

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 19770 of 2014 (O & M)

Date of decision: 29.01.2015

Dr. (Mrs.) Gurminderjit Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.S. Cheema, Advocate,
for the applicant-respondent no. 4.

Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. Vinod Sharma, Advocate,
and Mr. Naveen Mahajan, Advocate,
for Union of India.

Mr. L.C. Aggarwal, AAG, Punjab.

Mr. Anupam Gupta, Sr. Advocate,
with Mr. Gautam Pathania, Advocate,
for Panjab University.

Mr. R.S. Ahluwalia, Advocate.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 791 of 2015

Application for placing on record written statement on behalf
of respondent no. 4 is allowed, subject to all just exceptions.

Written statement of respondent no. 4 is taken on record.

C.M. No. 12540 of 2014 and
CWP No. 19770 of 2014

The present application has been filed for withdrawing the
petition with liberty to pursue her claim before the respondent-college.

The said application was listed on 12.11.2014 and counsel did
not put in appearance before the Bench. Thereafter, the case was taken up

with a bunch of matters on 01.12.2014.

This Court, while issuing notice of motion on 22.09.2014, granted interim protection to the petitioner to continue in service till the next date of hearing on account of the fact that in similar cases (lead case being CWP No. 11988 of 2014), the relief was granted since the issue was common. It is pertinent to mention that interim protection was only granted to persons who were yet to retire since the controversy pertains to whether the age of retirement is 60 years or 65 years. It was projected before this Court that the petitioner was yet to retire on 30.09.2014 in para no. 2 of the petition. The college has placed on record the retirement order dated 30.08.2014 (Annexure R-1) whereby, the petitioner was relieved of her duties on attaining the age of 60 years on 31.08.2014. She also received a sum of ₹41,23,887/- as provident fund as full and final payment on retirement (Annexure R-2). Thus, when this Court was approached, she had already retired from the services of the respondent-college and a different picture was projected.

Thus, apparent misrepresentation has been made before this Court and the petitioner has continued in service by the interim order passed by this Court. In spite of a withdrawal application having been filed before this Court, the petitioner also had the audacity to submit an application for joining on 05.11.2014 (Annexure R-4) on the strength of the order passed by this Court.

Thus, this Court is of the opinion that once there has been misrepresentation and concealment of facts to gain an interim order, this Court will not exercise its jurisdiction under Article 226 of the Constitution of India.

The Apex Court in *M/s. Prestige Lights Ltd. vs. State Bank of India, 2007 (8) SCC 449* laid down the principles as to whether this Court should exercise its extra ordinary discretionary writ jurisdiction where the party does not disclose true and complete facts. In the said case, the company had approached the High Court by suppressing the fact of the legal legitimate dues of the bank which the bank was entitled to realize and shifted the machinery and materials without informing the respondent-bank prejudicially affecting the interest of the bank. The High Court had denied to entertain the claim of the petitioner-company, which order was upheld by holding as under:-

“32. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"(I)t has been for many years the rule of the Court, and one which it is of the greatest

importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never

disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court."

Accordingly, the present writ petition is dismissed with exemplary costs of ₹50,000/-, which will be paid by the petitioner within a period of one month with the Mediation and Conciliation Center of this

Court. It is made clear that if this amount is not deposited within the stipulated period, the Collector, Mohali shall recover the said amount as arrears of land revenue and send a report to this Court. C.M. No. 12540 of 2014 also stands dismissed accordingly.

29.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE