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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8319/2017**
JAMILUR RAHMAN ANSARI

..... Petitioner

Through Mr.Rakesh Kumar Singh, Advocate.
versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ORS

..... Respondents

Through Ms.Ekta Sikri and Mr.Jasbir Bidhuri,
Advocates for R-1/GGSIPU.
Mr.Apoorv Kurup and Ms.Isha
Mittal, Advocates for UGC.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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18.09.2017

1. The present petition has made the following prayers:-

(a) *Declare fixing age limit specifically for IPRF by R-1 over and above or additionally to Ph. D. Programme as unequal, unconstitutional and bad in law in view of UGC guidelines for XII plans, National Fellowship for OBC 2012-2017 Ord-12 and the admission programmed to Ph. D. Of respondent No.1.*

(b) *Issue writ of certiorari and/or declare the alleged referred questionable guidelines of GGSIP qua age limit to an OBC candidate omitting a constitutionally accepted weaker section by excluding OBC in the relaxation of age category with award letter dated 10.12.2013 as unconstitutional, unjust, unfair, improper, unjustified and bad in law and may further declare the said guidelines as invalid, inapplicable and not binding upon the petitioner being an*

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OBC candidate.

(c) Issue writ of mandamus and/or declare that the amended University's (R-1) Ordinance-12/UGC/CSIR guidelines alone applicable for grant of (IPRF) Research Fellowship in (R-1) University, being binding on the respondent GGSIP University and so applicable to the case of the petitioner on the date of award of IPRF to petitioner and consequently issue writ of certiorari and/or declare the termination of petitioner's IPRF vide letter dated 13.02.2015 by the alleged Authority of University (R-1) as bad in law and set aside/quash the same in the interest of justice.

(d) Declare the University (R-1) to remain bound by its award letter dated 10.12.2013 to extent of awarding IPRF to the petitioner.

(e) Issue writ of mandamus or any other appropriate writ, order or direction commanding the respondent University to allow the petitioner to resume and continue the grant and receive I.P. Research Fellowship (IPRF) for full period as communicated vide letter dated 10.12.2013, and consequently order/direct the University to pay the arrears including the enhanced arrears along with suitable interest w.e.f. 01.12.2014, till the actual date of receipt as applicable to the case of the petitioner as paid/payable to such other candidates awarded with law.

(f) Alternatively if not granting relief (s) or prayers made in paras (a), (b) & (c) above may then be pleased to grant suitable damages and compensation of not less than Rs.12 lakhs as per chart.

(g) Declare that the age alone be not a dominating factor for the

doctoral programme including for awarding the research fellowship, and the age prescribed by respondent No.1 for grant of IPRF is otherwise unjust, unfair, and opposed to research mind, purpose and skill of the candidate.

(h) Direct the Govt. of NCT and UGC to interfere to rationalize for the uniform criterion (s) for award of Fellowship in the universities including the GGSIP University (R-1).

(i) Any such other further order (s), direction (s) which this Hon'ble Court may deem fit and proper in the facts of the case.

2. Learned counsel for the respondent who has put in appearance on advance notice points out that this matter cannot be re-agitated; it is barred by the principle of res-judicata and constructive res-judicata. The prayers made in the petition have already been answered in W.P. (C) No.892/2016 which was disposed of on 08.02.2016. No review or appeal had been filed against the aforementioned order which has now become final. An SLP had been preferred against the aforementioned order which had been withdrawn by the petitioner on 04.07.2016. Nothing survives in this petition.

3. Learned counsel for the petitioner has opposed this submission. Learned counsel for the petitioner points out that the prayers made in the present petition are distinct from the prayers which had been dealt with in W.P. (C) No.892/2016 which had been disposed of on 08.02.2016. Learned counsel for the petitioner has drawn attention to the aforementioned prayers which were made in W.P. (C) No.892/2016. These prayers have been reproduced in the order dated 08.02.2016

and read herein as under:-

*“a) Issue writ of Mandamus or any other appropriate writ or order or direction to respondent to grant relaxation to “other backward classes” (OBC) in upper age limit upto 5 years in Regulation 6; and
b) Issue writ of Certiorari or any other appropriate writ, order and quash the order dated 13.02.2015 issued by the respondent; and
c) Issue writ of Mandamus or any other appropriate writ, order or direction commanding the respondent to resume the grant of i.P. Research Fellowship (IPRF) to the petitioner in terms of a letter dated 10.12.2013 as well as pay the arrears; and/or
d) Pass such other order/orders as deemed fit and proper by this Hon’ble Court in the facts and circumstances of the case.”*

4. Learned counsel for the petitioner additionally points out that the Apex Court had granted him a specific liberty to approach this Court and the order of the Apex Court dated 04.07.2016 cannot be treated as redundant. Relevant extract of the aforementioned order passed by the Apex Court reads herein as under:-

“Learned counsel for the petitioner seeks leave to withdraw the petition. He says that he wants to approach the High Court.

The special leave petition is dismissed as withdrawn.”

5. Submissions and counter submissions of the parties have been perused. This Court is of the view that the prayers made in the present petition already stand answered in W.P. (C) No.892/2016.

