

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.4489 of 2008
RAJESH KUMAR JAISWAL SON OF SH. JAI NARAYAN
JAISWAL, RESIDENT OF BARMASIA JAGARNATHPURI, P.S.
KATIHAR.

Versus

1. THE STATE OF BIHAR
2. THE SECRETARY, DEPARTMENT OF PERSONNEL, GOVT. OF BIHAR, PATNA
3. CHAIRMAN, BIHAR PUBLIC SERVICE COMMISSION, BAILEY ROAD, PATNA.
4. THE SECRETARY, BIHAR PUBLIC SERVICE COMMISSION, BAILEY ROAD, PATNA
5. DEPUTY SECRETARY, BIHAR PUBLIC SERVICE COMMISSION, PATNA

For the petitioner : Mr. Prabhakar Kumar Singh
For the Commission : M/S P.K. Shahi
Sanjay Pandey
For the State : Mr. Lala S.N. Rais, AC to GA 9

2. 04.03.2009

Heard learned counsel for the petitioner, learned Advocate General on behalf of the Commission and learned counsel for the State.

The petitioner, who was a candidate for 47th combined preliminary examination conducted by the Bihar Public Service Commission, came to this Court earlier in CWJC No. 2404 of 2007. This Court on 16.4.2007 declined interference noticing the challenge that the number of vacancies for backward class community was far less than required by law. That the petitioner has right to move under the Right to Information Act was an issue between him and the statutory authorities under the Right to Information Act. He thereafter came in Civil Review No. 157 of 2007 making out a new case that the cut off marks for backward class candidates and general category candidates were same. The Review Court declined interference. However, liberty was given for filing a fresh writ application.

Learned counsel for the petitioner submits that liberty was given for filing a fresh writ petition in Civil Review No. 157 of 2007 and that CWJC No. 5802 of 2007 on a similar issue was pending consideration. He, thus, submits that the present writ application may be heard along with CWJC No. 5802 of 2007.

Learned Advocate General appearing for the Commission urges that the writ application is barred by constructive res judicata. The petitioner has not alleged any new ground which may have surfaced after the disposal of CWJC No. 2404 of 2007. If he was not vigilant, this Court may not grant him indulgence of filing fresh writ application every time he discovers new information, which is on the basis of the old materials.

The petitioner came to this Court with a cause of action in CWJC No. 2404 of 2007. It was for him to make his complete inquiry with regard to his cause of action and then move this Court. If he opted to move in haste unmindful of his rights and the consequences of moving in haste, he has only himself to blame. Learned Advocate General is right in his submission that nothing new has transpired or occurred so as to furnish fresh cause of action after the order dated 16.4.2007 in CWJC No. 2404 of 2007. The grounds sought to be urged in this writ application were grounds available to the petitioner vis-à-vis State of Bihar and the Bihar Public Service Commission when he came first in CWJC No. 2404 of 2007. This Court is not satisfied that merely because

the petitioner subsequently obtained some information under Right to Information Act, that shall give him a fresh cause of action. This right was available to him, when he filed CWJC No. 2404 of 2007. If he opted not to avail that right, this Court will not allow him the privilege and the advantage of founding a fresh cause of action on something that was already available to him on the previous occasion.

If constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by the court would also be materially affected.

The Courts are meant to protect those who are vigilant and diligent of their rights. Those, who move the Court unmindful with lack of caution, have only themselves to blame. If this Court was to permit them to do so, there shall be no end to repeat writ applications by a petitioner on the ground that subsequent to the Court declining his prayer, he has discovered new materials, which is nothing new but old information.

The issue of constructive res judicata raised on behalf of the Commission also finds favour with the Court. Notwithstanding the dismissal of the review application and the

observation therein, nonetheless the issue of law with regard to constructive res judicata shall have to be answered by the petitioner.

In *Home Plantations Ltd. v Talaku Land Board*, Peeramada and another (1999) 5 SCC 590 in context of the principles of res judicata, the Supreme Court has held as follows :

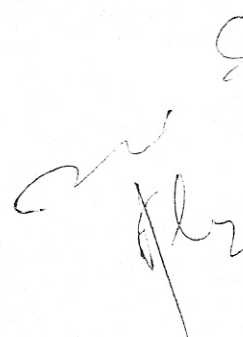
‘ An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigations and every matter coming within the legitimate purview of the original action both in respect of the matter 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.’

Learned counsel for the petitioner fairly acknowledges that CWJC No. 5802 of 2007 was fundamentally different in nature on facts inasmuch as the petitioner therein had never moved this Court earlier unlike the present petitioner. That this distinguishes the case of the present petitioner.

This Court, therefore, is satisfied that the present writ application between the same parties arising out of the same examination is barred by the principle of constructive res judicata.

The writ application is dismissed.

AKS/


(Navin Sinha, J.)

8/12/09
S. K. L.