



W.P.No.21564 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
07.07.2022	5.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.21564 of 2021
and W.M.P.No.2744 of 2021

1 Dr.Janet Jeyapaul ... petitioner

Vs.

- 1 Dr.N.Sethuraman,
Registrar
SRM University, SRM Nagar,
Kattankulathur,
Tamil Nadu - 603 203.
- 2 Dr.R.Balasubramanian,
Director, Faculty of Science and Humanities,
SRM University, SRM Nagar,
Kattankulathur, Tamil Nadu- 603 203.
- 3 Dr.M.Vairamani,
Dean, School of Bioengineering and
Technology SRM University, SRM Nagar,
Kattankulathur, Tamil Nadu-603 203.
- 4 Prof.AN Parmeswaran,
Dean, IIIC SRM University, SRM Nagar,
Kattankulathur, Tamil Nadu 603 203.



W.P.No.21564 of 2021

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5 Prof.K.S.Ganapathy Subramanian
Prof.Maths E & T, SRM University,
SRM Nagar, Kattankulathur,
Tamil Nadu - 603 203.

6 Dr.Pachumuthu
Chancelor, SRM University,
SRM Nagar, Kattankulathur,
Tamil Nadu-603 203.

7 Dr.Satyanarayanan,
President, SRM University,
SRM Nagar, Kattankulathur,
Tamil Nadu - 603 203.

... respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to produce the enquiry report and complaint letters and all the letters of the petitioner to UGC that the Registrar responded to between 2017-2021 as also the appointment letter and payslip of HOD (Biotech, FSH, Mrs.D.Sankari) in 2008 who brought the complaint letters and was included in the Enquiry committee for severe fundamental right violations under Article 14 and Article 21 and loss of salary in the upgraded scale of Prof and Loss due to halt of breast cancer therapeutic work at a critical stage leading to loss of money on valuable cancer treatment products, patents and award and further direct the Respondent to grant a compensation of Rs.50 lakhs for the terrible fundamental right violations of 14 & 21 of being falsely implicated with fabricated evidence and Rs.60 lakhs for lost salary in the upgraded prof. Scale and one and half crores towards complete payment of 1% money lost in half of cancer therapeutic products development totalling to Rs.2.60 Crores for the well being of the petitioner and basic living due including restart of the cancer therapeutic development work.

For petitioner	:	Dr.Janet Jeyapaul Party in Person
For Respondent No.1	:	No appearance
For respondents 2, 4 & 5	:	Notice not ready



W.P.No.21564 of 2021

For respondents 3, 6 & 7 : Mrs.B.Saraswathi

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ORDER

The petitioner seeks a Writ of Mandamus, directing the respondents to produce the enquiry report and complaint letters and all the letters of petitioner to UGC written between 2017 - 2021 that they responded to during that period and the responses/letters of the Registrar to UGC to petitioners letters to UGC, and the Appointment letter and payslip of HOD (Biotech, Mrs.D.Sankari) in 2008 who was part of the enquiry Committee, and it be addressed for fundamental right violations 14 and 21 requiring fresh action, in view of arrears in salary in upgraded scale of Professor not given and the half of the clinically important work in breast cancer product development in collaboration with IISc., Bangalore at a critical stage leading to loss of money, patents, awards and cancer loss and most importantly a terrible delay in bringing the cancer treatment product to clinical usefulness.

2. According to the petitioner, petitioner wrote letters to UGC, in the aftermath of the order passed by the Division bench of this Court order in W.A.No.932 of 2013 dated 14.7.2016 wherein the Court did not grant reinstatement and only Rs.25,000/- p.m. for 3.33 years amounting to Rs.10



W.P.No.21564 of 2021

lakhs instead of Rs.15 lakhs as compensation sought for by the petitioner.

According to the petitioner, the petitioner was HOD of Research unit of Faculty of Science and Humanities, Lecturer in pay slip and Appointment letter in the respondent Universities on 21.6.2008. Every HOD in Faculty of Science and Humanities was a Lecturer in payslip and Appointment letter in 2008. The petitioner who came from a scientific background, took the Lectureship to mean as in U.K. U.S.A. Systems, where scientists with extensive collaboration and significant scientific work and who also gave Lectures like the petitioner, were called the same. According to the petitioner, she was promoted as a Senior lecturer in 2010, by virtue of order dated 5.5.2010 she thus superseded even HOD Biotech, Faculty Science and Humanities, FSH who was not NET or Ph.D and was more administrative role and was Lecturer in appointment order and payslip at the time in 2008. Since then, she has got her Ph.D degree. Further, in the charge sheet dated 22.2.2012 served by the Registrar's office, the petitioner referred as Assistant Professor, as also in the memo dated 14.2.2012.

2(1) According to the petitioner, she had undertaken the research project in collaboration with IISc, Bengaluru regarding Photothermal ablation of gold nanoparticles in cancer therapeutics which was also approved by the



W.P.No.21564 of 2021

Ethical Committee of the Respondent University on 21.09.2010 and also

approved by scientists from the Respondent university. The petitioner submits that she was unlawfully terminated from the Respondent University by way of an Order dated 04.04.2012, when the research work was in a critical collaboration state with IISc., Bengaluru. Therefore, the petitioner approached the Hon'ble High Court seeking reinstatement, in W.P. No.12676 of 2012 and the same was allowed on 08.04.2013. Challenging the said order, an appeal has been preferred in W.A. No. 932 of 2013 by the Respondent. The Writ appeal was allowed on maintainability and it was sated that merits of case was not done. Thereafter, the petitioner filed SLP in Civil Appeal No.14553 of 2015 before the Hon'ble Supreme Court which was allowed in 2015 and the matter was remanded to this Court, to be considered on merits of the case. On 14.07.2016, an order was passed by the Division Bench of this Court setting aside the reinstatement portion alone and confirmed the writ petition order in all other respects. Further, only Rs.25,000/- for 3.33 yrs form 2012 to 2015, which amounted to Rs.10 lakhs, was ordered as compensation for loss of future employment. The petitioner wanted reinstatement in Respondent University in 2016, to carry forward the research work. This work would be valued at 2-5 crores in 2016 and in 2021 over 150 crores turn over per year start up. Since



W.P.No.21564 of 2021

the petitioner was unsatisfied with the order passed by the Division Bench of this Court in W.A.No.932 of 2013 dated 14.07.2016, she challenged the same before the Hon'ble Supreme Court. The petitioner was constrained to claim compensation of Rs.25,000/-p.m. for 3.33 years amounting to 10 lakhs granted by this Court in the year 2016 payable by the Respondent University.

