

CWP No.607 of 2014

[1]

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

**CWP No.607 of 2014
Date of decision:20.03.2015**

Ramesh Kumar

...Petitioner

Versus

The Presiding Officer and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sandeep Singal, Advocate,
for the petitioner.

Mr. Dheeraj Chawla, Advocate,
for respondents no.2 and 3.

Rakesh Kumar Jain, J.

The petitioner has challenged the award dated 18.07.2013
passed by the Industrial Tribunal-cum-Labour Court, Rohtak.

At the outset, counsel for respondents no.2 and 3 has submitted
that the petitioner had earlier filed a writ petition in this Court which was
lateron withdrawn without seeking any liberty to raise an industrial dispute.
It is also submitted that in view of Order 23 Rule 1(4) of the Code of Civil
Procedure, 1908 (here-in-after referred to as the "CPC"), the petitioner is
not entitled to raise the same dispute before the Labour Court.

Counsel for the petitioner, however, has relied upon a decision
of the Supreme Court in the case of **Haryana State Coop. Land Dev. Bank
v. Neelam**, 2005(2) SCR 424 to contend that even if the writ petition, in

CWP No.607 of 2014

[2]

which the termination order was challenged by the workman was withdrawn, the industrial dispute can still be raised. It is submitted that in the application filed for withdrawal of the writ petition, it was mentioned therein, that the respondent-management has assured that if the petition is withdrawn, he would be taken back in service from the due date.

I have heard learned counsel for the parties and examined the available record. Though it is mentioned in para no.2 of the application bearing CM No.3594 of 2003 that the writ petition is being withdrawn on the ground of alleged assurance given by the management but the petitioner did not appear when the order dated 18.02.2013 was passed and the alleged averments made in para no.2 of the application were not brought to the notice of the Court. The CM No.3594 of 2003 was, thus, disposed of in the following manner:-

“Present: None for the petitioner.

Ramesh Kumar-petitioner through the present application seeks permission to withdraw the writ petition.

C.M. allowed. Writ petition is dismissed as withdrawn.”

Even otherwise, the judgment relied upon by learned counsel for the petitioner in **Haryana State Coop. Land Dev. Bank's case (supra)** is not applicable to the facts and circumstances of the present case because in that case the writ petition was permitted to be withdrawn by the High Court with the following order:-

“Learned counsel for the petitioner prays that this

CWP No.607 of 2014

[3]

petition be dismissed as withdrawn so that the petitioner may approach the Labour Court.

Dismissed as withdrawn.”

Though there was no specific order passed by the Court giving liberty to the petitioner to approach the Labour Court but still the Supreme Court has observed that Order 23 Rule 1(4) would not strictly apply to a case of this nature and the objection raised by the respondent-management was rejected.

However, in the present case, no such statement was made by the petitioner before the Court that he wanted to approach the Labour Court at the time when the writ petition was withdrawn, therefore, the judgment of the Supreme Court would not be of any help to the petitioner.

Order 23 Rule 1 of the CPC is based upon a public policy that nobody should be vexed twice on the same cause of action and Order 23 Rule 1(4) specifically provides that where the party withdraws from any suit or part of a claim, without the permission, referred to in sub-rule (3), he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Even otherwise, the Labour Court has also found that the petitioner had failed to prove that his services were regularized.

In view thereof, I also do not find any merit in the present writ petition to interfere in the well considered order of the Labour Court.

Dismissed.

March 20, 2015
vinod*

(Rakesh Kumar Jain)
Judge