

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.708 of 2014

In
Civil Writ Jurisdiction Case No.17372 of 2008

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Ajesh Kumar Singh son of Late Shyam Sundar Singh Resident of Village -
Sohagpur, P.S. Mirganj, Distt. - Gopalganj

... .. Appellant/s

Versus

1. The Union of India through Commandant - 87 BN. C.R.P.F., A.O.I., Raipur Chhatisgarh
2. The Commandant 87, C.R.P.F. Raipur, Chhastigarh
3. The Inspector General of C.R.P.F., Bihar Sector, C.R.P.F., Patna, Bihar
4. The Deputy Inspector General of C.R.P.F., Muzaffarpur, Bihar, Patna
5. Shri Brahma Roy son of not Known to the appellant, Hawaldar, 87, BN. C.R.P.F., Raipur, Chhatisgarh

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Shashi Shekhar Kishore, Advocate
For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-06-2018

Seeking exception to an order dated 12.9.2013 passed by the learned writ court in C.W.J.C. No. 17372 of 2008 dismissing the writ petition on the ground of res judicata as the petitioner had earlier filed a writ petition which was dismissed as withdrawn without seeking any liberty, this appeal has been filed under Claise-X of Letters Patent.

There being a delay of more than 200 days, I.A.No. 3595 of 2014 has been filed seeking condonation of delay. The



delay in filing the appeal is condoned and I.A. No. 9535 of 2014 is allowed and disposed of.

We have considered the question of hearing of the petition on merit.

Even though learned counsel for the appellant vehemently argued that the petitioner has been removed from service and, therefore, he should be given an opportunity to agitate the matter, we find that two writ petitions were filed with regard to the issue in question pertaining to the disciplinary action taken against the petitioner on 28-07-2003. The first writ petition, being CWJC No. 8958 of 2003 was withdrawn with liberty to take recourse to the alternative remedy of appeal. The remedy of appeal was available and when the appeal was dismissed, the second writ petition challenging the same in CWJC No. 6890 of 2005 was withdrawn by the petitioner on 17-01-2007 without seeking any liberty. It is in view of the aforesaid factual aspect of the matter that learned writ court has refused to interfere into the matter.

The question as to what would be the effect of a writ petition withdrawn simplicitor without seeking any liberty has been considered and the principles crystallized by the Hon'ble Supreme Court way back in the year 1987 in the case of Sarguja



Transport Service vs State Transport Appellate Tribunal, AIR 1987, SC 88 wherein it has been held that when a petition or a suit is withdrawn without seeking liberty to initiate fresh proceedings, the same operates as res judicata and the second petition is not maintainable. Following the aforesaid judgment of the Hon’ble Supreme Court, a Bench of this Court also in the case of Rajeev Kumar Pandey Vs. The State of Bihar & Ors., reported in 2015 (3) PLJR 308 has upheld the same views after relying upon a subsequent judgment of the Supreme Court in the case of Uma Shankar Prasad Vs. The State of Bihar & Ors., 2009(4) PLJR SC 73.

Keeping in view the aforesaid, we are of the considered view that once the earlier writ petition was withdrawn by the petitioner without seeking any liberty, now we cannot make any further indulgence into the matter.

The appeal stands dismissed in view of the above.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
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