2(2). Since the petitioner had claimed compensation, she did not want to appeal the Madras High Court order passed in W.A.No.932 of 2013 dated 14.07.2016 before the Hon'ble Supreme Court and since the only issue against reinstatement was the animosity of respondent for having taken the issues to court, she instead approached U.G.C. to mediate the same, through letters written between 2017- 2021. The petitioner relied on the decision of the Hon'ble Supreme Court in ***Surendra Kumar Verma vs Central Government Industrial Tribunal-cum- Labour Court [1980 (4) SCC 443]*** in support of her claim made in the writ petition. It was circumstances created by the respondents in prolonging case, when the petitioner was not even drawing the salary she was entitled to, and subjecting her to such dire fundamental right violations that prevented her from challenging the order of this court dated 14.07.2016 before the Hon'ble Supreme Court in 2016 and instead she wrote



W.P.No.21564 of 2021

letters to UGC between 2017-2021 for necessary relief. The petitioner brought to U.G.C. attention, the arrears due to her, in terms of upgraded Professor's scale of pay, that she was entitled to and the said request was submitted in the earlier letter to Registrar dated 12.03.2012. In 2019, after writing letters to UGC for a year, it became clear to petitioner that the Registrar of the University was not going to allow any resolution of the matter or mediation by UGC. In two letters dated 11.1.2019 and 4.3.2019, the petitioner has stated that Director (FSH) and HOD (FSH) colluded in stalling chemicals and consumables for newly recruited Ph.D students, leading them to approach the then Vice Chancellor Dr.Ponnuvaiko. This upset Director (FSH) and he deliberately fabricated evidence against the petitioner, by asking the newly recruited Ph.D student, by stating in front of HOD (biotech) and Director (FSH) "there was problem in lab" by which the Ph.D student meant the stalling of chemicals and consumables. Director (FSH) asks the petitioner's Ph.D student to submit the email and then uses this email to mean in the charge sheet, " the problem in the lab" meant problem with petitioner. The HOD (FSH) wrote complaint letters that "classes not taken" by the petitioner and obtained signatures on the complaints using students, who told the entire class the signatures were being obtained for the newly procured practical record books.



W.P.No.21564 of 2021

At the time of the Enquiry Committee meeting, the petitioner did not know this as it was hurriedly convened within 3 days of the petitioner receiving the charge sheet. Thus, the memo sent to the Registrar office by the Director (FSH), resulting in the charges framed against the petitioner illegally, with totally fabricated and false evidence.

2(3). In her letter addressed to U.G.C., dated 4.3.219 the petitioner directly responded to the 11.1.2019 letter of respondent to UGC, where she mentioned the illegal halting of the breast cancer work at a critical time of her collaboration with IISc , Bengaluru, after proper administrative protocols were followed by the petitioner evident by the authorization letter given by Director (Research) SRM University for her Ph.D students to work at the IISc, Bengaluru. The Registrar's responses to emails prior to 11.1.2019 and 4.3.2019 seems to intimidate petitioner and UGC with unsavory, malafide, nasty language and fabricated, misconstrued statements to suggest so unscrupulously and nastily that the petitioner was trying to claim part of the already claimed Rs.25,000/- p.m. for 3.33 yrs amounting to 10 lakhs. Dr.N.Sethuraman, Registrar SRM University, Respondent herein, replies to UGC, in letters dated 2.04.2018, 28.05.2018, 26.06.2018, 10.07.2018 the Registrar makes the false statement to UGC that the Hon'ble Court, in its order, said that while awarding her



W.P.No.21564 of 2021

compensation that the question of reinstatement and backwages is not applicable to her'. This statement is totally erroneous, false and a fabrication as the Hon'ble Court in its order dated 14.7.2016 , in point no.18 states "As adverted to earlier, it is made clear that the termination of service of Respondent/petitioner done by the appellants is totally illegal and the learned single Judge has also given proper reason in the impugned order, to that effect. Since the termination of service passed against the respondent/ petitioner is illegal, she is entitled to get reinstatement. However on the basis of the circumstances of the present case, the Court has to look into what kind of relief would be sufficient to meet the ends of justice."

2(4). The HOD who brought forward the complaint letters was included in the Enquiry committee brought out more forcefully the 21st March letter to UGC. The Enquiry Committee further included HODs and Dean from totally different streams than that of petitioner, from mathematics, commerce, engineering,. While the inclusion of the above members is not illegal, these members from totally unrelated fields than petitioner creates a dangerous precedent for projects related to patients and scientific research leading towards therapeutic products . When there were competent doctors



W.P.No.21564 of 2021

and scientific faculty in Respondent University, as seen from members in doctoral committee meet of petitioner's Ph.D students, it seems that the Enquiry committee members were included to complicit in the schemes of Director (FSH) and HOD (Biotech) to frame the petitioner. The Enquiry Committee members must know that the project work belonged to Ph.D guide (the petitioners project) and her collaborators, and if the Ph.D student had a problem with Ph.D guide, then he/she must find another guide and another project. This is the procedure followed in all Universities, colleges and Research Institutes in India. This shows that the Enquiry Committee members were part of schemes of Director (FSID and HOD (Biotech) to frame the petitioner. The filing of the Enquiry Report by the respondents was of paramount importance to determine an important part of merits of case besides the complaint letters . Till date, the petitioner does not know what the Enquiry Committee wrote about the 4 lakhs antibodies purchased by the petitioner for the work and about the project she was undertaking. Email of respondents to UGC, dated 8.5.2021, the respondents have stated that based on the findings of the Enquiry Committee, the termination of petitioner occurred. Yet, the Enquiry Report has never been filed though repeatedly asked for in W.P.No. 12676 of 2012 and W.A.No.932 of 2013 proceedings and in oral



W.P.No.21564 of 2021

arguments in court. On 16th May 2021, reply by petitioner to the above 8th May 2021 letter of respondents to UGC, the petitioner has questioned on what basis the Registrar of Respondent university, without availing himself of any facts, appealed when the Single Judge in W.P. No.12676 of 2012 had ordered reinstatement, thus, increasing the agony of a protracted legal battle for the petitioner, including SLP in Civil Appeal No.14553 of 2015 filed before the Hon'ble Supreme court as Party -in- Person, which was allowed by Hon'ble Supreme court, which led to reopening of W.A.No.932 of 2013 and Hon'ble Division Bench of this Court order dated 14.07.2016 but the delay further causing depletion of petitioners finances, who already on low salary at Respondent University. If as stated in the letter dated 8.5.2021, by respondents to UGC, the termination order No.SRMU/Reg./Faculty.499-308/ 2012/1479 0.05.2012 was based on the findings of the Enquiry Committee, then the Enquiry Report could have been filed in W.A. No.932 of 2013 after the case was remanded to the Madras High Court by the Hon'ble Supreme Court in 2016 itself.

