

02 **18.01.
2023**

Ct. No. 04

Ab

WP.CT 38 of 2015

**Smt. Tetri Debi and another
Vs.
The Union of India and others.**

**Mr. Mukteswar Maity,
Mr. Arun Kumar Paul,
Mrs. Sikha P. Chowdhury.
... for the petitioners.**

**Mr. Ajoy Chaubey.
... for the Union of India.**

There is a factual error in the order dated 4th January, 2023, which was noticed by us before signing the said order.

The said order is hereby recalled.

We invited the parties to reargue the matter and after hearing the same the following order is passed:

After the service has been effected upon the parties, the parties are represented by the respective Counsels.

The instant writ petition has been filed challenging an order dated 30th July, 2014 passed by the Central Administrative Tribunal in OA 660 of 2014 by which an application under Section 19 of the Administrative Tribunal Act was dismissed solely on the ground of *res judicata*.

Sworn of unnecessary details the father of the petitioner no. 2 died in the year 1982 while in service and an application was taken out by the petitioner no. 1 seeking appointment on compassionate ground. Amidst the pendency of the said application, a further representation was made after a lapse of time and the moment the petitioners realized that the said representation has been kept in suspended animation, an approach was made to the tribunal with an

application being OA 165 of 2010. In the midst of the said application it was informed to the Tribunal that a decision has already been taken and the application of the petitioners has not been accepted. The said tribunal application was dismissed on 16th September, 2011 upholding the decision of the authority that the petitioners are not entitled to appointment on compassionate ground.

The order of the Tribunal was assailed by the petitioners before this Court. After hearing the respective parties this Court dismissed the said writ petition with following observations:

“In the instant case, the concerned employee died in 1982, when admittedly the petitioner no. 2 was minor. The petitioner no. 1 applied for compassionate appointment for the petitioner no. 2 after seventeen years of the death of the concerned employee. The said circular is nothing but an enabling provision for the Railways to consider any special case in extraordinary situation, where the Railways are entitled to consider the prayer for compassionate appointment even after twenty year of the death of the concerned employee and when a minor approaches within two years after attaining majority. No separate reason is attributed herein for making a departure from the usual procedure. Moreover, the said circular requires a special note to be given by the concerned official, while considering the prayer for compassionate appointment on merit. Such situation has not arisen here. It is true that the Railways rejected the prayer on the ground of second marriage, which is admittedly void in case of Hinduism. Even if such ground is not tenable, the petitioner are not entitled to any benefit, unless and until extraordinary case is made out to avail the benefit of that circular quoted above. Such case has not been moved before us.

The petition fails and is hereby dismissed.

There would be however, no order as to costs.”

After dismissal of the said writ petition upholding the decision of the authority rejecting the claim of

appointment on compassionate ground, another round of litigation was pursued by filing OA 660 of 2014. By the impugned order the said tribunal application was dismissed on the ground of *res judicata*.

It is contended by the learned Advocate for the petitioners that the son of the second wife whether entitled to the appointment on compassionate ground was never raised or agitated in an earlier round of litigation and, therefore, the dismissal of the earlier writ petition filed by the petitioners cannot operate as *res judicata*.

It appears from the findings of this Court as quoted herein above returned at the time of dismissing the said writ petition that such point was a centre of debate and a categorical finding has been arrived at by the High Court in this regard.

The principle of *res judicata* is founded on a public policy. It is a fundamental policy of the country that every litigation must achieve finality and the cause of action should not be allowed to be re-agitated by filing a subsequent proceeding. The principle of *res judicata* has received a judicial as well as the statutory recognition upholding the policy of the country and avoiding frequent litigation on the self-same issue to explode the docket of the Court. Unless the finality is achieved to a litigation it would encourage the citizen of the country to repeatedly go on agitating the self-same cause of action which would not only tantamount wasting of the precious time of the Court but may at a time invite the conflicting and/or diametrically opposite decision. The aforesaid principle is recognized to set at rest the issue agitated in an earlier round of litigation and not to permit any litigant to resuscitate the said cause of action by filing the subsequent litigation before the Court.

The moment the earlier writ petition was dismissed

on a categorical finding relating to the entitlement of the son of a void marriage, the said point cannot be resurrected either by making further representation or initiating a proceeding before the Tribunal and, therefore, we do not find any infirmity and/or illegality in the order of the Tribunal in dismissing the application by applying the principle of *res judicata*.

The writ petition is devoid of merit and the same is hereby dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)