

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17894 of 2014

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Usha Sinha Wife of Ashok Kumar Sinha Resident of Mohalla - Nadraganj,
P.S. - Civil Line, Gaya, P.O. - Chand Chaura, Gaya, District - Gaya

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, PHED, Nirman Bhawan,
Punaichak, Patna.
2. The District Magistrate, Gaya
3. The Superintending Engineer, Public Health Department (Mechanical) Gaya
Division, Gaya
4. The Executive Engineer, Public Health Department (Mechanical) Gaya
Division, Gaya

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra, Adv.

For the Respondent/s : Mr. Manoj Kumar Yadav, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 01-12-2022

Heard learned counsel for the petitioner and learned
counsel for the respondent- State.

2. The instant proceedings is a second writ petition for
grant of salary for the period 27-11-2009 to 31-07-2011 during
the period in between termination of the petitioner's earlier
appointment on compassionate ground; and her reappointment



under order dated 29-08-2011.

3. The writ petition reveals that the earlier termination of her services on compassionate ground was assailed by the petitioner earlier in CWJC No. 16458 of 2008. The same was allowed vide order dated 13-05-2010 with the following observations:-

“There appears to be no pleading that the petitioner had subsequently acquired the educational qualification as required under 1984, 1997 & 2002 Circulars. Since, one of the pleas is that the petitioner has not been issued a show cause notice before termination. I direct that the District Magistrate, Gaya and the District Establishment Committee, Gaya should issue a show cause to the petitioner and after hearing, pass an appropriate orders within a period of two months from the date of filing show cause reply by the petitioner in view of the observations of this Court, that if the petitioner has achieved the educational qualifications required for being appointed on compassionate ground, her termination should be set aside. The petitioner should not be terminated on technical ground as mentioned in the letter of termination.

In the result, the memo no. 1670/Estab.Gaya dated 21.08.2008 issued by the District Magistrate, Gaya is hereby quashed as far as it



concerns the above named petitioner.

This application is allowed to the extent indicated above.”

4. The petitioner’s counsel, upon seeing the earlier writ petition, copy of which is available with him, is not in a position to deny that he had made specific prayer for reinstatement with consequential benefits in the earlier writ proceedings. The same, however, was not allowed.

5. The prayer for the reinstatement in the earlier writ proceedings, admittedly, have not been pressed or allowed. The petitioner, therefore, is not in a position to claim salary for the period in between her termination and reappointment by virtue of any order passed in the earlier writ proceedings.

6. The question, therefore, that arises is that when the petitioner did not press her relief for reinstatement in the earlier writ proceedings, though prayer had been made therein, can she be permitted to now raise a claim for salary treating her as reinstated. The answer would obviously be in the negative .

7. The issue whether the petitioner was entitled to reinstatement for the period in between termination of her earlier appointment on compassionate ground, and her reappointment has attained finality by the order of this Court dated 13-05-2010, passed in CWJC No. 16458 of 2008 on the



principle of *res judicata* which mandates finality to adjudication by the Competent Court and that no one can be vexed twice for the same cause. The petitioner now cannot be permitted to again make a prayer for reinstatement or the consequential benefits. It is, by now, settled that the principles of *res judicata* applies to writ proceedings under Article 226 of the Constitution of India. In this connection, this Court would consider it apposite to refer to relevant extract of decision rendered by a Constitution Bench of the Apex Court in the case of the ***Amalgamated Coalfields, Ltd. and another v. Janapada Sabha Chhindwara and others*** reported in ***AIR 1964 SUPREME COURT 1013*** which reads as follows:-

“17.....Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Art. 32 or Art. 226. It is necessary to emphasis that the application of the doctrine of res judicata to the petitions filed under Art. 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law.”

8. In view of the above discussion, this Court has no hesitation in concluding that the petitioner, in the instant writ



proceedings, cannot be allowed to make a prayer for salary for the period in -question.

9. The writ petition is devoid of merit and dismissed

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01-01-2023
Transmission Date	