2(5). Further, in the Registrar letter to UGC, 07.01,2019, he stated that after his repeatedly unsavoury, nasty, fabricated language, that UGC must do merits of case. Since the Enquiry Report is not filed, it is unclear what



W.P.No.21564 of 2021

merits he is referring to. It is however, quite possible he is referring to the merits within the Enquiry Report, which paradoxically is yet to be filed by respondents. Nevertheless, the petitioner urged UGC in several letters post the 7.01.2019 letter to do merits of case. However, on persistence of the petitioner for merits to be considered in 2019 and no response was forthcoming from UGC on the Respondent response to petitioner's letter dated 11.1.2019 and 4.3.2019 letter, the petitioner decided to file SLP against the order of this Court, dated 14.07.2016 before the Hon'ble Supreme court in year 2020. The Hon'ble Supreme court in 2015 allowed the SLP filed by the petitioner on maintainability of writ appeal. The petitioner had intended to file a Writ Petition before the Court in 2021 placing on record the letters written to UGC between 2017 -2021 and the response of Respondent University to same. Thus, in the SLP filed before the Hon'ble Supreme court in 2021, the petitioner's letters to UGC between 2017-2021 was not placed on record before the Hon Supreme Court. When the matter came up for condone of delay, the Hon'ble Supreme Court, brought up the issue of having claimed compensation and delay of 4 years between 2012-2016, before filing of SLP. The petitioner told the Hon'ble Supreme Court about her low salary at Respondent University, she was compelled to claim the compensation after the case being in court between



W.P.No.21564 of 2021

2012-2016, which depleted her finances completely and also mentioned writing to UGC seeking resolution through it. The petitioner also mentioned that the Enquiry Report was never filed. The delay was not condoned. However, significantly the above order does not state claiming compensation in 2016, as a reason for not condoning delay. Thus, claiming compensation was not a issue with the Hon'ble Supreme court even for a SLP and if that was a issue it would have been made evident in the Supreme Court order dated 24-11-2020 itself. Thus, the petitioner humbly submits that the Hon'ble Court examine the letters written by the petitioner to UGC between 2017- 2021 and replies of respondents to same, and the three parts of merits of case be considered; Merits due to malefide procurement of complaint letters by HOD(Biotech) as stated in letters to UGC in letter dated 11.1. 2019 and 4.3.2019, leading to framing the petitioner with fabricated and false evidence and hitherto yet to be examined by courts; Merits arising out inclusion of HOD (Biotech) who brought forth the complaint letters, included in Enquiry Committee leading to biased Enquiry and doctored witnesses and hitherto not addressed by courts mentioned in 21st March 2019 email to UGC.; Merits arising from examination of Enquiry Report, which has not been filed at all though repeatedly asked for in W.P.No.12676 of 2012 and W.A.No.932 of 2013. The severe fundamental right



W.P.No.21564 of 2021

violations of Article 14 and Art. 21 arose due to unaddressed and unresolved merits of case mentioned in pts. 1,2, 3 where the petitioner was framed with false evidence, leading to grave injury to her person, identity, and reputation and this in the petitioner's opinion is second only to murder. Severe injustices can be tempered or mitigated to some extent by monetary remedy, as seen in catena of judgment such as ***Bhim Singh Mla VS State of J&K And Ors (1985) 4 SCC 677***, who was awarded compensation for fundamental right violations of Article 14 and Article 21, being kept for detention illegally for 2 days. Compensation for violation of fundamental rights has emerged as new remedy in public law distinct from relief of damages in tort. Further, the petitioner is entitled to : loss that arose naturally from the termination, such as loss of income till superannuation in the upgraded scale (letter for upgradation submitted to Registrar on 12.03.2012). The petitioner is also entitled to loss as a result of the termination such as loss of collaboration with IISc, Bengaluru and breast cancer product development which would be valued of over 150 crores turnover per year and sustenance to petitioner after superannuation and valuable product for cancer treatment and job opportunities for many. In ***A. T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59***, the Court without insisting for direct proof the measure of profit lost, granted 15% of the value of



W.P.No.21564 of 2021

the remaining work, as damages for loss of money 50 (1). The petitioner further submits that there is no adequate and alternative remedy available to the petitioner herein and thus, the petitioner has filed the present Writ Petition under Article 226 & 227 of the Constitution of India. After orders being passed in previous proceedings, the petitioner sent letter/emails to UGC and Respondent during the years 2016 to 2021. The Respondent had also sent letters refuting her request. Further, Emails were sent and received from various institutions pertaining to the breast cancer product development work, during the years 2016 to 2021. Therefore, the same has given rise to fresh cause of action. Hence the present writ petition is maintainable.

3. Mrs.B.Saraswathi, Counsel takes notice for the contesting respondents and filed counter affidavit has been filed by the first respondent wherein it is stated that the petitioner was a Lecturer in the Department of Bio Technology of the first respondent University. Since she failed to take classes properly for the third year students of B.Sc. Programme and the first year students of M.Sc. Degree Programme, she was issued a show cause notice on 14.2.2012 as to why disciplinary action should not be taken against her and she was also issued memo based on the complaints from the students. Since her



W.P.No.21564 of 2021

reply was found to be not satisfactory, an enquiry was conducted pursuant to which she was relieved from duties on 4.5.2012. The petitioner filed W.P.No.12676 of 2012 challenging the one month notice dated 4.4.2012 relieving her from 4.5.2012, in the first respondent University. The writ petition was allowed by order dated 8.4.2013 directing the respondent to reinstate her and to continue the enquiry from the stage at which the irregularities crept in. Challenging the said order, the respondent University has filed appeal before the Division Bench in W.A.No.932 of 2013 and the same was allowed on 4.7.2013 setting aside the order dated 8.4.2013. The petitioner preferred Civil Appeal No.14553 of 2015 on the file of the Hon'ble Supreme Court (SLP No.11208 of 2015) which was allowed on 15.12.2015 directing the Division bench restore and decide the appeal expeditiously on merits in accordance with law without being influenced by any of the observations. Pursuant to which W.A.No.932 of 2013 was taken on file and disposed off the same by order dated 14.7.2016 which reads as follows:

"In fine, this Writ Appeal is allowed in part without cost. The order dated 8.4.2013 passed in W.P.No.12676 of 2012 by the learned Single Judge in respect of reinstatement is set aside and in other aspects, the same is confirmed. As adverted earlier, the appellants are directed to



W.P.No.21564 of 2021

pay a compensation of Rs.10,00,000/- (Rupees ten lakhs only) to the respondent/ petitioner within a period of two months from the date of a copy of this judgment. Consequently, connected miscellaneous petitions are closed."

