

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14974 of 2007

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Manoj Kumar. son of late Mishri Shaw, resident of Mohalla Surajkund, vishnupad,
P.O.- Chandchaura, P.S.- Civil Lines, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Lodging House Committee, Gaya through its Secretary.
3. The District Magistrate, Gaya.
4. The District Magistrate-cum-Chairman, Lodging House Committee, Gaya.
5. The Secretary, Lodging House Committee, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghwendra Sharan Pandey

For the Respondent/s : Mr. Dev Kumar Pandey, A.C. to G.P.-6

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 12-05-2015

Heard Counsel for the petitioner and A.C. to G.P. 6 for
the State.

The writ application has been filed for a direction upon
the respondent, particularly, the Lodging House Committee, Gaya
(respondent no. 2) to regularize the services of the petitioner on the
post of Generator Operator in the pay scale of 2550-3200/-. Earlier to
this, the petitioner had filed a writ petition vide C.W.J.C. No. 12087
of 1999. The said writ petition was disposed of under order dated
10.7.2006 (Annexure-4) in the following terms:-

“Learned counsel for the petitioners, during course
of hearing, has requested for withdrawal of this petition
so as to seek redressal in different forum. The
permission to withdraw is granted.

This petition shall, accordingly, stand dismissed as
withdrawn on the aforesaid ground.”

On the same facts and for similar relief, the present writ petition has been filed in the year 2007.

Counsel for the State, relying on **(1987) 1 SCC 5 (Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior and Ors.)** has submitted that the earlier writ petition of the petitioner was withdrawn as the petitioner intended to ventilate his grievances in different forum. The present writ petition, in that view of the matter, would be barred by the principles of res judicata/estoppel since no leave was sought and granted by this Court for the same.

In paragraph no.9 of **Sarguja Transport Service (supra)**, the Apex Court noted as under:-

“The point of consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not



amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.”

Counsel for the petitioner, per contra, has relied on ***Dadu***

Dayalu Mahasabha, Jaipur (Trust) vs. Mahant Ram Niwas A.I.R.

2008 S.C. 2187 in order to contend that the principles of estoppel/*res judicata* would not be applicable.

I have perused the judgment. The aforesaid judgment was rendered in entirely different factual background. In this case, from the pleadings made in the writ petition, it is but evident that all facts which have been stated herein for grant of relief were stated in the previous writ petition and thereafter the petitioner sought permission of the Court to withdraw the writ application in order to move the different forum for redressal of the grievance. One year thereafter, the present writ petition has been filed for the similar/identical relief. The present one is the classic example of

bench hunting.

The present application, in view of the aforesaid, is held not maintainable and is accordingly dismissed.

(Kishore Kumar Mandal, J)

Pankaj/-

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