

In the Central Administrative Tribunal**Calcutta Bench**

Suddhasil Dey, Son of Dulal Chandra Dey, aged about 44 years, Ex. Senior Lecturer-cum-Senior Instructor, Institute of Hotel Management Catering Technology and applied Nutrition at present residing at Flat No. A-1, Utsarga Apartment, 386, Parnasree Pally, Kolkata - 700060.

...Applicant

- Vs -

1. Union of India, service through the Secretary, Ministry of Tourism, Government of India, having office at Transport Bhawan, 1, Parliament Street, New Delhi, Pin -
2. Institute of Hotel Management, Catering Technology & Applied Nutrition, service through the Principal, having office at P-16, Taratala Road, Kolkata - 700088.
3. Board of Governors, Institute of Hotel Management Catering Technology & Applied Nutrition, service through the Principal, having office at P-16, Taratala Road, Kolkata - 700088.
4. Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition having office at P-16, Taratala Road, Kolkata - 700088.
5. Principal, Institute of Hotel Management Catering Technology & Applied Nutrition having office at P-16, Taratala Road, Kolkata - 700088.

..Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1478/2017

Date of order : 17.7.19

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

SUDDHASIL DEY
VS.
UNION OF INDIA & ORS.
(M/O TOURISM)

For the applicant
For the respondents

Mr. C. Sinha, counsel
Mr. J. Chatterjee, counsel
Mr. S. K. Bhattacharyya, counsel

Bidisha Banerjee, Judicial Member

The applicant has preferred this O.A. to seek the following
reliefs:-

- "a) To set aside and quash Impugned Order of Suspension No.ct/ad-12(12)/14/2285 dated December 26, 2014 issued by the Principal/Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition;
- (b) To set aside and quash Impugned Memorandum No.ct/ad-12(129),15/367 dated May 19, 2015 issued by the Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition(Calcutta) Society;
- (c) To set aside and quash Impugned Report of Enquiry held on 19.03.2015 conducted by internal complaint committee of sexual harassment of women in work place(Prevention, Prohibition & Redressal Act, 2013) served under Memorandum dated 19.05.2015;
- (d) To set aside and quash Impugned Order No.CT/AD-12(129)/16/212 dated May 06, 2016 issued by the Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition.

(e) To set aside and quash Impugned Letter No. CT/AD-12(129)/17/29 dated 19.09.2017 issued by Principal, Institute of Hotel Management, Catering Technology & Applied Nutrition, P-16, Taratala Road, Kolkata 700 088;

(f) To set aside and quash Impugned Office Memorandum No.F.No.38(4)/2017-HRD dated 14.09.2017;

(g) To direct the respondents to reinstate your applicant in his former post of Senior Lecturer-cum-Senior Instructor forthwith with all back wages and consequential benefits;

(h) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Brief facts leading to the application run thus :-

(A) The applicant while serving as Senior Lecturer cum Senior Instructor in the institute of Hotel Management, Catering Technology, Kolkata was placed under suspension on alleged grounds relating to sexual harassment of students of the institute. It has been alleged that six complaints of said nature were filed against him upon receipt of which he was placed under suspension in contemplation of enquiry under The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013, vide order of suspension dated 26.12.2014. The suspension order was reviewed and continued from time to time. He was directed to appear before the Internal Complaint Committee(ICC in short) which submitted its report on 26.03.2015 along with its recommendations and his order of suspension was extended on 19.05.2015. Aggrieved the applicant preferred a representation which was of no avail. He preferred a Writ Petition before Hon'ble High Court numbered 11321(w) of 2015 against suspension. During pendency of the Writ Petition he was dismissed from service vide order dated 06.05.2016 against which he preferred an appeal dated 20.06.2016. He withdrew himself from the Writ Petition. It was dismissed as not

pressed on 30.06.2016. The appeal being not disposed of for a long time he was constrained to file Original Application No.O.A.350/63/2017. The O.A. was disposed of on 17.02.2017 with a direction upon the respondents to consider and dispose of the pending appeal. Pursuant to such direction a letter dated 13.04.2017 was issued stating that the Appellate Authority in regard to the applicant was not clearly defined. However, on 15.06.2017 the applicant was informed that the Respondent No.1 was his Appellate Authority and, therefore, he was requested to file appeal afresh. He preferred such appeal dated 14.07.2017 which was rejected by the Appellate Authority on 14.09.2017 communicated to him vide communication dated 19.09.2017 as under:

"Ref. No. : CT/AD-12(129)/17/1129

Dated : September 19, 2017

Mr. Suddhasil Dey
Flat No.A1, Utsarga Apartment
386, Parnasree Pally
Kolkata-700 060

Dear Mr. Suddhasil,

This has reference to your appeal dated 14.07.2017 to the Secretary, Ministry of Tourism, Government of India, the Appellate Authority.

The Appellate Authority has conveyed its decision to the undersigned by Office Memorandum F.No.38(4)/2017-HRD, dated 14th September, 2017 that your appeal has been rejected by the Appellate Authority.

This is for your information.

Thanking you,

Sincerely yours,

(Nisheeth Srivastava)
Principal"

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(B) The applicant has assailed the entire action on the following grounds highlighting the legal lacunae in the conduct of proceedings:-

- (i) Flagrant violation of principles of natural and procedural justice;
- (ii) Enquiry conducted by Internal Complaints Committee(ICC) has been vitiated on several grounds which he highlighted as under:-

a) Despite several requests no copy of complaint against him was ever handed over;

b) No witness was examined by the Internal Complaints Committee(ICC in short) during the course of enquiry. Conclusion of ICC is, therefore, based on surmises and conjecture rather than evidences and witnesses.

(C) The Disciplinary Authority, itself vide order dated 09.02.2016 redirected the matter to ICC for further enquiry on the ground that "the report of Internal Complaint Committee is not supported by evidence on the basis of which any conclusion can be drawn." Therefore, the Board sent back the report to the ICC for further enquiry for the purpose of recording evidences of complainant and other witnesses and to submit report with the evidence so collected within 21 days. Strangely enough, without any further enquiry by the ICC, the Board of Governors in their meeting dated 26.04.2016 issued notice to dismiss the applicant from his service of the institute with immediate effect imposing major penalty(IX) which order has been passed in most unprecedented and vindictive manner.

(D) No charge memo was ever served, but only on the basis of the report of the ICC he has been dismissed;

(E) The letter dated 19.09.2017 is in complete violation of the directions of this Tribunal as contained in its order dated 17.02.2017;

(F) The order dated 19.09.2017 is a cryptic and non-reasoned one.

3. The matter was reserved for order on 03.01.2018 on which date the respondents filed their reply wherein they *inter alia* raised the issue of maintainability of the O.A. on the ground of bar of res judicata. The respondents submitted that assailing the said proceeding the applicant had approached the Hon'ble High Court at Calcutta in W.P.No.11321(W) of 2015. While the said writ petition was pending the applicant was terminated from service which he brought on record by way of a supplementary affidavit and in the writ proceedings the respondents were even permitted to file an affidavit to the same. That apart, the present applicant on 13.07.2015 even submitted before the Hon'ble High Court that there was a possibility of settlement of dispute and prayed for an adjournment. The matter got adjourned from time to time. However, on 13.06.2016 Id. counsel for the petitioner on instructions submitted that "*the petitioner is not willing to proceed with the writ petitioner.*" In such circumstances, the writ petition was dismissed as 'not pressed' without any further orders as to costs. According to the respondents, having not pressed the writ petition, this O.A. filed against the suspension as well as the termination order, is barred by the principle of res judicata and hence not maintainable.

4. At hearing Id. counsel for the respondents would further submit that on 13.07.2015 the applicant had prayed before the Board of Governors to permit him to retire voluntarily by applying VRS Scheme on the basis of his last drawn full salary from the institute, dropping of the disciplinary proceedings and undertook to withdraw the writ petition as soon as a favourable decision is taken in the matter. On 09.10.2015 he withdrew the request for voluntary retirement from service and sought for withdrawal of suspension and permission to resume his duties at the earliest. On 13.05.2016 he withdrew the entire sum of Rs.21,04,723/- as full and final settlement of GPF account and, therefore, he did not press the writ petition on being satisfied with such payment. The respondents stated that such withdrawal of writ petition should be construed to mean that he gave up his challenge or withdrew his challenge to termination and therefore, the present application on the selfsame challenge is not maintainable.

