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W.P. No. 8093 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8093 of 2023

M. Rajeshkumar

... Petitioner

-VS-

1. The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.
2. The Principal Chief Conservator of Forests,
Head of Forest Force,
Panagal Buildings, Chennai – 600 015.
3. Selvi. Vairam

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in Memorandum No. 5543 /OTD-C2/2010 dated 14.09.2021 on the file of the First Respondent and quash the same as illegal and consequently, direct the First and Second Respondents to issue a selection order to the Petitioner for the post of Forest Apprentice in Tamil Nadu Forest Department in the light of Clause 6(A) r/w Section 6 of Tamil Nadu Act' 40 of 2010, namely Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010.



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For Petitioner : Mr. J.Bharathi Raja
For Respondents : Mr. R.Bharanidharan (for R1)
Mrs. R.Anitha,
Special Government Pleader (for R2)

ORDER

Heard Mr. J.Bharathi Raja, Learned Counsel for the Petitioner, Mr. R.Bharanidharan, Learned Counsel, who takes notice for the First Respondent and Mrs. R.Anitha, Learned Special Government Pleader, who takes for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had applied for the vacancies in the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service included in Group-IV Services in furtherance to the Notification No. 254 dated 24.11.2010 published by the First Respondent, had not been selected. Certain other unsuccessful candidates in that recruitment had immediately challenged the selections made in that recruitment which culminated in the Order dated 19.09.2014 in SLP (Civil) No. 25910 of 2014 passed by the Hon'ble Supreme Court of India confirming the order dated 14.08.2014 in W.A. No. 376 of 2013 etc. batch



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passed by the Division Bench of this Court, rejecting the various contentions raised by them. Long thereafter, the Petitioner along with two others challenged the selection list for the same recruitment in the Writ Petition in W.P. No. 32778 of 2014, which was declined to be entertained at the threshold by this Court in the order dated 25.08.2015, holding as follows:-

“12. This Court, upon consideration of the rival submissions and careful scrutiny of the materials, is of the view that the Petitioners under the guise of filing this Writ Petition, virtually wanted this Court to review the judgment dated 14.08.2014, made in W.A. No. 370 of 2013 etc., and the same is impermissible in law. That apart, the Petitioners are also guilty of delay and laches and they approached the Court belatedly only after the finality is reached in the earlier round of litigation.

13. For the foregoing reasons, the present Writ Petition lacks merits and substance and deserves dismissal. The Writ Petition is dismissed and the interim order dated 12.12.2014, stands vacated. However, in the circumstances of the case, there shall



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be no order as to costs. Consequently, connected Miscellaneous

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3. While the matter stood narrated supra, it appears that the Petitioner had filed another Writ Petition in W.P. No. 36848 of 2016 seeking a direction to consider his representation dated 25.02.2016 to the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service included in Group-IV Services in the light of Clause 6(A) read with Section 6 of the Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010, and this Court by order dated 12.07.2021 directed the First Respondent to consider the said representation on its own merits and pass appropriate orders in accordance with law within a period of twelve weeks from the date of receipt of its copy without expressing any view on the merits of the controversy involved. In compliance of the said order, the First Respondent by Proceedings in Memorandum No. 5543 /OTD-C2/2010 dated 14.09.2021 passed the following order:-

“3. Accordingly, he is informed that the Commission, in its notification dated 24.11.2010 had invited application from eligible candidates for the post of Forest Apprentice to fill up 79+1 c/f vacancies in the said post. The candidate Thiru. M.Rajeshkumar (Reg. No. 00111165) had applied for the said



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post and was summoned for Oral Test. He is non-forestry candidate and had obtained total marks of 618.00 (W.E.546 +O.T. 72) (Rank – 125) in the said examination for the recruitment.

4. *As per the orders of the Hon'ble High Court dated 14.08.2014 issued in W.A. Nos. 370 to 388 of 2013, 420 and 421 of 2013, the selection for the said post was finalized and the names and other particulars of selected candidates were communicated to the HOD concerned vide Commission's letter dated 12.09.2014. The ranking and selection of the candidates for the recruitment was done as per notification, rules and as per orders of Court.*

5. *The petitioner/candidate (Rank – 125) (Non-Forestry) had not reached his turn for selection to the said post as the rank obtained by the last candidate selected under BC(OBCM)(G) Category was Rank 68 (Forestry) and BC(OBCM)(G)(PSTM) category is Rank 72(Forestry). The petitioner/candidate was not been placed in the reserve list for the said post. Meanwhile, the said candidate along with 2*



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others had filed W.P. No.32778/2014 to appoint him, and the same had been dismissed vide the orders of the Hon'ble High Court dated 28.05.2015.

