

51 **27.09.
2022**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 89 of 2022

Aloke Kumar Sardar and others.
Vs.
The State of West Bengal and others.

Mr. Lal Ratan Mondal,
Mr. Probal Sarkar.

... for the petitioners.

Mr. Tapan Kumar Mukherjee,
Ms. Tuli Sinha.

... for the State.

The writ petitioners by suppressing the material facts approached the Tribunal taking a chance that if the State respondents do not disclose such facts, there is a possibility of getting the desired relief.

The stale claim is sought to be resurrected by initiating frequent proceedings before the Tribunal as well as this Court. Even the learned Advocate for the petitioners is heavily relying upon a judgment of the Tribunal passed in OA 100 of 2004 and OA 731 of 2005 delivered on 19th February 2008 to impress upon us that the said judgment is still operative and the State cannot act contrary thereto. Such courageous attempt is shown despite the findings returned by the Tribunal in the impugned order.

The order disposing of OA 100 of 2004 and OA 731 of 2005 was challenged by the aggrieved persons before this Court in WPST 568 of 2009. The High Court set aside the said order of the Tribunal and the applicants herein approached the Supreme Court by filing a Special Leave Petition being CC 16494 (Civil) of 2012. The Apex Court refused to grant leave meaning thereby the Special

Leave Petition was dismissed. The moment the Special Leave Petition is dismissed, the order of the High Court in the writ petition stands and, therefore, the order passed by the Tribunal merged with the order of the High Court and cannot owe its existence independently.

The moment the aforesaid facts would go against the petitioners, the Tribunal has recorded that such facts was conspicuously suppressed in the tribunal application and could only be brought to the notice at the behest of the contesting State respondents.

The suppression of facts plays a pivotal role in exercising the discretion bestowed upon the adjudicating authority. The person who is guilty of suppressing the material and relevant facts with an oblique motive to secure an order does not deserve any equity to play in his favour rather the Court should be jealous and serious in entertaining such application tainted with the suppression of material facts. The order, which merged with the order of the Tribunal loses not only its existence but its binding efficacy and, therefore, reliance upon an order, which has been set aside and overruled by the higher forum, is again an attempt to secure the order.

The tribunal application was filed challenging a subsequent notification issued by the Government on 7th August 2018 whereby and whereunder 151 posts of Homeopathic Pharmacists were created upon surrendering equal number of posts of Homeopathic Compounder-cum-Dresser. Such being the policy decision unless it is impinged upon the legally enforceable right and violates the constitutional guarantee, the interference by the Court or the Tribunal is not warranted.

Furthermore, there is no material, which has been placed either before the Tribunal or before us, which may remotely impinged the said policy decision of the Government affecting the legally enforceable right or the

constitutional right and, therefore, we do not find that the Tribunal has committed any error in dismissing such frivolous application.

The writ petition is dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)