

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No. 2880/2015

Reserved on 10.12.2024.
Pronounced on 01.01.2025

Mst. Halima Akhter.
W/O GH. Mohammad Lone.
R/O Lalipora Mulpora
P/O Wanpoah, Anantnag.

...Petitioner(s)/Appellant(s)

Through: Mr. S. H. Thakur, Advocate

Vs.

1. Union of India through.

...Respondent(s)

**Pay & Accounts Officer, Central Pension Accounting
Office, Ministry of Finance, Government of India, Trikote II**

**2. Branch Manager, State Bank of India,
Branch Office, Anantnag, Kashmir.**

3. Director General (I M D)

India Metrological Department, Lodhi Road, New Delhi.

4. Regional Director (I. M. D)

India Metrological Department, Rambagh, Srinagar.

Through: Ms. Sami, Advocate vice
Mr. T. M. Shamsi, DSGI
Mr. Q. R. Shamas,

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. It is stated by the petitioner that her husband died on 03.06.2008, leaving behind the petitioner, un-employed son, un-married daughter and old ailing parents. The petitioner moved the application for the release of post-retirement cum death benefits before the concerned officials, and another application was moved by the petitioner for the compassionate appointment of her son. The case of the petitioner was forwarded for the sanction of pension, and the petitioner was given PP No. 001100900087 dated 03.03.2009. The petitioner was directed to open the account with the respondent No. 3, so that money could be deposited by the respondents in that account. Accordingly, the petitioner opened account number

30408462450, but no pension was released in favour of the petitioner till May 2014. It was only after the petitioner filed writ petition bearing S.W.P No. 705/2014, the respondents released the monthly pension in favour of the petitioner from May 2014 regularly but the amount due to the petitioner from June 2008 till May 2014 was retained by the respondents. The writ petition mentioned above, was decided by this Court vide order dated 12.08.2015 and the arrears of the pension from June 2008 to May 2014, were released without any interest on the amount of pension withheld by the respondents without any justification. The respondent No.2 had filed the reply in the writ petition stating therein that there was no order from the other respondents for the release of pension in favour of petitioner from June 2008 till the matter was decided by the Court. By placing these facts before this court, the petitioner has filed the present petition for commanding the respondents to pay compound interest of 24% per annum on the retained amount of pension due to the petitioner from June 2008 till October 2015, when it was actually disbursed in favour of the petitioner and for further commanding the respondents to compensate the petitioner to the tune of ₹10,00,000.00 for social and economic exploitation, mental agony and undue delay, wastage of time and money from 2008 till date.

2. The respondent Nos. 3 and 4 have filed the response, stating there in that the respondent No.4 after the demise of the husband of the petitioner, requested her to submit the claim for family pension and other benefits admissible under rules along with the application for employment on compassionate grounds vide letter dated 17.06.2008. The office sanctioned family pension in favour of the petitioner vide P.P Number: 001100900087 payable at SBI Anantnag, vide A/C No. 30408462450. It is further stated that the office had also granted ₹13, 25,575- as death-cum-retirement gratuity, G.P.F, Death

Linked Insurance, C.G.E.G.I.S and leave encashment in favour of the petitioner. It is further stated that in a writ petition preferred by the petitioner bearing S.W.P No. 705/2014, no directions were issued by the Court to the respondent Nos. 4 and 5 i.e. Director General (IMD) and Regional Director (IMD) in the aforesaid matter. It is further stated that the respondent No.1 vide letter dated 02.02.2016 informed the respondent No. 4 that CPC, SBI Panchkula was requested by them on 15.01.2016 to comply the order of the Court by making the payment of interest from their own resources as per guidelines, issued by the RBI, from time to time as Bank had not started the payment of family pension to Smt. Halima Akhtar after completing the formalities within the prescribed time limit. Despite that, this office authorised the family pension in favour of the petitioner vide SSA dated 09.07.2009 and 06.08.2009.

3. The respondent No.2 has objected the petition filed by the petitioner by stating that the petitioner had earlier filed two writ petitions bearing Nos. 705/2014 and 1559/2014. In writ petition no. 705/2014, the petitioner besides praying for issuance of writ of mandamus commanding the respondents to release the pension of the petitioner from 2008 till date, had also sought a writ of mandamus, commanding the respondents to pay 24% interest on the retained amount. A further prayer was also made in the writ petition for grant compensation of ₹ 10,00,000.00. The said writ petition was disposed of by the Court vide order dated 12.08.2015, with the directions to the respondents to issue necessary order to the respondent No.3 [bank], so that the amount already released is credited to the account of the petitioner. The respondent No. 3 therein (Bank) was further directed to draw the amount with admissible interest. The writ petition would show that the reliefs sought by the petitioner in the instant writ petition were also sought in

