

CWP No.22000 of 2016 (O&M)

[1]

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

**CWP No.22000 of 2016 (O&M)
Date of decision:21.08.2017**

Satnam Singh

...Petitioner

Versus

Union of India and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajeev Anand, Advocate,
for the petitioner.

Mr. Indresh Goyal, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

As to whether a second writ petition, on the same cause of action, would be maintainable if the earlier writ petition was withdrawn by the petitioner with liberty to avail the appropriate alternative remedy and whether, after withdrawal of the earlier writ petition, the second writ petition can be filed by the petitioner, only after serving upon the respondents a legal notice are the questions involved in this petition.

In brief, the petitioner was issued passport No.A5087542 on 24.03.1998, which was valid upto 23.03.2008, in which he gave his date of birth, recorded in the school record at the time of admission, as 05.01.1972. The same date of birth is recorded in the matriculation certificate dated

15.10.1988. The petitioner has relatives in the United States of America. He applied for visitation and migration to United States of America and in that process, he was asked to fill up various forms for immigrant visa and alien registration by the Immigration Department of the United States of America, which includes the supply of birth certificate issued by the Registrar, Births & Deaths of the concerned area where the petitioner was born. The petitioner applied for issuance of the birth certificate to the Registrar, Births & Deaths, Municipal Corporation, Moga and found that his name was registered at Sr No.15 on 17.06.1971 and his date of birth was mentioned as 05.06.1971, which is his correct date of birth. The petitioner obtained the birth certificate No.7555/1 dated 07.02.2015, under Section 17 of the Registration of Birth & Death Act, 1969.

Since there were two different date of births of the petitioner, one recorded in the school record as 05.01.1972 and another in the office of the Registrar, Births & Deaths, as 05.06.1971, therefore, he made an application on 13.01.2015 to respondent no.2/Regional Passport Officer for incorporation of his correct date of birth in his passport on the basis of the birth certificate obtained by him from the Registrar, Births & Deaths. Respondent no.2, however, declined to correct the date of birth and insisted on a declaratory order from the Civil Court proving his correct date of birth. Pursuant to the refusal by respondent no.2 on 02.02.2015, the petitioner made a detailed representation on 09.02.2015 to respondent no.2 and, thereafter, since his representation was not decided, filed CWP No.3267 of 2015 titled as “Satnam Singh vs. Union of India and others”. In the said writ petition, the following order was passed on 29.02.2016:-

“Learned counsel for the petitioner submitted that he may be permitted to withdraw the present petition with liberty to avail of appropriate alternative remedy in accordance with law.

Ordered accordingly.”

Thereafter, on 19.04.2016, the petitioner served a legal notice upon respondent no.2 for the same relief for which he had earlier served a representation, after respondent no.2 had declined to make correction, as desired by the petitioner and, thereafter, has filed this petition before this Court on the same cause of action praying therein for a direction to the respondents to change the correct date of birth in the passport of the petitioner on the basis of the birth certificate issued by the Registrar, Births and Deaths, Municipal Corporation, Moga and also for seeking a direction to the respondents to act upon the justice demand notice dated 19.04.2016 and relied upon a decision of this Court rendered in the case of **Resham Singh vs. Union of India**, 2008(1) R.C.R. (Civil) 131.

Counsel for the petitioner has submitted that the date of birth of the petitioner was orally recorded by his parents as 05.01.1972, which has been found to be 05.06.1971 in the office of the Registrar, Births & Deaths, Municipal Corporation, Moga, therefore, in view of the decision of this Court rendered in **Resham Singh's case (supra)**, the date of birth recorded in the register of births and deaths be incorporated in the passport.

On the other hand, counsel for the respondents has submitted that the petitioner has no right to maintain this petition on the same cause of action as the earlier identical writ petition bearing CWP No.3267 of 2015 filed by the petitioner was withdrawn by him on 29.02.2016 with liberty to avail the appropriate alternative remedy, therefore, the present second petition on the

same cause of action, without availing the appropriate alternative remedy, is not maintainable.

Since the respondents have raised a preliminary objection about maintainability of the present petition, therefore, it has to be decided at the first instance because until and unless the present petition is held to be maintainable, no opinion can be given on the merits of the case.

There is no dispute that the petitioner had earlier approached this Court by way of CWP No.3267 of 2015, in which exactly same prayers were made as are made in the present petition, i.e. regarding change of date of birth in the passport and reliance was also placed upon the decision of this Court rendered in **Resham Singh's case (supra)**. However, the petitioner withdrew the earlier writ petition, with liberty to avail appropriate alternative remedy, in accordance with law, meaning thereby the remedy of writ petition was not found to be available to the petitioner and, therefore, he sought permission of the Court so that simple withdrawal of the writ petition may not come in his way as he wanted to avail the appropriate alternative remedy, in accordance with law.

However, the petitioner, instead of availing the alternative remedy, which should have been other than the writ petition but after serving the legal notice though earlier he had served a representation, has again filed the present writ petition on the same cause of action and has specifically averred in para no.18 of the writ petition that he has no other alternative remedy. If there was no other alternative remedy available to the petitioner, then on what account, he had withdrawn the earlier writ petition.

This practice of filing such type of writ petitions is growing in this

Court enormously and sometimes, such writ petitions are filed after change of the roster but be that as it may, the fact remains that this practice is not in good taste.

Thus, in view of the aforesaid facts and circumstances, the question framed in the beginning of this order is hereby answered to the effect that if the earlier writ petition is withdrawn in order to avail appropriate alternative remedy, in accordance with law, a subsequent writ petition on the same cause of action, without availing the appropriate alternative remedy, is not maintainable and issuance of a legal notice cannot be termed to be an appropriate alternative remedy especially when the earlier writ petition was also filed after serving a representation upon the respondents.

With these observations, the present writ petition is hereby dismissed being not maintainable, though without any order as to costs.

August 21, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No