6. The grievance of the petitioner is that the Indraprastha Research Fellowship (IPRF) which is meant for students like him had been

granted to him on 10.12.2013 (w.e.f. 02.12.2013) yet the same stood cancelled vide a subsequent notification dated 13.02.2015. This was for the reasons that the petitioner was over-age as per the guidelines for availing this fellowship. The upper age limit being 30 years (relaxable up to 5 years for SC/ST, woman and physically handicapped scholars) but the petitioner being 36 years of age (on 08.02.2016) the benefit of same was withdrawn.

7. This Court notes that all these submissions which are now being made before this Court had been considered on 08.02.2016 and the Court had noted that this relaxation of 5 years was for only SC/ST woman and physically handicapped scholars and not for OBC scholars which was the category of the petitioner.

8. In fact the prayers made in the earlier petition i.e. W.P. (C) No.892/2016 was that a writ of mandamus be issued to grant relaxation to 'other backward classes' (OBC) in upper age limit up to 5 years. The prayers made in the present petition are almost identical. A clever drafting with the language which has been used while delineating the prayers would not make a difference to the effect or the impact of the order which is to be passed on this petition. If a favourable order is to be passed in favour of the petitioner in terms of the prayers made in the present petition, it would be over-turning/reviewing the order dated 08.02.2016 which had been passed in W.P. (C) No.892/2016. At the cost of repetition, no review had been filed against that order. No appeal has also been preferred. What has been filed was an SLP which the petitioner has

voluntarily chosen to withdraw. This did not mean that a specific liberty had been granted to the petitioner to approach this Court. This Court also notes that these proceedings had culminated before the Apex Court on 04.07.2016. The petitioner has approached this Court in September, 2017 i.e. after a gap of more than one year. That apart, all the procedural hurdles which the petitioner has to face i.e. the principle of constructive res-judicata comes in his way and the present petition is thus liable to be dismissed in limine.

9. In this context the observations of the Apex Court in (2011) 5 SCC 607 Shankara Cooperative Housing Society Limited Vs. M. Prabhakar and others are relevant. They read as under:-

“the rule of constructive res judicata that of a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding, which is based on the same cause of action, is founded on the same considerations of public policy. If the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take proceedings one after another and urge new grounds every time, and that plainly is inconsistent with considerations of Public policy.”

10. The Apex Court in (2011) 3 SCC 408 M. Nagabhushana Vs. State of Karnataka and Others on the principle of the content of the petition which in effect has to be answered, the Court had made the following observations which would be relevant in the facts of the instant case:-

“....the application of the rule by Courts in India should be influenced by no technical considerations of form but by matter of substance within the limits allowed by law”

11. The Constitutional Bench of the Apex Court in (1990) 2 SCC 715 Direct Recruit Calss II Engg. Officers’ Assn Vs. State of Maharashtra had held as follows:-

“...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.”

12. The present petition fits into this parameter of the doctrine of constructive res-judicata. Even presuming no specific prayer had been made in the earlier petition qua a relief which is now sought in the present petition, the rule of constructive res-judicata (Explanation IV of Section 11 of the CPC) embodies that the petitioner having knowledge about all these facts at the time when the earlier petition had been filed including the challenge to the guidelines of the respondent and even if the same were not specifically agitated (which the petitioner ought to have agitated) the

hurdle of this doctrine not having been crossed over by the petitioner, the present petition is not maintainable.

13. The submission of the learned counsel for the petitioner that the principle of res-judicata is not strictly applicable to a writ proceeding is countenanced by the judgment of the Apex Court in M. Nagabhushana (supra).

14. Another submission made by the learned counsel for the petitioner that the parties in the present petition and the earlier petition were not the same and the matter has not been finally decided has necessarily to be over-ruled for the reason that the petitioner was the same; the effective relief was also sought qua the same respondent; merely because in the present petition, one more respondent has been added would not make any difference to the prayers which have to be answered. The question of a matter not having been “heard and finally decided” is also no objection as a final decision had been taken in terms of the prayers made in the earlier petition vide order dated 08.02.2016. A writ court is not a trial court and evidence is not recorded before the writ court. The order dated 08.02.2016 was a final order which was after hearing the parties. Principle of “heard and fully decided” would be fully applicable to the order dated 08.02.2016.

15. The principles of res-judicata and constructive res-judicata are based on two age old principles, namely, in interest of the State that there should be an end to litigation and the second principle is that no one ought to be vexed twice in a litigation if it appears to the Court

that it is on the same cause of action. This doctrine of res-judicata is common to all civilized system of jurisprudence; a controversy has to be set to rest at some stage. This principle of finality of litigation is based on the principle of public policy. In fact in the absence of such a principle great oppression might result under the colour and pretence of law as there would be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions which may compel the weaker party to relinquish his right. The doctrine of res-judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle also seeks to prevent abuse in the matter of accessing Court for agitating issues which have become final between the parties.

16. Petition is an abuse of the process of the Court. It is dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

SEPTEMBER 18, 2017

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