5. Vehemently opposing such contentions Id. counsel for the applicant would submit that the applicant had withdrawn the writ petition since the jurisdiction lay with this Tribunal and that any judgment without jurisdiction is a nullity in the eye of law. In support he would place the following decisions:-

(i) **Balvant N. Viswamitra and Ors. –versus- Yadav Sadashiv Mule(D) through Lrs. And Ors. reported in 2004(6) SCC 194 :-** In this case Hon'ble Supreme Court held as under:-

"9.Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

10. Before five decades, in *Kiran Singh & Ors. v. Chaman Paswan & Ors.* [(1955)1 SCR 117] this Court declared:

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up wherever and whenever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdictionstrikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

(ii) **Sushil Kumar Mehta vs- Gobind Ram Bohra(Dead) through his Lrs.** reported in 1990(1) SCC 193 :- Hon'ble Apex Court therein observed as under:

"10.....In considering that contention at Page 121, a four judge bench of this Court speaking through Venkatarama Ayyar J. held that : (SCR p121)

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceeding. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities."

Ld. counsel for the applicant would further submit that the applicant was only allowed to withdraw his own money and it was not in full and final satisfaction of all the settlement dues and, therefore, it was very unfair to contend that upon withdrawal of the said money to his satisfaction he sought to withdraw his challenge to the proceedings

itself. Ld. counsel would further submit that the charge sheet being never issued, the documents/complaints being never handed over to him as required under Rule 7 of the Act in question, the report of the ICC being not based on any evidence as admitted by the Board of Governors themselves who remitted the matter back to ICC for further enquiry, the dismissal order issued by Board of Governors without such further enquiry or recording of evidence was palpably wrong, illegal and in violation of principles of natural justice and procedural law and liable to be set aside. Ld. counsel for the applicant would further contend that if no Appellate Authority was prescribed under the rules, the authorities did not have the right to create an appellate authority for the purpose of rejection of his appeal.

6. We heard the Ld. counsel for the parties and perused the materials on record.

7. The issue that cropped up for determination at the outset was whether withdrawal of writ petition or its dismissal as "not pressed" would operate as res judicata to bar the present application.

We note as under:-

The principle of res judicata postulates that there should not be multifarious legal proceedings between the same parties on the same cause of action. The essence of the principles of *res judicata* has been succinctly laid down by a Full Bench of the Hon'ble Supreme Court in

Satyasadhan Ghosal v. Smt. Deorajin Devi, AIR 1960 SC 941 in the following words(para 7):

"Principles of res judicata are based on the need of giving finality to judicial decisions. What it says is that once res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigations. When a matter whether on a question of fact or on a question of law has been decided between two parties in one suit or proceedings and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvas the matter again. This principle of res judicata is embodied in relation to suits in section 11 of the Civil Procedure Code, but even where section 11 does not apply; the Courts have applied the principles of res judicata for achieving finality in litigation. The result of this is that the original Court as well as higher Court must in any future litigation proceed on the basis that the previous decision was correct."

Thus the principles have been held to be applicable to writ petitions also.

The doctrine of *res judicata* is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set aside on the ground that such a decision is violative of Art.14 of the Constitution. In order to operate as *res judicata* the finding must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of *res judicata*.

That the principle of *res judicata* can be applied to withdrawal of a case is no longer *res integra*. In **Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. Workmen, 1982 SCC(L&S)36** it was clearly held that

the principle is also applicable where the petitioner apprehending his case being not legally tenable withdraws his petition he is forbidden to re-agitate the matter once again before the courts. This principle of bar of further litigation is also provided in Or.23 r. 1 of the Code of Civil Procedure.

In H.P. State* Electricity Board v. K.R. Gulati, AIR 1998 SC 1445:1998 SCC(L&S)712(para8), respondent, a Stenographer was promoted to the post of Head Clerk which was not in his own line. Being aggrieved he filed a writ petition, which was allowed. Petitioner was reverted to the post of Stenographer but was promoted again as a Head Clerk. A Contempt case though filed by him was dismissed. He filed a fresh writ but ultimately withdrew. In such a situation, the Hon'ble Supreme Court held that he could not subsequently re-agitate the same cause in a fresh writ.

In Swapan Dhar v. State of West Bengal, 2008(1) SCR 658(SC) where the High Court directed that service benefits be granted from the date of presentation of the writ petition and not from the earlier date and the appellants were satisfied and did not move higher forum, they were not later permitted to raise new reliefs on the basis of observations made in the judgment.

Nevertheless, in **Lonakutty v. Thommen, AIR 1976 SC 1645**, a three Judges Bench of the Hon'ble Supreme Court held that "former suit" means a suit which has been decided earlier in time, irrespective of its date of institution. The other essential factor is that it is not

enough that the point now raised was in issue in the former suit, but it must be "directly and substantially" in issue there.

Therefore, the essential conditions of the principles are that (i) the present dispute is between the same parties as in the former suit, (ii) the subject matter of the present dispute was also the subject matter of the former suit, (iii) that the disputes in the former suit was decided upon by a competent court of law and (iv) that the decision has become final.

Needless to say that the party taking the plea of *res Judicata* must prove his case by referring to details of the present case with the facts of the previous case (*Vedagiri v. Induru*, AIR 1967 SC 781) and to challenge a proceeding on ground of *res judicata*, pleadings of previous case to be looked into for ascertaining what issues were decided. [Md. *Salie v. Md. Hanifa*, AIR 1976 SC 1569(1645)].

There cannot be any plea of *res judicata* unless there is a final decision by a competent Court on the issues, which are directly, and substantially in issue. The principle, therefore, does not apply, when a case filed earlier was withdrawn unless such withdrawal [dismissal as not pressed] can be interpreted as relinquishment of grievances.

It has been consistently held by Hon'ble Apex Court that the principle of *res judicata* cannot be invoked when a petition was earlier dismissed for latches or availability of an alternative remedy as was indicated *Pujari Bai etc. v. Madan Gopal (Dead) L.R., viz Smt. Jaiwanti*

and Others reported in AIR 1989 Supreme Court 1764. In para 23 of the decision Hon'ble Apex Court considered the question if dismissal of a case *in limine* operates as a bar of *res judicata* for further suit.

Hon'ble Court said:

"This takes us to the question of res judicata. The question is whether the suit of the appellant was barred by res judicata in view of the summary dismissal of her writ petition earlier. It is not disputed that the writ petition filed by the appellant against the Asstt. Custodian Officer was dismissed in limine. This order dated 14.4.69 was passed by the Division Bench of the Punjab & Haryana High Court. It was a one word order. The question of res judicata apparently arises when a controversy or an issue between the parties has been heard and decided. This Court in Workmen v. Cochin Port Trust (AIR 1978 SC 1283) considered this principle and observed at pages 1287-88 of AIR."

"But the technical rule of res judicata although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res judicata to such an extent so as to found it on mere guess work. To illustrate our view point, we may take an example. Suppose, a writ petition is filed in a High Court for grant of a writ of certiorari to challenge some order or decision on several grounds. If the writ petition is dismissed after contest by a speaking order obviously it will operate as res judicata in any other proceedings, such as, of suit Ar. 32 of Art. 136 directed from the same order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say only on the ground of laches or the availability of alternate remedy, then another remedy open at law either by way of suit or any other proceeding obviously will not be barred on the principle of res judicata."

Hon'ble Apex Court allowed the petition observing (para 24):

"It thus becomes clear that when a writ petition after contest is disposed of on merits by a speaking order, the question decided in that petition would operate as res judicata, but not a dismissal in limine or dismissal on the ground of laches or availability of alternative remedy. The High Court and the Courts below, therefore, were not right in throwing out the suit of the appellant on the ground of res judicata."

