

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

08.10.2021
Ct-24

WPA 13809 of 2021

Srila De

v.

The State of West Bengal & Ors.

Mr. Narayan Chandra Mandal
Mr. Chandan Chakraborty
... for the petitioner.

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
... for the respondent nos. 1, 4 & 5.

Mr. Joytosh Majumder
... for the respondent no. 2.

Ms. Tapati Samanta
... for the respondent no. 3.

The petitioner in the instant writ petition has prayed for a direction upon the respondent authorities to grant ten years incremental benefit along with arrear salaries following ROPA 2019 and issue revised PPO along with interest.

It appears that the petitioner filed an earlier writ petition being WP No. 3136(W) of 2020. In the said writ petition also the petitioner prayed for a direction upon the respondent authorities for grant of ten years benefit with effect from May 1, 2019.

The earlier writ petition was disposed of by this Court on January 22, 2021. The Court recorded that the grievance of the petitioner in respect of the writ petition has been redressed by the State. There remains no cause of action to be adjudicated in the writ petition.

The petitioner has re-agitated the self-same point by filing the present writ petition.

The learned advocates representing the respondents raise objection with regard to the maintainability of the writ petition before this Court. Reliance has been placed upon the provision of Section 11 Explanation V of the Civil Procedure Code.

It mentions that 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.

Reliance also placed upon the judgment of the Hon'ble Supreme Court in the matter of *Sarguja Transport Service v. State Transport Appellate Tribunal, M.P. Gwalior & Ors.*, reported in 1987(1) SCC 5 paragraph 9 wherein it has been mentioned that the principle underlying Rule 1 of Order XXIII of the Code of Civil Procedure should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy. It would also discourage the

litigant from indulging in bench-hunting tactics. There is no justifiable reason to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India once again.

The Court further held that while withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

In the instant case, the earlier writ petition filed by the petitioner was disposed of on merits where the Court categorically recorded that there remains no cause of action to be adjudicated in the writ petition, accordingly it may be implied that the petitioner abandoned her remedy, if available, in law.

In view of the facts mentioned hereinabove, the Court is of the view that since the prayer made by the petitioner in the earlier writ petition and the present writ petition are the same and the earlier writ petition was disposed of by the Court on merits, similar prayer in the

subsequent writ petition cannot be entertained by the Court.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)