

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1350 of 2015
IN
Civil Writ Jurisdiction Case No. 24959 of 2013**

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Ram Nandan Prasad, S/o Late Moti Lal Yadav, Resident of Mohalla- Kankarbagh,
P.S Patrakarnagar, District Patna.

.... Appellant

Versus

1. The State of Bihar, through the Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Patna Nagar Nigam through its Municipal Commissioner, Patna.
3. The Municipal Commissioner, Patna Nagar Nigam, Patna.
4. Chief Executive Officer, Patna Nagar Nigam Patna.

.... Respondents

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Appearance :

For the Appellant/s : Ms. Renu Jha, Advocate

For the P.M.Corporation : Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 01-12-2016

I.A.No. 5898 of 2015

The interlocutory application has been filed for
condonation of the delay of 313 days in filing the appeal.

On a consideration of the facts and circumstances
mentioned in the application and upon hearing learned counsels for
the parties, the delay in filing the appeal is condoned.

I.A.No.5898 of 2015 is, accordingly, disposed of.

The appellant has filed the appeal challenging the order
dated 29.4.2014 passed by a learned Single Judge of this Court in



CWJC No. 24959 of 2013 by which the writ application has been dismissed holding that there was no merit in the same.

The appellant had earlier approached this Court by filing CWJC No.4769 of 2008 in which the relief sought was to set aside the order dated 18.12.2007 passed by the respondent Patna Municipal Corporation by which the appellant had been retired as Mali on 30.11.2007 after considering his date of birth as 24.11.1947 and not 24.11.1957 as claimed by the appellant. Vide order dated 5.9.2008 of this Court it was noted that learned counsel Mr. C.P.Sinha, appearing on behalf of the petitioner seeks liberty to withdraw the writ application, upon which the writ application was dismissed as not pressed.

Thereafter the appellant approached the State Government for reference of the dispute to the Industrial Tribunal, Patna and a reference was made under Section 10(2A) of the Industrial Disputes Act, 1947 of the said matter. An ex parte award was passed in favour of the appellant. The writ application out of which the present appeal arises had been filed for implementation of the award dated 5.8.2011 passed in Reference Case No. 2 of 2010 by the Industrial Tribunal, Patna. The learned Single Judge noted that the appellant had earlier withdrawn the writ application, which was for the same cause of action, assailing the order dated 18.12.2007 of the



respondent Municipal Corporation without any liberty. It was further noted that the said fact has been suppressed in the writ application and there was no statement that earlier CWJC No. 4769 of 2008 had been filed in the same matter. Relying upon the decision of the Apex Court in *Sarguja Transport Service vs. The State Transport Appellate Tribunal, Gwalior and others* : (1987) 1 SCC 5 : AIR 1987 SC 88 it was noted that withdrawal of a writ application would be a bar for filing subsequent writ application since the writ petitioner did not seek any liberty to file a petition before any other court or Tribunal for redressal of the grievance raised in the writ application. It was accordingly noted that the writ petitioner-appellant could not have pursued his remedy before the Industrial Tribunal after having withdrawn the writ application from this Court without obtaining any liberty to do so. It was further observed that such conduct of the petitioner to have withdrawn the writ application after having felt that he would not be getting any relief from this Court and thereafter pursuing his remedy under the Industrial Disputes Act was certainly deplorable. It was also noted that the appellant had suppressed the material fact in the pleadings of the writ application of having approached this Court in an earlier writ application. Learned Single Judge also noted that there was absolutely nothing on the record to show whether notice was sent to the Corporation through registered



post or any actual service of notice was made upon the Patna Municipal Corporation pursuant to the order dated 19.2.2010 and it was observed that the Presiding Officer did not wait for ensuring service of notice and the entire proceeding proceeded ex parte. It was thus observed that such award had been obtained by committing fraud and it was a collusive award.

Learned counsel for the appellant has sought to assail all the three findings of the learned Single Judge. It is stated that the earlier writ application had been withdrawn and there was nothing wrong for the appellant to have thereafter moved before the Government for reference of the dispute to the Industrial Tribunal and thus the award of the Industrial Tribunal is a legal and valid award.

It is further submitted that the award itself could not have been held to be invalid. It is also submitted that since the petitioner has again filed the writ application only for enforcement of the award and not for obtaining the same relief as sought in the earlier writ application, for the said reason the fact of filing the earlier writ application in which no issue was decided, is not suppression of fact, rather the only prayer was for withdrawal of the same and it was dismissed as not pressed.

Learned counsel for the respondent Corporation, on the other hand, submits that the petitioner-appellant is definitely guilty of



having suppressed the fact of earlier approaching this Court in the same matter and it was only in the counter affidavit that the said fact was pointed out before this Court.

We have considered the submissions of learned counsels for the parties and perused the order of the learned Single Judge. So far as the case of Sarguja Transport (supra) is concerned, all that has been laid down in the said decision is that if a writ petition is withdrawn without any liberty to file a fresh writ petition then another writ petition is not maintainable in the same matter at the behest of the said parties by applying the principles of Order XXIII of the Code of Civil Procedure. It is, however, clearly stated in the said decision that other remedies remained open to the said parties who have withdrawn the said petition without any further liberty and thus to that extent the finding of the learned Single Judge that the writ petitioner-appellant could not have approached the Government for the matter to be referred to the Industrial Tribunal and the said conduct was deplorable does not appear to be in accordance what has been laid down by the Supreme Court in the said decision. Paragraph-9 of the Sarguja Transport case (supra) is quoted below :-

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 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's case (supra) is of no assistance. But we are of the view that the principle underlying R. 1 of O. 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 Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under art. 226 of the Constitution 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 Art. 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open."

It is evident from the above that it has been clearly held that withdrawal of a writ petition filed in the High Court without the



permission to file a fresh writ petition may not bar the other remedies like a suit or a petition under Article 32 of the Constitution since such withdrawal does not amount to res judicata, and the remedy under Article 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition without such permission. Thus it is evident that even after such withdrawal it was open to the writ petitioner-appellant to have approached the State Government for the reference of the dispute to the Industrial Tribunal. Thus on the said ground the order of the Tribunal could not be held to be without any validity.

This Court, however, is in agreement with the learned Single Judge that there has been suppression of material fact in the pleadings by the appellant by not mentioning the fact that in the same matter an earlier writ petition had been filed. Such suppression also would disentitle the appellant from getting any relief in the writ petition.

We also find that the writ court has refused to interfere on the ground that the award of the Industrial Tribunal was ex parte and obtained by committing fraud and was collusive. In our view all that was required in the matter was to dismiss the writ petition leaving it open to the appellant to pursue his remedies for the enforcement of the award before any appropriate forum in accordance with law. If the



award is ex parte the same certainly cannot be quashed in a proceeding filed by the writ petitioner in whose favour the award has been given. For getting it set aside or for any such relief against the award it is for the aggrieved party, namely, Patna Municipal Corporation to have taken appropriate steps in the matter. We leave it open to the Patna Municipal Corporation to take appropriate remedies.

The impugned order is accordingly set aside to the extent indicated above and the appeal is partly allowed with the aforesaid observations.

(Ramesh Kumar Datta, J)

spal/-

(Birendra Kumar, J)

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