

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.10786 of 2024

SMT. SOMA PAUL ROY

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner :Mr. Uday Sankar Chattopadhyay, Adv.,
Mr. Atanu Mondal, Adv.,
Ms. Trisha Rakshit, Adv.,
Ms. Anindita Bhattacharya, Adv.

For respondent nos.2, 3 & 4 :Mr. P. K. Roy, Adv.,
Mr. Joydip Roy, Adv.,
Mr. Biplab Das, Adv.

For respondent nos.5 & 7 :Mr. Soumyadeep Biswas, Adv.

Hearing concluded on :13.12.2024

Judgment on :18.12.2024

Kausik Chanda, J.:-

By filing this writ petition, the petitioner seeks compassionate appointment on death of her husband, who was employed under respondent nos.5, 6 and 7 as a Group-D staff. It is an admitted fact that the petitioner has already been appointed by the respondents on compassionate ground as a Group-D staff on contractual basis, not as a permanent employee.

2. It appears that on the self-same ground the writ petitioner filed another writ petition, W.P.A. No.14055 of 2021, before this Court which was dismissed as withdrawn on February 3, 2022. The order passed in WPA 14055 of 2021 is quoted below:

“It has been submitted by the learned advocate for the petitioner that the petitioner does not want to proceed with the matter. The written instruction is taken on record.

Hence, the writ petition is dismissed as not pressed.

Interim orders, if any, are vacated.”

3. To maintain this present writ petition on the self-same cause of action, Mr. Uday Shankar Chattopadhyay, learned advocate appearing for the petitioner, has placed reliance upon paragraph no.26 of a judgment reported at **AIR 1961 SC 1457 (*Daryao v. State of U.P.*)**. The said paragraph is quoted below:

“26. 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 Article 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 Article 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 Article 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 Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 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 a 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

Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 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.”

4. Further reliance has been placed upon the judgment reported at **(2008) 1 SCC 494 (*Sarva Shramik Sanghatana (KV), Mumbai v. State of Maharashtra*)**.

5. On the other hand, Mr. Soumyadeep Biswas, learned advocate appearing for respondent nos.5 and 7, has placed reliance upon the judgment reported at **(1987) 1 SCC 5 (*Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior*)**, to question the maintainability of this writ petition.

6. The case reported at **AIR 1961 SC 1457 (*Daryao v. State of U.P.*)**, *inter alia*, dealt with a case where a petition filed under Article 226 of the Constitution of India was dismissed as withdrawn, and the Supreme Court held that a subsequent petition under Article 32 of the Constitution of India on the self-same cause of action is maintainable since no decision was rendered on merit by the High Court.

7. However, it appears that a subsequent judgment of the Supreme Court in ***Sarguja Transport Service*** case held that a second writ petition

before the High Court under Article 226 of the Constitution of India is not maintainable when the first writ petition with a same cause of action has been withdrawn without any leave to file afresh. The relevant segment of the said judgment is quoted below:

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao case* [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not

be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

8. The same view has been reiterated in the judgment reported at **(1995) 6 Scale 622 (Basant Kumar Wangkhem, Etc v. The Speaker, Manipur Legislative Assembly)**.

9. The judgment in **Sarva Shramik Sanghatana** case also does not render any assistance to the petitioner. The said judgment was delivered in the context of Industrial Disputes Act, 1947, holding that an application under Section 25-O(1) of the Industrial Disputes Act, 1947, is not a civil suit and therefore, Order 23 Rule 1(4) of the Code of Civil Procedure, 1908, is not applicable in such a proceeding.

10. Mr. Uday Shankar Chattopadhyay, learned advocate, however, sought to distinguish the judgment passed in **Sarguja Transport Service** case, drawing attention of this Court to paragraph no.9 of the said judgment, where it has been held that the second writ petition will not be barred where the personal liberty or life of a citizen is involved.

11. I am constrained to reject the argument. The right to a compassionate appointment flows from the applicable statutes/ /regulations/notifications. Such right is not relatable to right to liberty or life as guaranteed by the Constitution of India.

12. In that view of the matter, it should be held that this present writ petition is not maintainable and accordingly, W.P.A. No.10786 of 2024 is dismissed.

13. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)