

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8431 of 2016

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Sudhir Kumar Das So late Surya Narayan Lal Das Permanent resident of Village and P.O. Mirdaul, PS Narpatganj District Araria.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Chief Managing Director, Patna.
2. The Director Administration , Bihar State Power-Holding Company Ltd , Patna.
3. The General Manager HR Bihar State Power Holding Company , Patna.
4. The Dy. General Manager HR Bihar State Power Holding Company, Patna.
5. The Under Secretary, Bihar State Power Holding Company, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amarendra Narayan
For the Respondent/s	:	Mr. Vivek Prasad, Advocate
		Mr. Pratiyush Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 01-07-2025

Heard learned counsel for the petitioner and learned counsel for the Bihar State Power Holding Company Limited.

2. Learned counsel for the petitioner submits that the present writ petition has been filed for quashing letter No. 242 dated 09.03.2016 communicating rejection of petitioner's representation and refusing to grant him pay and other allowances for the post of Director (I.T) for the period 24.04.2001 to 30.09.2009, on the ground that the petitioner was selected and appointed on the post of Director (I.T) with effect



from 24.04.2001 and by the said letter dated 09.03.2016, the respondents have refused to extent him any benefit of pay and allowances for the post of Director (I.T) prior to the date of his confirmation.

3. Counsel further submits that the petitioner joined service of Bihar State Electricity Board (now Bihar State Power Holding Company Ltd,) as Assistant Electrical Engineer pursuant to his appointment vide Board's letter contained in Notification No. 416 dated 01.10.1984. He further submits that upon completion of eight years of regular and continuous service, he was given pay scale of Electrical Executive Engineer with effect from 01.01.1993 and since the post of Electrical Executive Engineer was not vacant, he was designated as Senior Engineer with effect from 01.01.1993 and after completion of 14 years of regular and continuous service, he was given the pay scale of Selection Grade Electrical Executive Engineer and designated as Senior Engineer (Special Grade). He further submits that the petitioner could not get regular promotion to the post of Executive Engineer w.e.f. 01.10.2002.

4. Counsel further submits that the Bihar State Electricity Board brought in existence Department of Information Technology vide notification No. 196 dated



26.07.2000 and post of Director (I.T) was created to act as head of the department of I.T and manage it independently. He further submits that after creation of separate department and post of Director (I.T) and other posts for the newly constituted department for its smooth functioning, the Board issued advertisement vide notice published in Newspaper inviting applications from eligible candidates to apply for selection & appointment to the post of (Director) I.T. The petitioner having the required eligibility and criteria for the post of Director (I.T) and after rigorous selection process, found suitable and vide Notification No. 135 dated 24.04.2001 he was appointed to the post of Director I.T with a condition of keeping on probation period for six months. Counsel further submits that the petitioner had joined on a sanctioned and vacant post of Director (I.T) but he was kept in his own pay scale. At the time of his selection, he was in the pay scale of Electrical Executive Engineer. In addition to that he was paid Rs. 400/- as special pay prior to assuming charge of post of Director (I.T). Counsel further submits that after completion of training, the petitioner joined and he has immediately filed a writ petition bearing CWJC No. 8207 of 2004 for regularization as Director (I.T) which was disposed of vide order dated 14.11.2005, directing



the Board to issue such notification and his case to be considered for confirmation on the post of Director in terms of notification dated 24th April 2001 as soon as the petitioner will complete seven years in the pay scale of Electrical Executive Engineer. The petitioner being aggrieved and dissatisfied with the said order moved in Civil Review No. 258 of 2005, which was disposed of by the order dated 13.05.2009 with observation that the Court had already observed that the date of grant of the pay scale of Executive Engineer to the petitioner shall be relevant for consideration. Counsel further submits that after completion of seven years, he was granted benefit of Director (I.T.) with effect from 01.10.2009 but the department has not provided him benefit since 24.04.2001 to 01.10.2009, for which he is legally entitled. The petitioner moved before this Court in CWJC No. 2856 of 2011 challenging the legality of the order of confirmation with effect from 01.10.2009, but he lost. Then, he moved in L.P.A and also in S.L.P. but he could not be granted any relief and thereafter, the petitioner has moved before this Court in the present writ petition against the rejection of petitioner's representation refusing to grant him pay and other allowances for the post of Director (I.T) for the period of 24.04.2001 to 30.09.2009. Counsel further submits that in the



