

10.05.2023

WPST 73 of 2023

Court : 04
Item : 08
Matter : WPST
Status : DISMISSED
Bench ID :266048
Transcriber: NANDY

Asim Kumar Acharyya

Vs.

The State of West Bengal & Ors.

Mr. Jagabandu Mondal, Advocate

Mr. Kalpana Khan Mondal, Advocate

.....for the Petitioner

Mr. Biswabrata Basu Mallick, Advocate

Mr. Raja Saha, Advocate

Mr. Shayak Chakraborty, Advocate

.....for the Respondents

The present writ-petition is filed at the behest of a disgruntled litigant attempting to resurrect the issue which has been finally decided in an earlier round of litigation on the pretext of a fresh cause of action.

The moment the petitioner's name was included in the panel of 45 candidates for the post of Peon and steps have not been taken in this regard, the Tribunal was approached with OA 1978 of 1998 raising several issues concerning the appointment as well as the process undertaken by the authorities which were ultimately dismissed by the Tribunal. The order of the Tribunal was assailed before the High Court in WP 27558 (W) of 2015 which was earlier dismissed with costs.

Having unsuccessful in thwarting the selection process as well as consideration of his candidature, the petitioner took a circuitous route in making an application under Right to Information Act and after getting a response, approached the Tribunal again. A cleaver draftsmanship creating an illusory cause of action should not be permitted when the Court with reasonable certainty may ascertain the real object and the relief claimed in the tribunal application. The object is laudable that the selection process is faulty and,

therefore, may be interfered with though the cause of action appears to have arisen in the year 2015-2016 when the reply was received.

The petitioner was not found eligible nor could successfully demonstrate any illegality and/or infirmity in the selection process undertaken more than two decades before. It is contended by the petitioner that the earlier round of litigation was founded on a different cause of action than the present one which we are unable to accept for the simple reason that the real intention is to scrap and/or get away with the selection process initiated long before.

The moment the Tribunal has dismissed the application without interfering with the selection process or entitlement of the petitioner to be appointed to the post of a Peon on the basis of the panel, it does not give rise to a fresh cause of action that the petitioner's name is still showing in the panel. The issue which is involved in the earlier round of litigation and decided finally cannot be reopened in a subsequent litigation.

The finality to the litigation is based on a public policy and a litigant shall not be permitted to re-agitate the same issue which was substantially and directly involved in an earlier litigation in the subsequent litigation. We further find that the review application was filed before the Tribunal for re-visitation of the earlier order dated 29.08.2018 which is impermissible under the review jurisdiction. The Court or the Tribunal does not enjoin power to re-write or revisit the order in exercise of review jurisdiction which is principally decided on the ground enumerated under Order 47 Rule 1 of the Code of Civil Procedure.

The petitioner could not successfully demonstrate the errors apparent on the face of the record nor could demonstrate the discovery of new or important materials which were in existence at the time of passing the final order but despite due diligence the same was not within the knowledge of the petitioner.

The Tribunal has succinctly jotted down the grounds of review which *per se* manifest the intention of the petitioner to invite the attention of the Tribunal to revisit the order and rehear the tribunal application on the above ground which in our opinion does not come within the purview of Order 47 Rule 1 of the Code of Civil Procedure.

We thus do not find any illegality in the order passed by the Tribunal.

The writ-petition being **WPST 73 of 2023** is **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