The petitioner was given the compensation of Rs.10,00,000/- (Rupees ten lakhs only) by way of a demand draft dated 8.8.2016 which was received by the petitioner on 12.8.2016 and the order in W.A.No.932 of 2013 was complied with. Again, the petitioner preferred Special Leave petition (Civil) Dairy No(s) 15630 of 2020 arising out of the order dated 14.7.2016 in W.A.No.932 of 2013 before the Hon'ble Supreme Court. The SLP was dismissed on 24.11.2020 refusing to condone the delay of 1376 days in filing the SLP. The proceedings of the petitioner's termination by the first respondent attained finality. In between the period of disposal of Writ Appeal order dated 14.7.2016 in W.A.No.932 of 2013 and order in SLP (Civil) Dairy No.15630 of 2020 dated 24.11.2020, the petitioner approached the first respondent and its management through letters, emails, etc. from 17.10.2017 to February, 2019, to reinstate her praising the first respondent University and trying to get employed and the first respondent to appoint her in Dean position or Directors position and to allow her to do the breast cancer work. Simultaneously, during the said period 2017 to 2019, she has been continuously sending letters to UGC



W.P.No.21564 of 2021

& UGC in turn writing to the first respondent to address her grievance, about employment, etc. which was replied by the respondent University stating that it was not possible. The petitioner also filed emails & letters addressed to various private parties for job which is irrelevant and unwarranted insofar as the present case against the first respondent is concerned. In respect of the averments and allegations in paragraph 2 to 50 of the affidavit under reply it is in respect of the enquiry of petitioner's termination, compensation which has attained finality till the Hon'ble Supreme Court and cannot be agitated once again, as it hits the principle of res judicata, the petitioner's aim and project of breast cancer study is irrelevant as far as the first respondent is concerned. All the letter between 2017-2019 to the first respondent, UGC & reply seeking job in the first respondent University is against the order passed in W.A.No.932 of 2013 dated 14.7.2016 which was partly allowed in favour of the University setting aside the reinstatement of the petitioner ordered by the learned Single Judge. The prayer as sought for in the writ petition is not maintainable in the face of Principle of Res judicata as the proceedings of the petitioner's termination has attained finality till the Hon'ble Supreme Court and consequently, the writ petition is liable to be dismissed.



W.P.No.21564 of 2021

4. Heard the rival submissions of the parties and perused the materials available on record.

5. According to the petitioner who appeared before the Court and advanced her arguments before this Court as Party in Person, by stating that on 8.5.2021, the respondents wrote a letter to the U.G.C. and the petitioner wherein the respondents categorically stated that based on the findings of the enquiry Committee, the termination order dated 4.4.2012 was issued by the Registrar, Respondent University and not due to administrative reasons as stated by the respondents to U.G.C. in their letters during the period 2018-2019. Petitioner asked upgraded scale of pay of Professor Rs.50,000/- p.m. After the breast cancer therapeutic project was approved by the respondents scientists. The letter correspondence between the Respondent University and U.G.C. during the period 2016 to 2021 has never been adjudicated by this Court in the earlier writ petition or in the writ appeal or by the Hon'ble Supreme Court. The petitioner asked for reinstatement before this Court, because of animosity of the Management, the petitioner was not reinstated.

WRITTEN ARGUMENTS OF THE PETITIONER :

6. Subsequent to the arguments advanced by the petitioner before



W.P.No.21564 of 2021

this Court, the petitioner also filed written arguments wherein it is stated as under:

(1) That not even one criteria out of all criteria set by Hon'ble Supreme Court in section 11 of CPC is satisfied. Previous writ petition in W.P.No.2676 of 2012 and W.A.No.932 of 2013. W.A.No.932 of 2013 only dealt with the violation of principles of natural justices, the manner in which Enquiry was done, while this present petition addresses issues of merits of case hitherto unaddressed by this court or Supreme Court and seeks compensation on grounds of severe fundamental right violations under Article 21 and Article 14, salary arrears in upgraded Scale and damages due to halt of breast cancer therapeutic work of over 150 crores. In previous writ petitions, the manner in which the enquiry was held was examined by this Court, W.P. No.12676 of 2012 was allowed and set aside the impugned termination order of 04.05.2012 and further the last para reads, "the respondents are directed to reinstate the petitioner into service . However, it will be open to the respondents to continue the enquiry from the stage at which the irregularities crept in. The respondents have to furnish copies of documents, summon the witnesses for cross examination by the petitioner and thereafter proceed to pass orders afresh". However, the Respondent Registrar, without ascertaining any facts, or



W.P.No.21564 of 2021

engaging in any conversation with petitioner or the Enquiry Committee members on her vast breast cancer therapeutics collaborations, with Indian Institute of Science, Bengaluru, and collaborations with nanotechnology and medical hospital and research centre, a voluminous set of documents submitted to Enquiry Committee, and her value teaching and mentorship explained to Enquiry Committee, felt he was being benevolent Vatican Pope in giving administrative reason for the termination in the termination letter dated 04.05.2012, not understanding that she, petitioner only stayed at the University on deplorable salary, for Nanotechnology and Medical Hospital facilities, that would enable her to realize the breast cancer Therapeutic goal of 150-200 crores for the entire team, to give her sufficient income till superannuation and after superannuation. The letters written by petitioner to Directors and Chairman of Cancer Hospital and research centres in Mumbai and Chennai between 2017-2021 for start of the breast cancer therapeutic and diagnostic product work and their positive response are evidence of their validation of significance of work, but being in the situation she was, it was very exploitive. The value of teaching that petitioner was engaged in at University, of over 18 hours per week can be now regarded as her donations to the University. Respondent Registrar without ascertaining any facts or filling



W.P.No.21564 of 2021

the Enquiry Report and complaint letters, though repeatedly asked for filed a writ appeal W.A. No.932 of 2013 further aggravating the fundamental right violations of the petitioner. The Hon'ble justices have noted in their judgement order dated. 4th July 2013 that the enquiry report was asked by petitioner, she was not communicated with the result of Enquiry". The hon'ble court ruled on Maintainability as mentioned in last para of judgement order para 24 "it is made clear that the findings" observations made herein are only for the purpose of dealing with the question with regard to maintainability of the writ petition and this Court has not touched upon the merits of the challenge made by the writ petitioner in respect to termination order passed against her." Thus, merits of case not done.

