

02      **25.07.**  
**2022**  
  
Ct. No. 04  
  
Ab

**WP.CT 18 of 2022**  
**With**  
**IA No. CAN 1 of 2022**  
**IA No. CAN 2 of 2022**  
**IA No. CAN 3 of 2022**

**Dr. Rituparna Biswas**  
**Vs.**  
**The Union of India and others.**  
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**Mr. D. N. Ray,**  
**Mr. Biswarup Nandy,**  
**Mr. Rajesh Kumar Shah.**  
**... for the petitioner.**

**Mr. Pramit Kumar Ray,**  
**Ms. Sarda Sha.**  
**... for the respondent nos. 1, 2 & 4.**

**Mr. Raghunath Chakraborty,**  
**Mr. A. De.**  
**... for the applicant/intervenor.**

The writ petition was disposed on 29<sup>th</sup> March 2022 directing the respondent no. 3, the Director, Chittaranjan National Cancer Institution, to issue release order within two days from that date in favour of the petitioner.

A little prelude to the genesis of the dispute is required to be adumbrated that the petitioner was working with the respondent no. 3 under the pervasive control by the State of West Bengal as a probationer and applied her candidature for the concerned post at All India Institute of Medical Sciences, Kalyani (in short 'AIIMS, Kalyani'). The petitioner was found suitable for such appointment but could not join because of the decision of the said respondent in not issuing the release order despite the resignation having tendered by the petitioner. Since the time of joining was about to lapse, an approach was made to the Tribunal and by the impugned order, the Tribunal dismissed the said

tribunal application holding that the said respondent was within its authority to deny the release order to be passed and refused to accept the resignation. By the impugned order, disposing of the instant writ petition, this Court set aside the said order and directed the said respondent to issue release order.

After the disposal of the writ petition, the things changed when the AIIMS, Kalyani took a rebound and decided not to continue with the offer of appointment to the petitioner. A stand was taken by the AIIMS, Kalyani that they will not appoint the petitioner and, therefore, kept the fate of the petitioner in lurch.

Unfortunately, the petitioner has lost the job with the respondent no. 3 and, on the other hand, has also lost the opportunity of joining the AIIMS, Kalyani. She has been put in medio. This is what the state of things exists as of the day.

Bearing in mind that it is an ardent duty of the Court to dispense justice, we proceeded with the applications filed by the petitioner bringing all those facts and seeking clarification and/or modification of the impugned order and invited the attention of the AIIMS, Kalyani to place their stand in this regard.

There is a strong resistance on the part of the AIIMS, Kalyani and it is vigorously submitted by the learned Advocate for the said Institution that once a decision has been taken to scrap the offer of appointment to the petitioner, we are not going to take any other decision.

This Court insisted for the sake of justice and bearing in mind that the said Institution, who is involved in benevolent activities and extending the better health services to the society, would rise to an occasion, but such impression has failed because of the resistance being offered by the said Institution.

Be that as it may, the sympathy, empathy and compassion cannot be a ground in a service jurisprudence to pass an order as it is to be founded upon a sound legal principles applicable in this regard.

The fact remains that the writ petition was disposed of on 29<sup>th</sup> March 2022 directing the respondent no. 3 to issue a release order and there was no corresponding order passed by this Court upon the AIIMS, Kalyani, as this Court had strong believe that they would go by their own decision once taken and cannot take a rebound later on. Once the proceeding has been disposed of, the Court retains a limited jurisdiction thereafter.

Mr. D. N. Ray, learned Advocate for the petitioner, is very much vocal in his submission that there is no fetter on the part of the Court to mould the relief depending upon the attending circumstances.

Though there is no quarrel to the aforesaid proposition, as the concept of moulding relief has traced its origin in a common law but the question still begging an answer that whether principle of moulding the relief can be applied in a disposed of proceeding.

There are plethora of judgments of different High Courts as well as the Apex Court that the Court at the time of passing a final relief in a proceeding can mould the relief necessitated by the changes in the attending circumstances or on the basis of a subsequent events having brought to the notice of the Court, but none of the judgments have any bearing on the issue that after the disposal of the writ petition, in the guise of clarification and/or modification, the Court will exercise such power and mould the relief, which, in effect, amounts to the review of the order or imposition of some more obligations, which were at one point of time not granted by the Court. Even the Apex Court has held that the concept of moulding the relief cannot be applied

at the time of passing the ex parte ad interim order of injunction but has its applicability at the time of final disposal of the proceeding.

What can be gathered therefrom is that once the lis is pending and has reached the stage of final disposal, there is no fetter and/or hurdle on the part of the Court in moulding the relief on the basis of the subsequent events or the changed circumstances, if it so warrant.

Mr. Ray further submits that the procedural hassles if pitted against the justice, the justice must prevail and the Court should not be so rigid on the procedural aspect.

As indicated above, though the procedure is hand made of justice and not a jealous mistress yet it has to be applied with caution and not in a truncated manner. It is no doubt true that the procedural law pitted against substantial justice; the later must prevail. Equally it is important that if the issue relating to the jurisdiction and the competence of the Court is raised, the Court must satisfy its conscience on the same before embarking its journey on the terrain of substantial justice.

There is no quarrel to the proposition that one cannot achieve review in the guise of clarification and/or modification of the impugned order. If the intention becomes patent and the Court finds that the party is actually intending to review the order in the guise of clarification and/or modification, it would not exercise of such power and refuse to entertain such application. However, so far as the clarification and/or modification of the order is concerned, the same can only be done on the basis of the facts, which existed as on the date of final disposal of the proceeding and not on the basis of something, which sees its birth subsequent thereto.

The exception can be carved out when the final order is passed upon a fact or instruction given to the Counsel representing the party and the orders are passed thereupon, which subsequently appeared to be incorrect (see Board of Control for Cricket in India and another vs. Netaji Cricket Club and others, decided on 10<sup>th</sup> October 2005 in Appeal (Civil) No. 237-239 of 2005).

There was no allegation against the AIIMS, Kalyani that they have refused to permit the petitioner to join the said post but the entire allegation hovers around the respondent no. 3, who was not issuing the release order, which is one of the pre-requisite conditions for joining the post offered by the AIIMS, Kalyani. The Court disposed of the proceeding on the basis thereof and if the AIIMS, Kalyani have taken a decision in scraping the offer of appointment to the petitioner, it constitute a fresh cause of action and, therefore, it would not be proper on the part of the Court to entertain the same in the instant proceeding, more particularly, in a disposed of proceeding.

We, thus, do not find any justification and/or ground warranting interference in the applications filed by the petitioner nor we intend to go into the veracity of the allegations made on the application filed by the other persons in the instant proceeding and it is left open to the parties to ventilate the grievance as and when circumstances so arise before the appropriate forum.

It is open to the petitioner to challenge the order of the AIIMS, Kalyani before the appropriate forum and if such approach is made, the said forum would decide the same on the basis of the materials disclosed therein in accordance with law.

In view of the above findings recorded herein above,

all the pending applications are disposed of.

**(Harish Tandon, J.)**

**(Shampa Dutt (Paul), J.)**