

05.12.2024
(D/L-4)
Ct. No.4
(Naba)

W.P.S.T. 80 of 2024

Debabrata Biswas
Vs.
The State of West Bengal & Ors.

Mr. Subir Kr. Bhattacharyya
... for the Petitioner.

Mr. Tapan Kr. Mukherjee, Sr. Adv.,
Ms. Sangeeta Roy
... for the State.

1. Heard the learned Counsel for the petitioner and the learned Counsel for the State.
2. The petitioner moved an application before the Tribunal bearing O.A. No. 1042 of 2015 wherein he claimed promotion to the post of Senior Mechanic on the basis of a gradation list published on 01.11.2012. The applicant had withdrawn the same.
3. For the same relief based on the same gradation list, petitioner has again moved the learned West Bengal Administrative Tribunal (Tribunal). The Tribunal has thus dismissed the O.A. in the following terms :-

“...The applicant in this application prays for a direction to the respondent authorities to promote him to the post of Senior Mechanic as per the gradation list. It appears from the submissions of the learned counsels and the records that for the same cause, the applicant had filed an

application in this Tribunal being OA 1042 of 2015. However, this application was withdrawn by the applicant and which has been noted in the order dated 09.01.2018. It is the observation of this Tribunal that such an application praying for promotion on the basis of a gradation list published on 01.11.2012 is clearly barred by limitation. Though the application was filed in 2015 but the same was withdrawn by the applicant in 2018. Therefore, this application suffers from limitation for a cause dating back to 2012.

Accordingly, this application is disposed of without passing any order.”

4. The learned Counsel for the petitioner relies on a decision of the Hon’ble Apex Court in the case of ***Daryao & Ors. Vs. State of U.P. & Ors.*** reported in ***AIR 1961 Supreme Court 1457***. He has referred to paragraph 19 of the report which reads:

“We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is

dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art. 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art. 32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us.”

5. The issue before the Apex Court in the case of ***Daryao (Supra)*** was the maintainability of writ petition under Article 32 of the Constitution of India, before the Supreme Court when the petitioners had already moved the High Court for similar relief under Article 226 of the Constitution of India and the High Court has rejected the said petitions. It was under such circumstance that the Apex Court was considering whether a bar of *res judicata* can be pleaded against a petition filed in the Apex Court under Article 32. In the present case, we are concerned with maintainability of a second O.A. filed before an administrative tribunal constituted under Administrative Tribunals Act after an earlier O.A. filed by the same party was withdrawn on the ground of the same being barred by the delay in latches. The issue before the Apex Court in the case of ***Daryao (Supra)*** was in relation to exercise of jurisdiction by the Apex Court under Article 32 as well as whether such relief would be barred by *res judicata* in the facts and circumstances of that case.
6. In the present case we are concerned with the jurisdiction of a different forum under a different Act namely the Administrative Tribunals Act. The issue of *res judicata* is also not raised. The issue

arising for consideration is that once the applicant had withdrawn the original application earlier filed before the Tribunal on the ground of delay and laches, in a subsequent and much later proceedings for the self-same cause of action in the same forum, the plea of delay and laches would continue to stare in the face of the applicant, or not. The petitioner, therefore, cannot derive any sustenance from the decision of the Apex court of in the case of ***Daryao (Supra)***.

7. The order of the Tribunal dated 19.02.2024 thus does not require any interference in exercise of the jurisdiction under Article 226 of the Constitution of India.
8. The Writ Petition is dismissed.
9. There shall be no order as to costs.
10. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)