(2) When the case was remanded back to this Court by the Hon'ble Supreme Court by its judgement dated 15.12.2015, the Enquiry report and complaint letters were again asked repeatedly to be filed, but this was not complied with by respondents in the present writ petition nor insisted by the Division bench in the Writ appeal during the year 2016. Thus, petitioner was expecting a reinstatement and back wages in the year 2016, keeping with many case laws on subject of reinstatement and backwages. The petitioner thus, presumed that it was because of reinstatement and back wages that the



W.P.No.21564 of 2021

Division Bench of this Court in W.A. No.932 of 2016 did not insist on the Enquiry report and complaint letters to be filed. However, the Division bench of Madras High court only concurred with the observations made by the learned Single judge that the termination of the petitioner is a violation of principles of natural justice and as stated in last operative para, "The order dated 08.04.2013 passed in W.P.No.12676 of 2012 by the learned Judge in respect of reinstatement is set aside, and in other aspects the same is confirmed". But Division Bench of this court in Writ Appeal in W.A.No.932 of 2016 did not examine or decide on merits of case. Merits of case was never done by this Court in 2012, 2013 or 2016. Surprisingly, reinstatement was not given and only Rs 25,000/- p.m. for 3.33 years. Since merits was not done in any of the early petitions, nor was the much wanted reinstatement given to the petitioner to take her breast cancer therapeutic work ahead, which would be valued today at 150-200 Crores, the enquiry report and complaint letters were not filed in 2016 and not even in the present writ petition or mandamus W.P.No.21564 of 2021 and W.M.P No.27114 of 2021. Petitioner was compelled to claim the compensation of Rs.25,000/- p.m. for 3.33 years and give herself some relief. Having claimed the compensation, the petitioner did not feel like in her heart/ did not feel right to challenge this Court's order in 2016 on merits not done,



W.P.No.21564 of 2021

enquiry report and complaints letters not filed and ask for reinstatement to take her halted breast cancer therapeutic work ahead which was at critical stage when the termination occurred in 2012, with collaborations with Ilsc Bangalore, and respondent University Nanotechnology, Medical hospital and research centre having gathered critical mass in 2012 at time of termination. Instead, petitioner chose to write letters to UGC between 2017-2021 for reinstatement to carry her breast cancer therapeutic work to completion. This is fresh matter put for adjudication before this Court for fresh cause of action. This material has not been placed before any High court or Supreme Court on the earlier occasion. The present writ petition, in the affidavit, the petitioner mentions in para 49, the three parts to merits of case yet to be examined by courts, and not addressed or decided in previous petitions. Further, the present petition does not seek reinstatement as in previous petitions, but seeks compensation for fundamental right violations, arising out of examination of merits of case, salary arrears in upgraded scale of Prof. and damages due to abrupt halt of breast cancer therapeutic and diagnostic Product development work.

(3) Fundamental right violations under Article 21 and 14 injurious to petitioner are detailed below:

24/48



W.P.No.21564 of 2021

(i) When the Hon'ble court issued a stay order of the initial termination order dated 04.05.2012 of the respondent, before the case was heard in its entirety in 2012 and, time and again whenever the petitioner approached the Respondent University for mediation of case through UGC, respondent Registrar would set the security personnel on the petitioner. This has traumatic and torturous and caused grave fundamental right violations to the petitioner.

(ii). Further the inclusion of the HOD (Biotech, Mrs D.Sankari), who was not NET or Ph.D at that time, unlike petitioner, and who brought forward the complaint letters against petitioner, was brazenly included in the Enquiry Committee, is unconstitutional and illegal, as it lead to doctored witnesses. However, she has not been named as a respondent, as her inclusion in the Enquiry Committee was done by Respondent, Dir. (FSH) and respondent, Registrar, leading to doctored witnesses. She was also instructed to procure complaint letters from Ph.D. student and B.Sc and M.Sc. students, on instructions from Dir (FSH). F.I.R was sought to be filed at Police Station, in Virugambakkam close to SIMs, SRM institute medical against Dir (FSH) in early 2016, when the case was out of court, waiting to be listed before this Court, after it was remanded back to this Court by the Hon'ble Supreme Court in 2015 to be examined on merits of case. The police Inspector refused to file FIR and thus it was sent as complaint with acknowledgement due and is filed this present writ petition in additional typed set. It was not filed in the previous petitions wherein seeking reinstatement then, and common sense dictates that it was necessary not to antagonize the respondents. However the fundamental right violations due to being framed with fabricated evidence leading to termination, was so severe, when case was out of court, that it necessitated



W.P.No.21564 of 2021

filing of FIR, for petitioner to give herself some relief before case was listed before this Court in July 2016. Thus, the inclusion of HoD Biotech, who procured the complaint letters from students in a criminal manner, at the instructions of Dir (fsh,) in the Enquiry committee does not come under violations of natural justice, but goes beyond that into erroneous behaviour of a criminal nature and severe fundamental right violations under Article 21.

(iii). The recent 8th May 2021 letter of respondents to UGC, the Respondent Registrar states that it was based on the complaint letters and Enquiry report in 2012, that the petitioner was dismissed, yet, the Enquiry report and complaint letters were never filed before this court or Hon'ble Supreme Court or with UGC to this date. Instead of writing unsavory, male fide, defamatory and derogatory letters to UGC, in response to petitioner's letters to UGC, sent between 2017-2021 (fresh matter adjudicated in the Madras high court 2021). The Respondent, Registrar could have submitted the complaint letters and Enquiry report to UGC (between 2017- 2021), if they did not want to file the same in court in 2016.

(iv).The Prof, HOD research credentials and enormous collaborations of petitioner with IISc, Bengaluru and respondent, Nanotechnology Dept, Respondent Medical Hospital and Research Centre and faculty in India and abroad filed in the Writ petition and Writ Appeal and in the present petition has not been taken seriously by the respondents.

(v). In 2008, every HOD and every M.Sc, PhD (like petitioner or HOD or M.Sc. Ph.D commerce and other fields in humanities) was Lecturer in appointment letter and / or pay slip Mrs.Sankari, HoD (Biotech) who was not



W.P.No.21564 of 2021

SLET/ NET cleared and who at that time did not have a Ph.D. like petitioner, was lecturer in appointment order and pay slip.

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(vi). In the 8th May 2021 letter of respondents to UGC, the respondent Registrar, without acknowledging petitioners documentation of vast breast cancer work and collaborations with Ilsc, Bengaluru and respondent University Nanotechnology and Medical Hop doctors and scientists, and collaboration in India and abroad; including documents submitted both at the enquiry and in Writ petition and Writ appeal weilds the Lecturer in Appointment letter, as a dagger to be used by a pervert, or clueless, on scientific and educational matters, to try and destroy the petitioners work and reputation and in so doing trying to destroy the very soul of the University.

