

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Urmita Datta (Sen) Member (J) & OA-212 of 2018
 Hon'ble P. Ramesh Kumar, Member (A)

Shyamal Kanti Datta Vs The State of West Bengal & Ors..

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p><u>02</u> 25.07.2018</p>	<p>For the applicant : Mr. Asok Kumar Das Sinha, Learned Advocate.</p> <p>For the respondent : Mr. Goutam Pathak Banerjee, Mr. Biswa Priya Roy, Learned Advocates.</p> <p>In this application the applicant was appointed on adhoc basis since 1972 and continued up to 24.11.2002 with some negligible break in the meantime. However, vide letter dated 25.11.2002 (Annexure – L), the Officer-in-Charge of Fulia Polytechnic, Nadia directed the Director of Technical Education and Training, West Bengal to discontinue the services of the applicant. Being aggrieved he has approached this Tribunal.</p> <p>Being aggrieved with the applicant had initially approached the Hon'ble High Court in WP 15663 (W) of 2002 which was finally disposed on 24.03.2003 (Annexure-D). However, since in the meantime the jurisdiction to adjudicate the issue was already passed to this Tribunal, therefore, the applicant filed OA-1887 of 2004 which was disposed of vide order dated 14.01.2005</p>	

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<p style="text-align: center;">02 25.07.2018</p> <p>Page /2</p>	<p>(Annexure-E) with a direction to the authority to consider the application of the applicants as representation and to pass order.</p> <p style="text-align: center;">In pursuance to that order, the respondents considered the case of the applicant and rejected the prayer of the absorption vide order dated 27.06.2006 against which the applicant had preferred OA 2368 of 2006, which was disposed of vide order dated 13.08.2008 (Annexure –F) and directed the Principal Secretary, to explore the possibilities of accommodating the petitioner.</p> <p style="text-align: center;">Being aggrieved with, the applicant approached the Hon’ble High Court in WPST 1667 of 2008 which was finally disposed of vide order dated 12.04.2012, whereby after quashing the impugned order, the original application was remanded back to the Tribunal for fresh hearing. (Annexure-G). Therefore, OA-2363 of 2006 was further heard by this Tribunal and finally disposed of vide order dated 18.07.2012 with an observation for granting absorption (Annexure-H).</p>	

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<p style="text-align: center;">02</p> <hr/> <p>25.07.2018</p> <p style="text-align: right;">P/3</p>	<p style="text-align: center;">Being aggrieved with, the State Respondents had filed one writ petition in WPST No. 441 of 2012 which was disposed of vide judgement dated 17.01.2014 whereby the Tribunal's order dated 08.07.2012 was quashed and set aside. However, there was an observation to sympathetically consider the case of the petitioner by way of allowing them in regular selection process irrespective of their present age.</p> <p style="text-align: center;">Being aggrieved with, the applicant had preferred Special Leave Petition being no. 2932 of 2014, which was disposed of by the Hon'ble Apex Court vide their order dated 21.11.2016 (Annexure-M). Thereafter the applicant has approached this Tribunal praying for following relief :-</p> <p style="text-align: center;">1. A direction upon the respondents to quash and set aside the impugned orders dated 11/14.11.2002 and dated 25.11.2002 which are Annexure (J & L) to this application issued by the</p>	

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<p style="text-align: center;">02 25.07.2018</p> <p>P/4</p>	<p>Respondents No. 2 and the Respondent No. 3 respectively forthwith.</p> <p>2. A direction upon the respondents to regularize or to absorb the applicant to the post of Mathematics Instructor/Workshop Calculation and Science in Fulia I.T.I. (erstwhile Fulia Polytechnic), Nadia from the date of initial appointment i.e. from 18.11.1992 forthwith and also to pay the salary and allowances month by month with consequential service benefits in favour of the applicant.</p> <p>However, the respondents has raised preliminary objection on the ground of resjudicata and estoppels as the prayer of the applicant was already considered by this Tribunal as well as Hon'ble High Court against which he had preferred one SLP before the Hon'ble Apex Court and the Hon'ble Apex Court also dismissed the SLP as withdrawn with a liberty to the petitioner to apply to the respondents for unpaid salary</p>	

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<p style="text-align: center;">02</p> <hr/> <p>25.07.2018</p> <p>P/5</p>	<p>only. Therefore, according to the respondents on the self same cause of action, the applicant cannot approach the Tribunal. Finally, the Hon'ble High Court by their judgement dated 17.01.2014 had passed the following order :-</p> <ol style="list-style-type: none"> 1. In our view, the Tribunal erred in allowing the application that would deserve an order of dismissal. 2. The Tribunal application succeeds and is allowed. The judgement and order of the Tribunal dated July 18, 2012 is set aside. 3. There would be no order as to costs. 4. Before parting with, we, however, feel that the Government should not ignore his contribution to the Institute for a long time. We are told, the regular recruitment rules would not provide a post of Mathematics Instructor, the reasoned order would denote, there was no subject as Mathematics. There are other regular posts for which he might be suitable. The 	

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<p>02 25.07.2018</p> <p>P/6</p>	<p>Secretary, Technical Education Department, may sympathetically consider as to whether he could be permitted to participate in the regular selection process irrespective of his present age. However, we do not wish to give any mandate that would be beyond the scope of this application.</p> <p>The applicant being aggrieved with that, approached the Hon'ble Apex Court, however, and the Hon'ble Apex Court vide their order dated 21.11.2016 had passed the following :-</p> <ol style="list-style-type: none"> 1. After some arguments, Learned counsel appearing for the petitioner, seeks permission to withdraw this petition with liberty to the petitioner to apply to the respondents for unpaid salary. 2. Permission, as sought for, is granted. 3. Accordingly, the special leave petition 	

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<p>02 25.07.2018</p> <p>P/7</p>	<p>is dismissed as withdrawn with the aforesaid liberty.</p> <p>4. We make it clear that if such an application is filed by the petitioner, the respondents shall consider and dispose it of within a period of six months from the date of receipt of such application, on its own merits.</p> <p>From the perusal of the above, it is crystal clear that the applicant had withdrawn the application only with a liberty to the respondents for his unpaid salary. Therefore, the impugned order dated 11.04.2002 as well as 25.11.2002 has attained finality which was under challenge before this Tribunal, as well as before the Hon'ble High Court and the applicant though approached the Hon'ble Apex Court but he withdrew the petition, thus, he is debarred to challenge the same issue, which was already decided by the Hon'ble High Court and was subsequently withdrew by the applicant.</p> <p>Therefore, in our opinion, the application is</p>	

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<p>02 25.07.2018</p> <p>SC</p>	<p>hit by estoppels as well as barred by resjudicata and thus, is not maintainable. Accordingly, the application is dismissed with the above observations with no order as to costs.</p> <p>P. RAMESH KUMAR MEMBER (A)</p> <p>URMITA DATTA (SEN) MEMBER (J)</p>	

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