(emphasis added)

In *Indian Oil Corporation Ltd. v. State of Bihar*, (1986)4 SCC 146 the Hon'ble Supreme Court held that the dismissal of a special leave petition in limine by a non-speaking order does not necessarily imply

that the special leave petition has been rejected on the merits of the case. It has been further held that the effect of a non-speaking order of dismissal of a special leave petition without indicating grounds or reasons for dismissal must, by necessary implication, be taken to be that the Hon'ble Supreme Court had only decided that it was not a fit case for grant of special leave to hear the appeal. Thus, the effect of such dismissal is peripheral and not substantive.

8. In the aforesaid legal backdrop we note that as jurisdiction explicitly and admittedly lay within this Tribunal, Hon'ble High Court would not have issued directions on merit. Ld. counsel also may have exercised his right to withdraw the pending writ petition with a liberty from the Hon'ble High Court to approach the proper forum in accordance with law. Nevertheless, in absence of jurisdiction such liberty to approach the proper forum is implied. It does not transpire from the order dated 13.06.2016 that such dismissal order was made after hearing out the parties at length, and therefore, the dismissal of the writ petition was not on merits. The order does not indicate either that the applicant had any intention to relinquish his grievances.

9. Having understood the implications of the decisions as enumerated supra, we are of the considered opinion that although nothing was spelt out in the order passed by the Hon'ble High Court while dismissing the writ petition as not pressed, that the petitioner was at liberty to move a proper forum, the writ petition being not

rendered on merits by the Hon'ble High Court, could not operate as res judicata to bar the present O.A.

10. That apart, we would decipher that this applicant had preferred O.A.63/2017 with almost the same prayer as in O.A., as noted hereunder:-

- "a) To set aside and quash Impugned Order of Suspension No.CT/AD-12(12)/14/2285 dated December 26, 2014 issued by the Principal/Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition.
- b) To set aside and quash impugned Memorandum No.CT/AD-12(129)15/367 dated May 19, 2015 issued by the Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition(Calcutta) Society.
- c) To set aside and quash impugned report of Enquiry held on 19.3.2015 conducted by internal complaint committee of sexual harassment of women in work place(Prevention, Prohibition & Redressal Act, 2013) served under Memorandum dated,19.5.2015.
- d) To set aside and quash Impugned Order No.CT/AD-12(129)/16/212 dated May 06, 2016 issued by the Secretary, Institute of Hotel Management Catering Technology & Applied Nutrition.
- e) To direct respondents to consider and dispose of the appeal dated 26.6.2016 before the appellate authority submitted by the applicant within a period of one month.
- f) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

Bar of res judicata was then never raised. Since appeal was pending, the O.A. was disposed of yet again without entering into its merits, with the following order:-

".....by directing the respondent No.3 that if any such statutory appeal has been preferred on 20.6.2016 and still pending consideration then the same may be considered and disposed of by way of a well reasoned order within a period of two months and if after such consideration the applicant's grievance is found to be genuine then expeditious steps may be taken within a further period of two months from the date of such consideration to extend those benefits to the applicant."

Pursuant to such direction upon the respondents an order has been issued on appeal, which is a subsequent event and, therefore, the applicant was well within his rights to assail the newly settled position of law which never was substantially in issue in the former proceedings including the writ petition. His challenge to the non-speaking appellate order and the entire proceedings that culminated into a penalty of dismissal, that were never adjudicated earlier, is clearly and inarguably maintainable.

Therefore, we proceed to decide the matter ignoring the plea.

10. Having noted the glaring omissions and violations of the procedural law as alleged by the applicant and set out in para 2 hereinafore, we have no other option than of quashing the order of dismissal and the appellate order and of remanding the matter back to the Board of Governors to act strictly in terms of provisions of the act, get the enquiry concluded in accordance with law and pass appropriate reasoned and speaking order on the guilt of the applicant. Till then the applicant may be continued on suspension. Let appropriate orders be issued within 4 months from the date of communication of this order.

8. Accordingly the O.A. stands disposed of. No costs.

Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member