(4) The case remanded back to the Madras High Court renumbered in 2016 from Supreme Court, Besides, in the order in W.A.932 of 2016 this court in para 18, clearly states that the termination is" totally illegal and the single judge has also given proper reason in the impugned order to that effect. Since the termination of service passed against respondent/ petitioner is illegal, she is entitled to get reinstatement. However, on the basis of the circumstances of the present case, the Court has to look into what kind of relief would be sufficient to meet ends of justice." The salary at Respondent University was criminally low but because of the income that would be generated by the Cancer products , diagnostics and therapeutics 250- 300



W.P.No.21564 of 2021

crores, petitioner was not concerned about her low salary, when she joined the respondent University in 2008. She asked for the upgraded scale of Prof. Rs.50,000/- p.m. soon after the Breast cancer therapeutic project was approved by the respondents scientists and faculty and ethical committee.

Merits of case:

(5) The memo sent by respondents to petitioner in 2012 on 14.02.2012 was sent after complaint Letters and charge sheet matter was sent by Respondent (Dir fsh) to Registrar office on 31.01.2012 as per the charge sheet sent from respondent, Registrar office dated 22.02.2012. Thus, the reply sent by the petitioner to the respondent (Dir FSH) in 2012 in response to his memo, was considered immaterial by respondent (Dir fsh) even before he sent the charge sheet to Registrar office.

(6) The charge sheet from Registrar office dated 22.02.2012 seems verbatim from the letter of Respondent, Dir (FSH) to the Registrar, office dated 31.01.2012, but the complaint letters or Annexures mentioned were never made available to the petitioner nor were the complaint letters filed in court in Writ petition or Writ Appeal in the year 2012/2013, Writ appeal renumbered or in the present petition, even though repeatedly asked for it.



W.P.No.21564 of 2021

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(7) The memo sent by Respondent Dir (FSH) through the Dean (FSH) on 14.02.2012 refers to the petitioner as Assistant Prof in 2012 and a copy of memo is sent to Registrar, Mrs. D.Sankari, HOD of Biotechnology, and Dr.Janet Jeyapaul, Assistant Professor of Biotechnology.

(8) In the memo sent by Respondent, Doctoral committee meeting of Prasanth Bhat , Ph.D student was successfully completed on Dec 2011. So it is highly unlikely that this Ph.D. student would have sent the email indicating " there was a problem" with his Ph.D guide, within a month of completion of this doctoral committee as alleged in the charge sheet. This email or complaint letters were requested to be filed before this court through this present Mandamus or writ petition 2021.

(9) The complaint letters of the B.Sc and M.Sc students of classes mentioned in the charge sheet were never given to the petitioner and have never been filed in the Madras High court or with UGC between 2017-2021. The petitioner was told by the good students, that Mrs.D.Sarkari told a few criminally minded students to obtain signatures on complaint, written by her



W.P.No.21564 of 2021

on the pretext of getting signatures on record books. Thus, the memo was a meaningless formality by respondents, as petitioner was already charge sheeted before replies to memo was received by respondents . Thus, how could Registrar in his 8th May 2021 letter to UGC state that the replies to two memos sent were found to be unsatisfactory. The fact of the matter is that it was found unsatisfactory by respondents even before they received the replies to the memo from the petitioner. This is a grievous act of Respondent and in violation of fundamental right of 21 and 14 to the petitioner. Instead of the respondent, Registrar writing 12-15 mala fide, nasty, unsavory, defamatory, false responses to UGC about petitioner in reply to petitioners letters to UGC between 2017-2021, he could have sent the complaint letters and Enquiry report to UGC.

(10) Since the merits of case was never done or addressed or decided for last eleven (11) years in the Hon'ble Madras High court, and the Enquiry report and complaint letters never filed though repeatedly asked for in writ petition and Writ appeal and in the present writ petition.



W.P.No.21564 of 2021

(11) In its 2020 order, the Hon'ble Supreme court, which knew, petitioner had claimed the compensation in 2016 , did not mention that fact in the order of proceedings dated 24.11.2021. The Hon'ble Supreme court asked petitioner what she did during that period of time of 4 years, and petitioner told that she wrote letters to UGC to mediate the restart of the breast cancer work at the respondent University. The Hon'ble Supreme Court in 2020 then dismissed the the SLP on the ground of inordinate delay, as the reason given for delay was writing letters to UGC between 2017-2021 which was found unsatisfactory, as adjudication of entire set of letters to UGC and responses of respondents to UGC, did not fall under the forum of SLP and neither could a writ petition filed under Article 32, as claiming damages and severe fundamental right violations came within the ambit of Article 226 and Article 226 alone and not Article 32. The other erroneous act of criminal nature is the fabrication done by the Registrar, respondent University in response of reply of Registrar to UGC where he has fabricated the language of petitioner where petitioner has thanked the respondent University for the paying Rs.25,000/- p.m. for 3.33 yrs (judgment order amounting to 10 lakhs. However, the Registrar had criminally fabricated this, using the same method used by Dir(FSH) of making the words mean something against the petitioner. He has



W.P.No.21564 of 2021

written letters that petitioner, self, has said that only 60% of 10 lakhs was paid. This is Criminal fabrication of Registrar as the petitioner has never said this. Another erroneous act of criminal nature was that the Enquiry Committee criminally allowed themselves to be influenced by Dir (FSH) (respondent) and as to why the PhD student was enthusiastic about the project in Dec 2011 before the Doctoral committee, comprising of respondents scientists and faculty who approved the project and Ph.D student and in one month Jan. 2012, the petitioner is unhappy with Ph.D guide. Why did they not tell the Ph.D student to change guide then and look for interests elsewhere within the same campus. This is what is followed in research centres all over India shows that the Enquiry Committee members were complicit with Dir (FSH) who fabricated the charge sheet framed against the petitioner. Yet another harrowing act of criminal nature was that the management without ascertaining the facts, used money power to employ the Solicitor General to intimidate and Thus, indirectly promote criminal activity in the University. The petitioner relied on **Nambi Narayanan Vs. Siby Matthews CA 6637-6638, 2018**. This case is similar to Nambi Narayan scientist case in 2018 Remedies and grounds for Nambi narayan case similar to Nambi Narayana case which stated -This case is similar to Nambi Narayanan case in severity of fundamental right violation of 21 product



W.P.No.21564 of 2021

therapeutic work ahead. It doesn't make sense that when you are seeking reinstatement, to bring to focus the erring conduct of Respondent of criminal nature. The only divergence of this case from Nambia Narayan was that Nambi Narayanan got his full voluntary retirement benefits from his institute, before spending few days in jail. The petitioner did not get such benefits of salary in upgraded scale and superannuation or after superannuation benefits. The similarity of the present case with Nambi Narayan case was that the terrible trauma of being framed and falsely charged and harrowing experience of being ill handled by security personnel is similar in both cases, it destroys one's identity, personhood and professional reputation and causes grievous fundamental right violations and must not be treated lightly in Courts. It is a harrowing, traumatizing effect to be falsely framed and your professional reputation famished, as also termination of services, the wounds of which one carries for a lifetime unless appropriate interim relief ante Nitelong remedies are given by the courts.

