

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16233 of 2013

Chandan Kumar S/O Sri Lalan Prasad Singh Resident Of Mohalla - Chandi,
P.S. P.O. Barh, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of General Administration, Govt. Of Bihar, Patna
3. The Principal Secretary, Department of Art, Culture And Youth, Govt. Of Bihar, Patna
4. The Director General, Bihar State Sports, Art And Culture, New Secretariat, Bailey Road, Patna
5. The Selection Committee Through The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
6. Shakti Kumar S/O Shambhu Saran Singh R/O Near New B.S.N.L. Office, Shakti Nagar, P.O. Sanda, P.S. Muffasil Chapra, Saran, Pin - 841301
7. Mukesh Kumar Singh S/O Shiva Dhar Singh C/O Hari Narayan Jha, Vill - Dahrak, P.O. - Ramgarh, District - Kaimur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajiv Kumar Singh, Advocate Mr. Mukesh Kumar Singh, Advocate
For the Respondent/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 23-12-2025

Heard Mr. Rajiv Kumar Singh, learned counsel for the petitioner, Mr. Gyan Prakash Ojha, learned GA-7 for the State of Bihar and Mrs. Nivedita Nirvikar, learned Senior counsel appearing for the respondent nos. 6 and 7.

2. The petitioner has filed the instant application for a direction to the respondents to appoint the petitioner on Group-C post with all consequential benefits against advertisement dated 2.4.2011 published by the General



Administration Department, Government of Bihar.

3. The case of the petitioner in brief is that the respondents having come out with an advertisement in the daily newspaper namely '*Prabhat Khabar*' on 2.4.2011 for appointment of outstanding sports persons of the State of Bihar on Group C and D posts, the petitioner having represented the State in Athletics at the national level, applied against this advertisement. In the provisional merit list published, the name of the petitioner figured at serial no.9.

4. The objection filed by the petitioner for placing him at serial no.3 was not considered by the respondents and they did not take into consideration the certificates showing the petitioner to have participated in various athletics meet. The petitioner, on being called participated in the counselling on 30.1.2012.

5. Non consideration of the petitioner's certificate lead to the petitioner filing CWJC no.3159 of 2012, which was dismissed by order dated 14.5.2012.

6. It is submitted by learned counsel appearing for the petitioner that as a result of non-participation of one of the applicants who had been placed at serial no.1 in the final merit list, one post remained vacant which lead to the petitioner



filing CWJC no.4530 of 2013. The said writ application was dismissed as not pressed by order dated 18.3.2013. Learned counsel submits that the respondent no.6 having been appointed on the basis of certificates of 2005 and 2006 which were forged and fabricated and respondent no.7 having been appointed on the basis of the certificates issued of having represented the State of Maharashtra in athletics, it is submitted that the action of the respondents in not selecting the petitioner is arbitrary and discriminatory. As such the instant writ application has been filed praying for the reliefs as stated herein above.

7. The application is opposed by learned counsel for the State of Bihar as also learned Senior counsel appearing for the respondent nos. 6 and 7. It is submitted by learned Senior counsel appearing for the respondent nos. 6 and 7 that the petitioner having moved this Court for the same/similar relief in CWJC no.3159 of 2012 and CWJC no.4530 of 2013 and both the applications having been dismissed, this case is fit to be dismissed on the principles of *res-judicata* as also *constructive res-judicata*.

8. Heard learned counsel for the parties and perused the material on record.



9. The grievance of the petitioner arises as a result of his non-selection on Group-C post pursuant to his application filed against advertisement dated 2.4.2011 of the General Administration Department, Government of Bihar.

10. The petitioner not having been selected moved this Court in **CWJC no.3159 of 2012** which was dismissed by **order dated 14.5.2012** (Annexure-11). The relevant part of the order is reproduced herein below for ready reference :-

“The appointments are made under the regulations framed in 2009. The eligibility Clause (ii) (b) provides for recognition of participation in National Senior/Junior Championship representing the State. The junior Championship therefore encompasses participation from under 20 to under 14. If the respondents as a matter of policy have decided not to grant the benefit to persons who participated in the events meant for the category of under 14 years, the Court shall not be in possession of the jurisdiction under Article 226 in the garb of judicial review to substitute its own views with regard to the policy and criteria for selection. If the respondents have made a distinction in National Junior Athletics Championship qualification on basis of age to grant the benefit or not to grant the benefit it would not be appropriate exercise of jurisdiction for the Court to sit in judgement over it as an appellate court. These would essentially be policy matters. The Court is not persuaded to accept the submission that the committee decision dated 3.4.2012 was individualised to defeat the claim of the petitioner. It deals with the conditions for appointment of several others in various different sports and is not confined to the



petitioner alone. It has been taken in normal course of business and in a routine manner. The petitioner has already been provided the benefit of his participation at 19th National Inter Zonal Junior Athletics Championship. Indisputably his participation in the 18th National Junior Athletics Championship 2003, was in the under 14 years category. Only five persons could be appointed in the sports category. Unfortunately, he stood at serial 6.

The writ application is dismissed.”

11. It appears that the dismissal of the petitioner's writ petition on merits by order dated 14.5.2012 was not appealed against, however the petitioner once again moved this Court in **CWJC no.4530 of 2013**. This writ application was also dismissed by **order dated 18.3.2013**. The order reads as follows :-

“Learned counsel for the petitioner submits that he has got no instruction in the matter to press this application.

This application is, accordingly, dismissed as not pressed.”

12. It is for the third time that the petitioner is once again moving the writ application for the same relief ie on the petitioner's non-selection against advertisement dated 2.4.2011.

13. The petitioner has not been able to demonstrate that the grounds being raised herein were not available to the petitioner at the time of hearing of the earlier applications.



The first writ petition filed by the petitioner having been decided on merits, even by the recital of the petitioner in the present writ application, in the opinion of the Court, he has not been able to overcome the reasons given in the order dated 14.5.2012 for dismissal of CWJC no.3159 of 2012.

14. To ensure finality of litigation, the petitioner cannot be permitted to file repeated writ petitions for the same relief. Reference may be made to the judgments of the Hon'ble Supreme Court in the cases of **Forward Construction Co. & Ors. vs. Prabhat Mandal (Regd.) Andheri & Ors.; (1986) 1 SCC 100** and **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors.; (1990) 2 SCC 715**.

15. In the case of **Forward Construction Co.** (*supra*), the Hon'ble Supreme Court held as follows :-

“20. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of



controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.”

16. In the case of **Direct Recruit Class II Engineering Officers’ Association** (*supra*), the Hon’ble Supreme Court held as follows :-

“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. [(1962) 1 SCR 574 : AIR 1961 SC 1457] 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 as was observed at SCR p. 595 of the reported judgment, thus : (SCR p. 595)

“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.”

The decision in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri [(1986) 1 SCC 100 : 1985 Supp 3 SCR 766] , further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter



determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.”

17. In view of the facts and circumstances stated herein above and especially the earlier case of the petitioner vide CWJC no.3159 of 2012 having been dismissed on merits by order dated 14.5.2012, the Court finds no merit in the instant application and the same is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	NAFR
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