

Court No. 22
24.11.2022
(Item No. 25)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 23940 of 2022

Md. Ishahaque Ali
VS
The State of West Bengal & Ors

Mr. Prahlad Chandra Ghosh
Mr. Saibal Acharyya
Mr. Subir Hazra
.... For the petitioner
Mr. Mohan Kumar Sanyal
.... For respondent No. 2
Ms. Sweta Mukherjee
Ms. Adreeka Pandey
... for the State

The petitioner seeks his age correction in his service record. The petitioner is working as an **Assistant Teacher at Ratua High Madrasah, District – Malda.** Through this writ petition the petitioner claims that, the respondent No. 8 who is duty bound and obliged to countersign the prescribed format supplied by the Board and was submitted on behalf of the petitioner, he had not been signed. Such inaction on the part of the respondent No. 8 is impugned in this writ petition filed in November, 2022. The wit petitioner claims that he has passed Madhyamik Examination in 1980. Today, the petitioner's age is about slightly more than 59 years. The superannuation age is 60.

Seeking the same correction of age the petitioner filed a previous writ petition before this Court being **WP 8361 (W) of 2008** which was

dismissed by a co-ordinate bench with the following observation:

“The Court:-The petitioner in this writ petition dated May 2, 2008 is alleging inaction on the part of the Secretary, West Bengal Board of Secondary Education in that the authority has not considered his representation dated April 22, 2008, Annexure P5 at p.14.

By making the representation he requested the secretary of the board to correct his date of birth recorded in the certificate issued by the board stating that he passed the Madhyamik Pariksha(Secondary Examination) held in the month of April, 1980. In the certificate his date of birth was recorded as January 1, 1963.

In the representation he stated that in his Pass Certificate for the Primary Final Examination, 1973 dated January 2, 1974 issued by the District Inspector of Schools (Pry. Edu.), Malda his date of birth was recorded as January 11, 1965. Relying on this certificate he requested the secretary of the board to correct his date of birth recorded in the secondary examination certificate.

It is not the case that the date of birth recorded in the Pass Certificate for the Primary School Final Examination, 1973 was not known to him at the date he took the Secondary Examination, 1980. It could not be the case, because the Pass Certificate for the Primary Final Examination, 1973 was issued by the district inspector of schools on January 2, 1974. While filing in the prescribed form of the requisite application seeking registration with the board and permission to take the Secondary Examination, 1980 he declared the date of birth

that was recorded by the board in the certificate issued by it as back as May 9, 1983.

He never questioned the date of birth recorded in the secondary examination certificate. He got an employment as Assistant Teacher of Biology in Ratua High Madrasah, Malda and joined the institute on March 1, 2008. Immediately thereafter he submitted the representation. His motive is revealed by his conduct. He wanted correction of the date of birth recorded in the secondary examination certificate with a view to enjoying a longer service tenure. He has also falsely stated in the affidavit accompanying the writ petition that his occupation is business.

For these reasons, the writ petition is dismissed. There shall be no order for costs.”

Mr. Prahlad Chandra Ghosh, learned advocate appearing for the petitioner submits that, no appeal was carried out from the said previous order of dismissal of the writ petition filed by the writ petitioner seeking the age correction. He submits that, the present writ petition is based on a different cause of action questioning the impugned act of the respondent No. 8 as state above. The learned counsel prayed for a simple direction upon the respondent No. 8 to countersign the relevant records placed before him relating to the age correction of the petitioner as advised and suggested by the Board.

Mr. Mohan Kumar Sanyal, learned advocate appears for the respondent No. 2 submits that, it is a

delayed writ petition. This writ petition has been filed by the petitioner only before a few months of his superannuation. He further submitted that, on the self-same issue the previous writ petition has already been dismissed by the said order dated June 11, 2009 passed by a co-ordinate bench, which has been placed before this Court. The said earlier order of dismissal is a reasoned order, not challenged by the petitioner. He submits that, this writ petition is thoroughly misconceived and is liable to be dismissed.

Ms. Sweta Mukherjee, learned advocate appears for the respondent Nos. 1 and 8 adopted the submission made on behalf of the respondent No. 2. She also submits that, this is a misconceived writ petition and the petitioner wanted to take a chance to obtain an undue benefit at the fag end of his service career.

In support, Mr. Sanyal has referred to a judgment of the Hon'ble Supreme Court in the matter of **State of T.N. Vs. T. V. Venugopalan reported at 1994(6) SCC 302 : JT 1994(5) 337.**

Considering the rival submissions made on behalf of the parties and considering the materials on record, it appears to this Court from a reading of the said previous order dated June 11, 2009 passed in the previous writ petition as referred to above, the co-ordinate bench had discussed the issue in detail and

gave its reasoned finding while dismissing the writ petition.

On a close perusal of the averments made in the writ petition and after careful consideration of the submission made on behalf of the petitioner, this Court is of the firm opinion that, the core disputes and issue involved in the present writ petition was self-same as that of the subject matter of the previous writ petition which stood dismissed on merit. No appeal had been carried out. No challenge whatsoever in any manner was thrown to the said order dated June 11, 2009. Thus the said order dated June 11, 2009 has attained its finality and is binding on the issue.

It is trite that, while adjudicating an issue involved in an application filed by a litigant, the core issue has to be looked into by the Court which actually calls for adjudication. Since the issue involved in this writ petition has already been decided on merit with detailed reasons and discussions by a co-ordinate bench in the said order dated June 11, 2009, the same cannot be re-opened by this Court in any manner. What the petitioner could achieve directly in the previous writ petition, cannot achieve indirectly now.

This writ petition is thus barred under the principles of resjudicata and/or analogous thereto.

In view of the foregoing discussions and reasons, this Court is of the firm view that, this is a thoroughly misconceived writ petition.

Accordingly, the writ petition being **WPA 23940 of 2022** stands dismissed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)