(12) The trauma is both of being framed and fabrications of a criminal nature that are harmful to identity, personhood and professional reputation of a Professor or scientist and added tauma of security personnel set on the petitioner. Nambi Narayan was paid 1.9 crore for the fundamental right



W.P.No.21564 of 2021

violation, The petitioner is asking for only 50 lakhs for being framed and 60 lakhs for salary lost in upgraded scale and 0.3% of value of product of 40 lakh totalling to 1.5 crore and rest of 1 crore paid for setting up lab in Maharashtra for start of breast cancer work cost. The latter was not asked by Nambi Narayanan because he was not working towards a product and had also claimed voluntary retirement benefits from his institute prior to filing a case for being framed falsely. To this date the petitioner have not seen Enquiry. Report and complaint letters and who signed the final order of the Enquiry report, based on which the Registrar has taken the final decision as mentioned in his recent reply to UGC dated 8th May 2021. If private law was applied, then according to tort law, petitioner can claim 15-20 crores in damages as according to ***A.T Brij Paul Singh 7 Vs State of Gujarat (1984) 4 SCC 59***, the court without insisting for direct proof, the measure of profit lost granted 15% of value of remaining work. Taking into consideration the fundamental right violation under Article 21 and Article 14 arising out of merits of case, which is written in detail in affidavit of present writ petition 2021 to grant compensation of Rs.50 lakhs for fundamental right violations under Article 21 and 14 of grievous nature, and 60 lakhs for salary in upgraded scale of Rs.50,000/- p.m and damages of 40 lakhs



W.P.No.21564 of 2021

(0.3%) of breast cancer work therapeutice product work) totalling to an interim relief of 1.5 crore.

7. The ground raised by the writ petitioner is that the Hon'ble Supreme Court has not decided the issue on merit, whereas the SLP was dismissed on 24.11.2020 refusing to condone the delay of 1376 days in filing the SLP. and therefore, the writ petition is not barred by *res judicata*. Further, the petitioner relied on the order passed by the Division Bench of this Court in W.A.No.932 of 2013 dated 14.7.2016 wherein it was held as follows:

“As adverted to earlier, it is made clear, that the termination of service of Respondent / petitioner done by the appellants is totally illegal and the learned single Judge has also given proper reason in the impugned order, to that effect. Since the termination of service passed against the respondent/petitioner is illegal, she is entitled to get reinstatement. However on the basis of the circumstances of the present case the Court has to look into what kind of relief would be sufficient to meet the ends of justice.”

8. The petitioner relied on the decision of the Hon'ble Supreme Court in **A.T.Brij Paul Singh and others vs. State of Gujarat [(1984) 4 SCC 59]** wherein damage claimed by the Contractor for breach of contract against



W.P.No.21564 of 2021

the Government under the Contract Act which is not relevant to the case in hand.

9. The petitioner relied on the judgment of the Hon'ble Supreme Court in ***Bhim Singh Mla VS State of J&K And Ors (1985) 4 SCC 677***, wherein it was held as under:

"We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah vs. State of Bihar and Sebastian M.Hongray vs. Union of India. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases, we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs.50,000/- within two months from today."

10. The Hon'ble Supreme Court in ***Bhim Singh case supra***, has held that *"When a person comes to us with the complaint that he has been arrested and*



W.P.No.21564 of 2021

imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free" and awarded a compensation. The case of the petitioner was decided by the Division Bench of this Court as well as the Hon'ble Supreme Court. After remand by the Hon'ble Supreme Court, the Division Bench of this Court set aside the reinstatement order passed by the learned Single Judge in W.P.No.12676 of 2012. However, considering the loss of future employment and the ordeals meted out by the petitioner, awarded compensation of Rs.10,00,000/- and the petitioner also received the amount from the respondent University without any protest. Therefore, the aforesaid decision of the Hon'ble Supreme Court will not apply to the case of the petitioner.

11. A perusal of record shows that after receipt of compensation received from the respondent, the petitioner has approached the respondent University by email letter dated 12.10.2017 and 19.12.2017 seeking reinstatement in the respondent University. The petitioner also approached U.G.C. for reinstatement in the respondent University or appointment in any other University in Chennai. U.G.C. by letter dated 20.6.2018, 31.12.2018 forwarded the copy of representation dated 9.3.2017 to the respondent University. The respondent University by letter dated 2.4.2018, 28.5.2018,



W.P.No.21564 of 2021

10.7.2018, 19.7.2018, 14.9.2018 addressed to the Secretary, U.G.C. by stating that the petitioner has already approached this Court and this Court granted Rs.10 lakhs as compensation for her services which includes fair consideration of compensation by the court regarding her future service as well. It is further stated in the said letter that the court has categorically stated while awarding her compensation, the question of reinstatement does not arise. For the aforesaid reasons, the request of reinstatement and backwages is not applicable to the petitioner. U.G.C. forwarded the reply received from the respondent University to the petitioner on 14.12.2018 and 24.1.2019.

12. The petitioner in the present writ petition, apart from enquiry report and complaint letters, also sought for all the letters of the petitioner addressed to the Secretary, U.G.C. seeking reinstatement in the respondent University and also replies sent by the Registrar of the respondent University to the U.G.C. Though the petitioner has sought for the aforesaid letters correspondence in the prayer, the petitioner has not impleaded U.G.C. as party in the Writ petition. Without impleading the U.G.C. as party in the present writ petition, this Court cannot consider the prayer seeking those letters addressed to the Secretary, U.G.C. and also replies sent by the



W.P.No.21564 of 2021

Registrar of the respondent University. Therefore, the contention of the petitioner insofar as the second limb of the prayer seeking to provide all the letters correspondence taken place during the period 2017 - 2021 between the petitioner, U.G.C. and the Registrar of the Respondent University is rejected.

