

Form No. J(2)

District: South 24 Parganas**IN THE HIGH COURT AT CALCUTTA****Civil Appellate Jurisdiction****Appellate Side****Present :****The Hon'ble Justice Ananya Bandyopadhyay****WPA 4192 of 2025****RUDRAJIT RAYCHAUDHURI
VS
UNION OF INDIA AND ORS.**

Mr. Shamik Chatterjee
Mr. Aditya Bikram Mahata
Mr. Sahil Kabir
Ms. Jayita Das

... for the petitioner

Ms. Madhurima Basu

... for the Union of India

Mr. D. N. Ray, Sr. Adv.
Mr. Bhaskar Mukherjee
Mr. D. Dutta

... for the respondents

Heard on & Judgment on : 24.09.2025

Ananya Bandyopadhyay J.

1. The petitioner had been an employee of Indian Institute of Management, Calcutta being the respondent No.3 having been inducted in service on 15.10.1998. Subsequently, the petitioner had been granted voluntary retirement from the service on medical grounds prior to completion of 20 years of service. The voluntary retirement on medical grounds was endorsed by the respondent no.3

authorities considering his serious ailment. Initially the retirement benefit and pension were granted by the respondent no.3 authorities which had been subsequently discontinued prompting the petitioner to file a writ petition being WPA 20662 of 2018 whereby the Co-ordinate Bench of this court distinguished between voluntary retirement and voluntary retirement of service on medical ground assessing viability and implication of Rule 50(h) of the Service Rule relied upon and followed by the respondent no.3 authority.

2. The order of the respondent no.3 dated 23.10.2017 had been set aside by the Co-ordinate Bench deciding WPA 20662 of 2018 in favour of the petitioner directing the respondent no.3 to release the arrear amount of pension which was outstanding with immediate effect. The respondent no.3 preferred an appeal against the aforesaid writ petition which was thereafter withdrawn by the respondent no.3 authorities. Subsequently, the arrears of pension had been disbursed in favour of the petitioner.

3. The petitioner had filed a contempt application being CPAN No.161 of 2024 Vide an order dated 31.01.2024 passed by the Co-ordinate Bench of this court notice was directed to be served upon the respondent authorities, however, subsequent to the same the respondent authorities had paid a sum of Rs.42,33,043/- in the month of January, 2025 in favour of the petitioner.

4. The petitioner has filed the instant writ petition claiming interest @ 24% on the arrear of pension due to the petitioner from

the date of discontinuation of the pension till the date of its actual payment.

5. Learned Advocate representing the petitioner submitted the pension to have been discontinued by the respondent no.3 authority without valid reason had been unfair, arbitrary and contrary to principles of natural justice and relied upon the following decisions

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- i) D.D Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd., (2014) 8 SCC 894, paragraphs 3
- ii) Union of India v. Tarsem Singh(2008) 8 SCC 648, paragraphs 7 & 8
- iii) State of Kerala v. M Padmanabhan Nair, (1985) 1 SCC 42 paragraphs 1 to 5
- iv) S. K. Dua v. State of Haryana, (2008) 3 SCC 44, paragraph nos.5,6,9, 13, 14
- v) Ramesh Chandra Sharma v. Punjab National Bank (2007) 9 SCC 15, paragraph
- vi) Union of India v. K. Balakrishna Nambiar, AIR 1998 SC 3222, paragraphs no.9 to 13
- vii) Atul Chandra Mahta vs. State of West Bengal & Ors. 2005(3) LLN 250, paragraphs 7
- viii) R. Kapur vs. Director of Inspector(Painting and Publication) Income Tax and Anr. (1994) 6 SCC 589 paragraphs 5,6,8,10 and 11
- ix) State of Uttar Pradesh and Ors. Vs. Dharendra Pal Singh, (2017) 1 SCC 49, paragraph 6, 7, 9
- x) Y.I Singla vs. Punjab National Bank and others (2013) 3 SCC 472, paragraphs 8, 9, 12, 13, 25, 26
- xi) H. Gangahanuma Gowda vs. Karnataka Agro Industries Corporation Ltd. (2003)3 SCC 40, paragraphs 7 to 10.
- xii) Gorakhpur University and Others vs. Dr. Shitta Prasad Nagendra and Ors.(2001) 6 SCC 591, paragraph 2, 5, 6
- xiii) Dr. Uma Agarwal vs. State of U.P and Anr(1999) 3 SCC 438, paragraph 2 to 17
- xiv) M/s. Eastern Coalfields Limited vs. Smt. Purnima Singh & Ors. Para 26, 27, 28, 29, 30.

6. It was further submitted the respondent authorities declined to demand a refund of Rs.13.61 lacs from the petitioner as per the notice dated 01.01.2024.

7. The Learned Advocate representing the petitioner has relied on the following decisions as mentioned above claiming interest on the delayed payment of pension which had been irrationally and arbitrarily discontinued by the respondent authorities to the financial constraints and predicament of the petitioner.

8. The Learned Advocate representing the respondent authorities submitted the Co-ordinate Bench of this court vide order dated 13th December, 2023 in WPA 20662 of 2018 had directed the respondent authority to disburse the arrears of pension amount without granting any order of interest to be paid on the arrears of pension as discontinued by the respondent authorities from the date of such discontinuation. The aforesaid order having been complied with to constitute *res judicata* since the Coordinate Bench discarded the prayer for granting interest upon the arrears of pension though the petitioner had prayed for the same.