SWP No.705/2014, therefore, the instant writ petition is hit by principle analogous to order 2 rule 2 CPC, as such the present writ petition is not maintainable. It is also stated that the pension payment order has two copies. One copy is the petitioner's copy and the another is banker's copy, giving the directions to the banker to credit the amount to the pensioners account. Though, the petitioner had received her part of pension payment order, but the banker's copy was not available with the bank because either the employer had not sent it to the bank or the same was lost during transit. It was only because of non-availability of the banker's part of the pension payment order that the pension was not credited to the account of the pensioner maintained at SBI Anantnag. It is also stated that pursuant to the interim order dated 02.04.2014 passed in SWP No. 705/2014 directing the answering respondent to take up the matter with the Indian Metrological Department, the answering respondent took up the matter with the employer of the deceased and the family pension with effect from May 2014 was released immediately in favour of the petitioner. The employer undertook to send bankers' copy of the pension payment order to the Branch. It is also stated that the family pension with effect from May 2014 was being regularly credited into the account of the petitioner, however, the areas of the pension from 04.06.2008 to May 2014 could only be paid after the receipt of the pension payment order from the employer. Besides, the interest for the delayed payment amounting to ₹3,55,983 has also been credited to the account of petitioner on 04.12.2016. Pursuant to the directions of this court, the respondent No. 2 has submitted the details of interest for the delayed period from June 2008 to May 2014, amounting to ₹ 3,55,983 and the interest has been calculated @ 8% per annum as per the prevailing Bank rate.

4. Learned counsel for the petitioner has argued that the respondents are under an obligation to pay the compound interest to the petitioner for the delay caused in making the payment of arrears of family pension and they are also bound to compensate the petitioner for undue harassment meted out to her.
5. *Per contra*, the learned counsel for the respondent bank has submitted that the bank has paid the interest as well to the petitioner, @ 8% for the delayed payment of arrears of family pension and this writ petition is not maintainable particularly, when the similar relief was sought by the petitioner in the earlier writ petition but was not granted by the Court. If at all, the petitioner had any grievance, the petitioner ought to have challenged the order passed in the earlier writ petition but in no way, the petitioner can file the fresh writ petition for the same cause and reliefs, which were earlier not granted to her by the court.
6. Heard and perused the record.
7. The record depicts that earlier the petitioner and her son had filed SWP No. 705/2014 for grant of following the reliefs:
 - a. *Writ of mandamus commanding the respondents to release the pension of the petitioner from June 2008 till date without any hedge and hindrance within the period of one week and file compliance report before this Hon'ble court so that family may not suffer anymore.*
 - b. *Writ of mandamus commanding the respondents to pay an interest of 24% per annum on the retained amount of pension due to the petitioner from June 2008 till it is actually disbursed in favour of the petitioner.*
 - c. *Mandamus commanding the respondents to compensate the petitioner to the tune of ₹10,00,000 for social and economic exploitation, mental agony undue delay wastage of money and time from 2008 till date.*

8. The petition mentioned above was disposed of by this court vide order dated 12.08.2015 and the operative part of the order is extracted as under:

“Petition in the above backdrop is disposed of with the direction to respondents 1 and 2 to issue necessary order to respondent No. 3, so that amount already released is credited to the petitioners’ account and the petitioners are in a position to draw the amount. The respondent no. 3 on his part shall credit the amount to the account of the petitioners and once the amount is credited on completion of necessary formalities, allow the petitioners to draw the amount with interest admissible. Let the entire exercise be completed within two weeks from the date of receipt of copy of this order by the respondents, so that the petitioners are not exposed to hardship any further.”

9. Now, the petitioner has filed the present petition all alone for the following reliefs:

(i) Mandamus commanding the respondents to pay compound interest of 24% per annum on the retained amount of pension due to the petitioner from June 2008 till October 2015, when it was actually disbursed in favour of the petitioner.

(ii) Mandamus commanding the respondent to compensate the petitioner to the tune of ₹10,00,000 for social and economic exploitation, mental agony undue delay, wastage of time and money from 2008 till date.

10. The comparative perusal of both the writ petitions would reveal that the petitioner has filed this second writ petition for the same reliefs on the same cause, which were not granted to the petitioner earlier by the Court, while passing the order dated **12.08.2015**. There is substance in the submission made by the learned counsel for the respondent-bank that once the reliefs sought by the petitioner for grant of interest @ 24% per annum and for grant of compensation of ₹10,00,000 were not granted by the Court in the earlier

writ petition filed by the petitioner, the petitioner cannot file the fresh writ petition, for the same reliefs on the same cause.

11. Further the perusal of the order dated **12.08.2015**, as extracted above, would reveal that the Court had allowed the bank to draw the amount with admissible interest. The Bank in turn has also paid the interest for the delay caused in crediting the arrears of family pension calculated @ 8 % per annum.

12. If at all the petitioner was not satisfied with the order passed in SWP No. 705/2014, the petitioner should have filed an appeal against the said order. The petitioner is estopped from filing the fresh writ petition for the same cause and reliefs. In this context, it would be apt to take note of the judgment of the Hon'ble Apex Court in case titled *M. Nagabhushana v. State of Karnataka*, (2011) 3 SCC 408, wherein, it has been held as under:

11. We find that disregarding the aforesaid clear finding of this Court, the appellant, on identical issues, further filed a new writ petition out of which the present appeal arises. That writ petition, as noted above, was rejected both by the learned Single Judge and by the Division Bench in clear terms. It is obvious that such a litigative adventure by the present appellant is clearly against the principles of res judicata as well as principles of constructive res judicata and principles analogous thereto.

12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent

jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. xxxxxxxxxxxxxx

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

(emphasis added)

13. In view of the above, the present petition is found to be without any merit and is, *dismissed*.

**(RAJNESH OSWAL)
JUDGE**

SRINAGAR:

01.01.2025.

"Abdul Rashid PS"

Whether approved for reporting: Yes/No.