light of the Rule 103 of the Bihar Service Code which is applicable in case of the petitioner, the petitioner is entitled for the said benefits, as the cause of action has accrued to him from the date when his service was confirmed on the post of Director (I.T), and therefore, he submits that the earlier decision made by this Court shall not create bar for the petitioner. He further submits that the law laid down under Section 103 of the Bihar Service Code is very much clear according to which the refusal of petitioner's representation is completely in violation of law.

5. Learned counsel for the State, on the other hand, submits that it is the third round of litigation for the petitioner. In the first round, the petitioner has moved before this Hon'ble Court in CWJC No. 8207 of 2004 which was disposed off with specific direction that the right of the petitioner to be considered for confirmation in the post of Director, Information Technology will occur in favour of the petitioner in terms of the notification dated 24th April, 2001 and as soon as the petitioner will complete seven years in the pay scale of Electrical Executive Engineer and then only he shall be entitled for the relief.

6. Counsel submits that being aggrieved and dissatisfied with the said order passed in CWJC NO. 8207 of 2004, the petitioner had preferred Civil Review No. 258 of 2005



in which vide order dated 13.05.2009, this Hon'ble Court pleased to observe that the review application is misconceived and accordingly stands disposed off.

7. Counsel further submits that in the second round of litigation, the petitioner has filed the writ petition bearing CWJC No. 2856 of 2011 before this Hon'ble Court, which was dismissed on 14.02.2011 on the ground that it is not open to challenge by the petitioner by again raising the same ground which has been raised in the earlier writ application. Thereafter, the petitioner moved before this Hon'ble Court in L.P.A. No. 678 of 2011 in CWJC No. 2856 of 2011. Counsel further submits that the Hon'ble Division Bench of this Court has pleased to acknowledge both orders, i.e., order passed in CWJC No. 8207 of 2004 as well as the order passed in CWJC No. 2856 of 2011, and pleased to hold that in their view the judgment negates the claim of the appellant that he should have been confirmed in the post in question with effect from 24.04.2001.

8. Counsel further submits that since the petitioner is demanding all benefits, i.e., pay and other allowances, it is not permissible in light of the L.P.A. order. Counsel further submits that in the present writ petition, the same relief has been demanded by him. The petitioner is demanding all pay and other



allowances with effect from the date of his joining meaning thereby that he is treated to be confirmed in the post in question with effect from 24.04.2001. Counsel further submits that due to the finding of the L.P.A. Court, the representation of the petitioner has been decided completely in accordance with law, there is no need of any interference. He also submits that the doctrine of res judicata is completely applicable in the petitioner's case, therefore, no relief should be granted to the petitioner.

9. Upon hearing the parties and perusing the documents on record, it transpires to this Court that the petitioner has previously approached this Court on two occasions. On the first occasion, he filed a writ petition, being CWJC No. 8207 of 2004, which was decided on 14.11.2005. Thereafter, he filed a review petition, bearing Civil Review No. 258 of 2005, arising out of CWJC No. 8207 of 2004, which was decided on 13.05.2009. The Review Court found the review application to be misconceived.

10. Subsequently, the petitioner again approached this Court by filing CWJC No. 2856 of 2011. Upon its dismissal, he preferred L.P.A. No. 678 of 2011, which was decided on 04.08.2011. In the said judgment, the Hon'ble Division Bench



categorically held as under:-

“Writ Court has considered and relied upon a judgment of another learned single Judge in the earlier round of litigation. That judgment dated 14.11.2005 passed in CWJC No.8207 of 2004 has been extracted by the Writ Court and in our considered view, that judgment negates the claim of the appellant that he should have been confirmed in the post in question with effect from 24.4.2001.”

