***Forward Construction Co. and others v. Prab- hat Mandal (Regd.), Andheri and Others***, [1986] 1 SCC 100, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

10. In the result, these petitions are dismissed.

SD/-
(**Manindra Mohan Shrivastava**)
Judge