9. The Learned Advocate representing the respondent authorities relied upon the following decisions:

a) In ***Raghavendra Rao and Ors., V. State of Karnataka and Ors.***¹, the Hon'ble Supreme Court held as follows:-

"... 13. As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier

judgment having attained finality. It is now a well-settled principle of law that the principle of res judicata applies also to the writ proceedings.”

b) In **Shri Indernath V. The Andaman and Nicobar Administration and Ors.**², the Hon’ble Supreme Court held as follows:-

“... (38) The decision in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri ((1986) 1 SCC 100: AIR 1986 SC 391), 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 decoded as incidental to of 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 S. II 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.”

In Molina Ghosh (Supra) the Divisional Bench of this High Court has applied the principles of constructive res judicate in the writ proceedings. In paragraph 25 of the said judgement, it was held: “if constructive res judicata were not applied to such proceedings, a party could file as many writ petitions as he liked and take one or two points every time. That clearly was opposed to considerations of public policy on which res judicata was based and would mean harassment and hardship to the opponent.”

¹ (2009) 4 SCC 635

² 2014 SCC OnLine Cal 7422

The said judgement has been followed in Lalit Kumar Marodia v. Union of India (UOI) reported in (2005) 123 CC 716.

In Forward Construction Company (supra) The Hon'ble Supreme Court has applied the principle of res judicata in the writ proceedings, while dealing with the case in connection with municipal matter paragraph 20 of apex court observed as follows: "so far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgement would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 of the Civil Procedure Code provides that any matter, which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. 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 is the matter has 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."

In M. Nagabhusana (supra) it was held that principles of constructive res judicata are applicable to Writ proceedings. Moreover Rule 53 of the writ rules framed by this court clearly states that provision of code with regard to suits shall be followed

as far as it can be made applicable to proceedings under Article 226 of the Constitution of India.

The petitioner on earlier occasion had the opportunity to challenge the aforesaid clause of the guidelines. The petitioner did not challenge the said guidelines. On the contrary, the petitioner accepted the said guidelines. The learned Single Judge has passed an order on the basis of the said guidelines. The petitioner, thereafter, cannot turn around and agitate the points which was open for him to raise in the earlier proceeding and having not done so the instant writ application is barred by principles of res judicata. Even otherwise the petitioner having accepted the order of the learned Single Judge is estopped from questioning the said guidelines and the instant writ application is barred by principles of estoppels, acquiescence and principles of analogous thereto. In view thereof, the writ petition stands dismissed.”

10. Stressing the fact that the concept of *res judicata* is applicable to writ petitions equally as much as evidently applicable to the suit. It was further submitted in terms of Section 11(5) of the Civil Procedure Code if the prayer in the writ petition is not granted it consequently construed to be a refusal of the same.

11. Learned Advocate representing the petitioner in reply to the contentions of the Learned Advocate representing the respondent authorities submitted the primary prayer in the writ petition being WPA 20662 of 2018 having been granted the corollary prayer for granting interest concurrently followed. It was further submitted that the Division Bench of this court in MAT No.356 of 2024 with IA No.: CAN 2 of 2024, inter alia, in paragraph 2 and 3 stated as follows :-

“ 2. Prayer for withdrawal of the appeal is being opposed on behalf of the private respondent on the ground that private respondent is entitled to further amount than paid by the appellants.

3. Disputes with regard to the payment may be agitated before the appropriate forum.”

12. Since the Division Bench of this Court had granted the liberty in favour of the petitioner to agitate dispute with regard to payment before the appropriate form, the petitioner had filed the instant writ petition claiming for interest to be paid upon arrears of pension already disbursed in favour of the petitioner by the respondent no.3 authorities.

13. The petitioner had prayed for following relief in the writ petition being WPA 20662 of 2018

e) Issue a writ of an/or in the nature of Mandamus by directing the Respondent Indian Institute of Management Calcutta to re fix the pension of the petitioner in terms of Rule 49(2) of the Central Civil Services (Pension) Rules, 1972 and further direct them to release full pension along with arrear pension and accrued interest thereunder.

f) Issue writ of and/or in the nature of declaration by declaring that the petitioner is entitled to pension and other retiral benefits after having been allowed to voluntarily retire from service with those conditions”.

14. The petitioner had claimed for payment of interest on the arrears of pension which was not granted by the Co-ordinate Bench in writ petition being WPA 20662 of 2018.

15. Since, the interest claimed by the petitioner had not been granted by the Co-ordinate Bench apart from disbursing the arrear of pension the same had obtained finality in view of Section 11.

16. Once the issue had been conclusively determined the same could not have been re-agitated by filing a separate writ petition. A

subsequent writ petition filed by the petitioner claiming interest on the arrears of payment which had been a prayer in the earlier writ petition not been granted in favour of the petitioner debarred the petitioner from filing a fresh writ petition since the issue in question before the Co-ordinate Bench dealing with WPA 20662 of 2018 involved the grant of interest on arrears of pension which had not been directed to be granted in favour of the petitioner by the respondent authority. Such adjudication on the part of the Co-ordinate Bench in deciding WPA 20662 of 2018 had been conclusively determined and achieved or attained finality as far as the interest to be paid on arrears of pension is concerned against which the petitioner did not prefer any appeal. Though it cannot be denied that the petitioner is entitled to the interest to be paid on the arrears of pension. However, the same cannot be claimed by filing a new writ petition in the form of the instant writ petition, since the order of the Co-ordinate Bench as aforesaid cannot be proceeded against in another Co-ordinate Bench having obtained the status of *res judicata*. The petitioner is at liberty to approach the appropriate forum.

16. The writ petition stands disposed of.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Ananya Bandyopadhyay, J.)