11. A bare reading of the order passed in the L.P.A. reveals that the Hon’ble Division Bench categorically held that the judgment negates the claim of the appellant that he should have been confirmed in the post in question with effect from 24.04.2001. Further, from the pleadings of the petitioner, it is evident that he not only filed the L.P.A. but also challenged the judgment of the Hon’ble Division Bench by filing a Special Leave Petition (S.L.P.) before the Hon’ble Supreme Court, which was also dismissed.

12. Thereafter, the petitioner again approached this Court by filing the present writ petition, challenging the rejection of his representation wherein he had sought the grant of pay and other allowances by treating him as Director (I.T.)



with effect from 24.04.2001. It transpires to this Court that such pay and allowances could have been granted only if the petitioner had been confirmed on the said post from the aforementioned date. However, this very claim had already been considered and rejected by this Court, the decision which was subsequently affirmed by the Hon'ble Division Bench in L.P.A. and, thereafter, by the Hon'ble Supreme Court upon dismissal of the Special Leave Petition.

13. In view of the above, this Court is of the considered opinion that the petitioner is seeking the same relief which has already been adjudicated and rejected. The principle of res judicata squarely applies in the writ matters. The applicability of the doctrine of res judicata to writ proceedings has been upheld in *Association for Democratic Reforms v. Election Commission of India and Another*, reported in (2025) 2 SCC 732, wherein it has been categorically held in paragraphs 107 to 111 as under:—

“107. It is pertinent to reiterate that the doctrine of res judicata is applicable to writ petitions under Article 32 and Article 226 as well. The inclusion of the term “public right” in Explanation VI of Section 11 of the Civil Procedure Code, 1908 aims to avoid redundant legal disputes concerning public rights. Given this clarification,



there is no room for debate regarding the application of Section 11 to matters of public interest litigation presented through writ petitions.

108. In Daryao v. State of U.P. [Daryao v. State of U.P., 1961 SCC OnLine SC 21 : (1962) 1 SCR 574] , a Constitution Bench of this Court emphasised that the rule of res judicata is founded on significant public policy considerations rather than being a mere technicality. It was clarified that petitioners seeking to challenge a decision must present new grounds distinct from those previously raised in order to escape the bar of res judicata. The Bench articulated this as follows:

“31. ... We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same.”

109. Another Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] followed the aforesaid dictum to hold that the principles of res judicata are not foreign to



writ petitions. A reference may be made to the following paragraph :

“35. ... It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. [Daryao v. State of U.P., 1961 SCC OnLine SC 21 : (1962) 1 SCR 574] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the



general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea”

110. No doubt, res judicata bars parties from re-litigating issues that have been conclusively settled. It is true that this principle is not rigid in cases of substantial public interest and constitutional courts are empowered to adopt a flexible approach in such cases, acknowledging their far-reaching public interest ramifications.

111. However, this standard is applicable only when substantial evidence is presented to validate the irreversible harm or detriment to the public good resulting from the action impugned. The Court must come to the conclusion that the petition is not just an old wine in a new bottle, but rather raises substantial grounds not previously addressed in litigation. Only under these circumstances may it consider such a petition;



otherwise, it is within its authority to dismiss it at the threshold.”

14. By the aforesaid paragraphs, it is unequivocally clear that the doctrine of res judicata is applicable to writ proceedings as well. In the present case, the matter has already been adjudicated, yet the petitioner has again approached this Court on the same issue. Therefore, in light of the reasons stated above, this Court is not inclined to entertain the present petition.

15. Accordingly, the writ petition is dismissed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	05.07.2025
Transmission Date	NA