6. Subsequently, on receipt of proposal from the HOD, supplemental selection was resorted to by operating the reserve list in order to fill the vacancies that arose due to not joined candidates. The name and other particulars of the supplementally selected candidates were also communicated to the HOD for further action.

7. As the candidates selected in main list and supplemental selection list were ranked higher than the petitioner's category, there is no merit in representation of the petitioner/candidate and that he has not reached the zone of selection. Hence, he could not be selected for the said post.

8. Therefore, the Commission has considered the candidate representation dated 25.02.2016 on its own merits and passed appropriate orders in accordance with law within the time limit as per the directions of the Hon'ble High Court order dated 12.07.2021.”



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The said order is challenged in this Writ Petition.

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4. At the outset, it must be pointed out that in the light of the order dated 25.08.2015 in W.P. No. 32778 of 2014 declining to entertain the Writ Petition filed by the Petitioner which in substance relates to the same selection made for the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service included in Group-IV Services in furtherance to the Notification in Advertisement No. 254 dated 24.11.2010, the Petitioner is not entitled to re-agitate the matter thereafter.

5. In this regard, it must be highlighted that though the provisions of the Code of Civil Procedure Code, 1908 (hereinafter referred to as 'the CPC' for short), are not strictly applicable to writ proceedings under Article 226 of the Constitution before this Court, the principles underlying Rule 2 of Order II of the CPC that where a person entitled to more than one relief in respect of the same cause of action omits to sue for all such reliefs, he shall not afterwards be entitled to sue for the omitted relief, would definitely get attracted. Reference must also be made to the effects of finality of litigation as deduced from the authoritative pronouncements of the Hon'ble Supreme Court of India in ***M.Nagabhushana –vs- State of Karnataka*** [(2011) 3 SCC 408] and ***Union of***

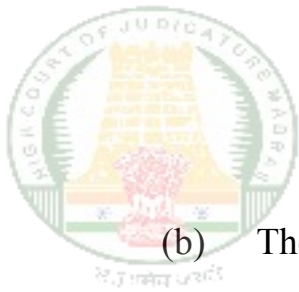


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India –vs- Major S.P.Sharma [(2014) 6 SCC 351], which can be summarized

as under:-

- (a) The doctrine of finality of litigation is an outcome of two age old salutary principles of public policy, viz., *interest reipublicae ut sit finis litium* which signifies that it is in the interest of the State that there should be an end to litigation, and the other principle, viz., *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*, conveys that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. 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 or by adopting a procedure prescribed by law. 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. In the absence of such principle, great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a resourceful and malicious litigant may succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The universally acclaimed rule of *res judicata* has been evolved to prevent such anarchy.



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(b) The rule of *res judicata* is common to all civilized system of

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jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding which has been initiated in breach of the rule of *res judicata* is *prima facie* a proceeding which has been initiated in abuse of the process of Court.

(c) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. 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



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defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. This precept is referred in legal parlance as '*constructive res judicata*'. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is not permissible for the parties to re-open the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice.

- (d) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate 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*, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

6. Though this Court by order dated 12.07.2021 in W.P. No. 36848 of 2016



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had directed the First Respondent to consider the representation made by the Petitioner without expressing any view on the merits of the controversy, it could not be construed as a gateway to ignore the adjudication made clinching the same dispute raised in the earlier legal proceedings, which has attained finality as reiterated by the Hon'ble Supreme Court of India in ***State of Uttaranchal -vs- Shiv Charan Singh Bhandari*** [(2013) 12 SCC 179] in the following words:-

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

(emphasis supplied)

In any event, the Petitioner has not demonstrated any infirmity in the impugned order passed by the First Respondent rejecting his claim on merits. Viewed from that perspective, there does not appear to be any justification to entertain this Writ Petition in respect of the recruitment made for the posts during the year



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2010 at this distance of time.

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In the result, the Writ Petition, which is devoid of merits, is dismissed. No costs.

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Index : Yes/No

Neutral Citation : Yes/No

Note: Issue order copy by 28.07.2023

To

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Chennai – 600 003.
2. The Principal Chief Conservator of Forests,
Head of Forest Force,
Panagal Buildings, Chennai – 600 015.



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P.D. AUDIKESAVALU, J.

sgl/skr

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