13. The petitioner relied on the orders passed by this Court in W.P.No.12676 of 2012 dated 8.4.2013 wherein it is held as follows:

"In view of the above, the writ petition is allowed and the impugned termination order is set aside. The respondents are directed to reinstate the petitioner into service. However, it will be open to the respondents to continue the enquiry from the stage at which the irregularities crept in. The respondents shall furnish copies of documents, summon the witnesses for cross examination by the petitioner and thereafter proceed to pass orders afresh....."

14. Pursuant to the order passed by the Hon'ble Supreme Court in the SLP dated 15.12.2015, the Division Bench of this Court by order dated 14.7.2016 while setting aside the reinstatement order dated 8.4.2013, in paragraph 21, has held as follows:

"21. Considering the submissions made by the learned



W.P.No.21564 of 2021

Senior counsel appearing for the appellant/ management and the fact that relationship between the employer and the employee in this case has become strained, this Court feels that it is a fit case to award compensation to the respondent for loss of future employment and further if re-employment is given, it will not be beneficial to the respondent / petitioner."

15. In the light of the stand taken by the respondent Management that denova enquiry against the respondent is impossible due to efflux of time and the students who complained against the petitioner had already left the Institution and the fact that the relationship between the employer and the employee in this case has become strained, therefore, this Court feels that it is a fit case to award compensation to the petitioner for loss of future employment and the ordeals she met and awarded compensation of Rs.10,00,000/- (Rupees ten lakhs only) to the petitioner and the same has been received by the petitioner. Therefore, the order passed by the Division Bench of this Court dated 8.4.2013 does not give any right to the petitioner.

16. The petitioner if aggrieved, ought to have raised all the grounds as stated in the present writ petition before the Hon'ble Supreme Court by way of SLP. Further, the petitioner in the writ petition has stated that the enquiry



W.P.No.21564 of 2021

report has not been placed before the Hon'ble Supreme Court in the SLP preferred by the petitioner. The SLP preferred by the petitioner in the year 2020 challenging the order of the Division Bench of this Court dated 14.7.2016 was dismissed by the Hon'ble Supreme Court, wherein the explanation offered by the petitioner for condoning the delay of 4 years was rejected and consequently, the SLP was also dismissed. That being so, the petitioner already exhausted the legal remedies available to her. Now, the petitioner cannot seeks to reopen the case for the reasons stated in the instant writ petition, by way of mandamus, however, seeking different prayer by stating that the Division Bench of this Court and the Hon'ble Supreme Court did not decide the appeal on merit. Therefore, as rightly pointed out by the learned counsel appearing for the respondents, the present writ petition is hit by the ***Doctrine of res judicata.***

17. The Hon'ble Supreme Court has laid down the ***principles of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure is applied to writ case*** in the following decisions:

(i) In ***M.Nagabhushana v. State of Karnataka [(2011) 3 SCC 408 : (2011) 1 SCC (Civ) 733 : 2011 SCC OnLine SC 277]*** the Hon'ble Supreme Court



W.P.No.21564 of 2021

has held as follows:

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"19. A Constitution Bench of this Court in **Devilal Modi v. STO** [AIR 1965 SC 1150] , has explained this principle in very clear terms: (AIR p. 1152, para 7)

*"7. ... But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide **Daryao v. State of U.P.** [AIR 1961 SC 1457 : (1962) 1 SCR 574])."*

20. This Court in **AIMO case [(2006) 4 SCC 683] explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in **AIMO case** [(2006) 4 SCC 683] relied on the following formulation of **Somervell, L.J. in Greenhalgh v. Mallard** [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (**AIMO case** [(2006) 4 SCC 683] , SCC p. 700, para 39)**

"39. ... 'I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-



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W.P.No.21564 of 2021

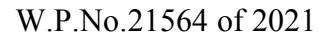
matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.'

“21. Following all these principles a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)

“35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.”

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

*23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in **K.K. Modi v. K.N. Modi [(1998) 3 SCC 573]** . In SCC para 44 of the Report, this principle has been very lucidly discussed*



“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata.”

“43. ... ‘This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.’ ”

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W.P.No.21564 of 2021

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(ii) Yet another decision of the Hon'ble Supreme Court in ***Omprakash***

Verma v. State of A.P., [(2010) 13 SCC 158 : 2010 SCC OnLine SC 1160] wherein the Hon'ble Supreme Court has held as under:

75. As pointed out by the learned Attorney General, the matter can be looked at from another angle. The proceedings in the instant case are barred by the principle of constructive res judicata. The validity of the ULC Act was squarely in issue. The effect of allowing the State appeals in Audikesava Reddy case [(2002) 1 SCC 227] is that all contentions which parties might and ought to have litigated in the previous litigation cannot be permitted to be raised in subsequent litigations.

76. In Forward Construction Co. v. Prabhat Mandal [(1986) 1 SCC 100] this Court held that an adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The following portion of the judgment is relevant which reads as under: (SCC p. 112, para 20)

“20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC



W.P.No.21564 of 2021

provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided.”

“77. In *Hoystead v. Taxation Commr.* [1926 AC 155 : 1925 All ER Rep 56 (PC)] the Privy Council observed: (AC pp. 165-66)

“... Parties are not permitted to begin fresh litigations because of new views that they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle.”

78. As rightly observed by the High Court, what is of utmost relevance is the final judgment of the superior court and not the reasons in support of that decision. Apart from the legal position and the effect of allowing



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W.P.No.21564 of 2021

of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject-matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that WPs Nos. 18385 of 1993 and 238 of 1994 stood dismissed.

.....

.....

82. The appellants contended that the High Court had recorded a finding that the land is agricultural and the State had taken up a ground saying that the land was not agricultural land and was a vacant land but that point was not pressed before this Court in Audikesava Reddy case [(2002) 1 SCC 227] , hence to that extent the High Court judgment would operate with binding effect in view of principles of constructive res judicata. We accept that principle of res judicata/constructive res judicata is applicable to the writ proceedings. ”



W.P.No.21564 of 2021

18. The instant writ petition is squarely hit by the ***doctrine of res***

judicata In the light of law laid down by the Hon'ble Supreme Court in the decisions cited supra. Therefore, the contention of the petitioner cannot be countenanced and this Court finds no merit in the writ petition and consequently, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

W.M.P.No.2744 of 2021 is closed.

5.08.2022

Note: Issue order copy on 11.8.2022

Speaking / Non Speaking order

Index : Yes/No

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W.P.No.21564 of 2021

D.KRISHNAKUMAR, J.

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Pre-Delivery Order in
W.P.No.21564 of 2021



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W.P.No.21564 of 2021

Dated: 5.08.2022