

23.04.2024

TUESDAY

Court : 04
Item : 05
Matter : WPCT
Status : DISMISSED
Bench ID : 266176
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPCT 60 of 2024

Radha Rani Koley & Anr.

Vs.

Bharat Sanchar Nigam Limited & Ors.

Mr. S.K. Bhattacharya, Advocate

Mr. Sarthak Barman, Advocate

.....for the Petitioner

Mr. Sanajit Kumar Ghosh, Advocate

.....for the Respondents

1. The affidavit of service filed in Court today be kept with the record.
2. By consent of both the parties, the petition is taken up for hearing.
3. The instant writ-petition is filed assailing the order dated 14.06.2023 passed by the Central Administrative Tribunal in OA 350/94/2017 by which the said original application was dismissed on the ground being barred by principle of *res judicata*.
4. The subject matter relates to appointment on compassionate ground. Admittedly the Government Employee, the father of the petitioner no. 2, died-in-harness and initially an application was taken out by the petitioner no. 1, being the mother of the petitioner no. 2, seeking employment for her younger son on compassionate ground. It was averred in the said application that she had no other children than the said son and such suppression was subsequently unearthed by the Authority finding that one of the sons has already been employed in the Postal Department. Further, an application was taken out for the appointment of the petitioner no. 2 which ultimately reached to the Tribunal upon registration of OA No. 1364/2015.

5. The said original application was dismissed on 01.07.2016 by the Central Administrative Tribunal holding that there has been a gross suppression of material facts as well as there is a considerable lapse on the part of the petitioners in seeking redressal of their grievances. It was further observed that it is a belated claim and in view of the gross suppression of the facts, no equity can be extended to the petitioners.
6. The said order was assailed before this Court in a writ-petition being WPCT 271 of 2016 which was again dismissed on the ground that the mother did not disclose that one of the sons was already employed in the Postal Department and, therefore, there is a gross suppression of the material facts which disentitled the petitioner seeking any appointment on compassionate ground.
7. The dead wood is sought to be resurrected by the petitioners in approaching the Tribunal again renewing the similar prayer on the premise that the earlier litigation was dismissed simplicitor on the ground of limitation and, therefore, the Tribunal having conferred with the power to condone the delay, may condone it and decide the matter on its merit.
8. As indicated above, the Tribunal dismissed the application on the ground of *res judicata*. By virtue of Rule 53 of Rules of High Court at Calcutta, the provisions of the Code of Civil Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 of the Constitution of India.
9. In view of the incorporation of the aforesaid Rule which has a statutory flavor, there is no fetter on the part of the Writ Court in applying the principles of *res judicata* envisaged under Section 11 of the Code of

Civil Procedure. The *res judicata* is based on a public policy as every litigation must reach to its finality. If the issue which was directly and substantially an issue in which the earlier proceeding has been decided by the competent authority or the Court/Tribunal, such issue cannot be re-tried and/or re-opened in a subsequent proceeding and, therefore, the principle of *res judicata* can be gainfully applied in this regard.

10. However, it is sought to be contended that certain points which were available to the petitioners, could not be canvassed in an earlier round of litigation and, therefore, there is no fetter on the part of the petitioners in filing the subsequent application before the Tribunal for adjudication on merit.
11. We are unimpressed with the aforesaid submission as explanation IV of Section 11 of the Code of Civil Procedure postulates that even if a point was not taken but was available and could not have been taken in an earlier round of litigation, shall operate as a constructive *res judicata* in a subsequent proceeding. The reason behind incorporation of such explanation is laudable that every litigation cannot be re-visited and/or re-tried in a piecemeal manner so as to enable an unscrupulous litigant to continue in litigating on one score/ground after another, which would be opposed to the fundamental policy of the Country that every litigation must attain finality.
12. We do not find any infirmity and/or illegality in the order of the Tribunal in dismissing the original application on the ground of *res judicata*.
13. The writ-petition being **WPCT 60 of 2024** fails and accordingly **dismissed**.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

