

16.08.2024
sayandeep
Sl. No. 18
Ct. No. 08

FMA 740 of 2024
With
CAN 1 of 2024

Uma Rani Maiti
Vs.
The State of West Bengal & ors.

Mr. J. K. Bhattacharya
Mr. Aswini kr. Bera
Mr. Arijit Bera
... for the appellant

Mr. Subhrangsu Panda
Ms. Mithu Singha Mahapatra
..... for the respondent no. 2

Mr. Kamal Mishra
Mr. Pratup Sanfui
....for the respondent Nos. 5

A stale claim is sought to be resuscitated taking judicial route re-agitating the same issues. The issue pertains to the tendering of a resignation from the post of the Assistant Professor in the University which according to the appellant, she was forced to tender resignation under mental pressure, stress and the extraneous force used upon her. It further appears that she also lodged a complaint with the police authorities. A writ petition being WPA No. 15243 of 2023 was filed by the appellant narrating the self-same facts seeking relief to get away with the resignation letter. The said writ petition was dismissed having found no substance in the abovementioned allegations.

It was categorically observed by the Single Bench in an earlier writ petition that after tendering of the resignation, the appellant has also prayed for release of her arrears remuneration. While dismissing the writ petition on merit, the Court observed that if the petitioner has approached to the authorities for setting the criminal law in motion, the authorities shall make

an investigation in this regard. There appears to be incongruity in the stand of the appellant. Firstly, it is submitted that despite the direction passed by the Court to investigate the issues on the complaint so lodged having not investigated, the authorities have acted contrary to the said order. Secondly, the resignation letter was procured by putting a mental pressure and under duress or stress which the authority should take a conscious decision thereupon. Thirdly, the justice is paramount and, therefore, the Court should have taken a pragmatic approach in this regard.

We are not impressed with the aforesaid stand taken before us for the simple reason that though the primary duty of the Court is to impart justice but the justice has to be done in accordance with law and not *de hors* the law. The moment the equity and the law is pitted against each other, the law shall prevail as the equity is to be done in conformity with the law and not contrary to it. The justice cannot be used in isolated term inculcating a sense in the mind of the litigant that whatever is perceived to be right in his/her decision the Court has to accept and that is how the justice can be imparted. Such misconception in the mind of the litigant is to be eradicated by percolating that the justice cannot be used as one way traffic but has to be imparted strictly within the four corners of law and not beyond it. Once the Statute is enacted by the framers thereof, it has to be applied uniformly ruling out any impression of discrimination. The principle of *res judicata* is based on a public policy. The fundamental public policy adopted by the Court even under the common law as well as the constitution that every litigation should reach to its finality and shall not be permitted to be reopened. The moment, the issues raised in an earlier writ petition has been decided finally, such issue cannot be reopened by taking a

circuitous route by making an additional prayer to give different colour.

The explanation 4 to Section 11 which brings the concept of constructive *res judicata* has its equal application in this regard. It postulates that the issue or the matter which ought to have been an issue and matter in the form of an attack or defence in an earlier proceeding having not taken shall be deemed to have been taken and finally decided in the said proceeding and, therefore, cannot be re-opened in the subsequent proceedings.

The contention of the appellant that the investigation has not been ensued despite order of the Court, is the fresh cause of action, does not appear to hold water for the simple reason that in the event, the administration has failed to discharge their duties and obligation under the Statute, it does not come within the determination of the education matter going under Group-II. The inaction on the part of the police authorities are brought under the different category. The Chief Justice is the master of roaster. The moment, the roaster is created by the Chief Justice upon a particular Judge to take up specified class of the matters, the Judge cannot be take up any matter which is beyond such class.

From whatever angle we look, it does not find any substance in the instant appeal warranting interference with the order of the Trial Court.

Accordingly, the appeal is dismissed without any order as to costs.

The application being CAN 1 of 2024 is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)