

15.06.2022
Item No. 21
Ct. No. 40
AKG

W.P.A. 5691 of 2018
Tripura Sankar Chell
Vs.
State of West Bengal & Ors.

Mr. Apurba Kumar Ghosh,
Mr. Rudranil Ghosh

...For the Petitioner

Mr. Bipin Ghosh

...For the State

Affidavit of service filed on behalf of the petitioner be kept with the records.

The writ petitioner appeared in the final year LL.B Examination for the year 1987 conducted by the Calcutta University. When the result was declared, the petitioner found he obtained 268 marks which were short of 2 marks to get the second class. The petitioner applied for re-evaluation of his two answer scripts, namely Public International Law and Drafting of Pleadings and Documents.

The University informed the petitioner that even after re-examination of the papers there had been no change in his result which prompted the petitioner to file a writ petition (C.O. No.5469 (w) of 1990) before this Court.

A Single Bench of this Court ordered the Controller of Examination, to produce the said two

answer scripts. Upon production of the said two answer scripts the Court *prima facie* found that certain questions were not given marks in Drafting of Pleadings and Documents paper although the answers for the same were written.

The Court directed the University of Calcutta to look into the matter afresh. The Court further directed the Vice-Chancellor to appoint an expert on the subject of Drafting of Pleading and Documents to do a thorough check-up.

After such re-examination, the revised marks of the petitioner stood at 42 instead of 36 in the second paper.

The said Single Bench by an order dated October 9, 1991, held that where a career of a student was at stake such herculean blunder which was the outcome of sheer negligence and irresponsibility was unacceptable. Two-and-a-half years of an advocate's life were wasted, moreover, the petitioner could have appeared for other competitive examinations or worked in a multinational organisation. The petitioner was subjected to humiliation, anxiety, insult, and depression for which a compensation of damages of Rs.25,000/- were to be paid by the 31st of December, 1991. Such time limit was directed to be maintained strictly. Additionally, a cost of Rs.

100G.M.s was also directed to be paid to the petitioner.

The University challenged the said order in so far as it related to payment of damages to the petitioner. The appeal was dismissed for default on August 27, 2002, by a Division Bench of this Court.

By filing this second writ petition, the petitioner seeks to enforce the said order dated October 9, 1991.

It is the case of the petitioner that since the appeal preferred against the said order has been dismissed, the petitioner is entitled to the damages awarded to him in the order dated October 9, 1991.

The petitioner could have enforced the order October 9, 1991, by initiating a proceeding under the Contempt of Courts, 1971, subject to the limitation prescribed under Section 20 of the said Act. He, however, as it appears, has chosen to execute the said order by filing a second writ petition after a lapse of about 16 years from the date of dismissal of the appeal.

A second writ petition, no doubt, may be maintainable to enforce an order passed in an earlier writ petition.

It has been held in the judgment reported at
(2003) 1 CHN 154 (*Bibekananda Mondal v. State of West Bengal*) as follows:

“ ...

6. It is, therefore, settled law that the second writ application is maintainable for implementation of an earlier order of the writ court. This court must issue proper directions for proper implementation of previous directions. Where there has been an order, the order must be complied with. An act done in wilful disobedience of a court order is not only contempt, but, also, an illegal and invalid act. The language used in Article 226 of the Constitution of India is couched in comprehensive phraseology and the said article recognises a very wide power on the High Courts to remedy injustice wherever it is found.

...”

At the same time, it should be borne in mind that when a party chooses to enforce the order passed in an earlier writ petition by filing a second writ petition, though the limitation period prescribed under Section 20 of the Contempt of Courts Act, 1971 may not apply, he must demonstrate his alacrity in his approach.

In the present case, a towering delay of about 16 years in filing the writ petition from the date of dismissal of the appeal has not at all been explained by the petitioner. The stale claim of the petitioner cannot be revived by filing this second writ petition after such an unexplained and inordinate delay.

The Supreme Court in dealing with a similar issue on the grant of compensation to a student by the same University, in the judgment reported at **(2002) 7 SCC 478 (*Rabindra Nath Ghosal v. University of Calcutta*)** held, inter alia, as follows:

“9. ... But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act.”

Accordingly, the writ petition being W.P.A. 5691 of 2018 is dismissed.

However, there will be no order as to costs.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Kausik Chanda, J.)