

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

**CWP No. 28315 of 2018
DATE OF DECISION: 19.11.2018**

Shivani

..... Petitioner

versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. B. S. Rathee, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

1. The question herein is whether the petitioner having once unsuccessfully assailed her rejection for appointment to the post of Constable before this Court vide Single Bench judgment dated 25.09.2018, which was appealed vide LPA No. 1647 of 2018, can file a fresh writ petition assailing the same very rejection on the ground that she has withdrawn the LPA, albeit with liberty to resort to the remedies, as admissible in law.

2. The earlier civil writ petition filed by the petitioner herein, seeking issuance of a writ of mandamus for grant of appointment to the post of Constable (General Duty) in CAPFs, NIA, SSF and Riflemen (GD)) in Assam Rifles as advertised vide advertisement dated 24.01.2015, was dismissed by a learned Single Judge of this Court, vide detailed judgment dated 25.09.2018. The said judgment was assailed by way of an LPA

before the Division Bench of this Court and the same was disposed of in the following terms :-

“ Having argued the matter at some length, learned counsel for the appellant submits that he be permitted to withdraw this appeal, so as to enable the appellant to resort to the remedies as admissible in law.

Dismissed as withdrawn, with the liberty prayed for.”

3. It is, thus, clear that the appellate Division Bench of this Court even though did not decide the appeal on merits, but at the same time, the judgment of Single Bench was not interfered and the same has since attained finality.

4. Before the final judgment was rendered in the earlier civil writ petition bearing No.7168 of 2017, an interim order dated 20.03.2018 was passed, which is reproduced herein below for ready reference :-

“ The competent authority is hereby directed to pass a speaking order insofar as considering the petitioner's name for the unreported vacancy or in the alternative ITBP border post within a period of four weeks from today. In this regard, necessary order be passed and placed it on record by the next date of hearing, failing which adverse order would be passed.”

5. Pursuant to the above order of this Court, respondent No.3 herein/DIG (Recruitment CRPF) passed an order dated 18.04.2018, (Annexure P-26), rejecting the claim of petitioner for appointment as Constable (GD). Intriguingly, the order dated

18.04.2018 was not brought to the notice of this Court at the

time of final arguments of earlier writ petition No.7186 of 2017. The said earlier writ petition was heard at length and was disposed of on merits considering all the available contentions of both the sides when the impugned order Annexure P-26 was already in existence.

6. The impugned order Annexure P-26 has been passed, inter-alia, on the grounds that firstly, the case of petitioner being a "tie" case, the preference was, therefore, to be given to the candidate scoring more marks in Part-A. The petitioner scored 16 marks in Part A out of 25 marks in written examination which were less than that of the last selected candidate who scored 20 marks out of 25 marks in Part A. Secondly, the vacant post in Border Area of Himachal was to be filled by a candidate who had domicile of border area. The petitioner not being a domicile of border area, was not considered for the said post.

7. The present writ petition has now been filed assailing the order dated 18.04.2018 (Annexure P-26) whereby the claim of the petitioner to consider her for appointment to the post of Constable, has been rejected, notwithstanding that the said rejection has been subsequently upheld vide detailed judgment of Single Bench and as affirmed by the Division Bench of this Court.

8. Facts of the case succinctly are that on 24.01.2015, Government of India, Staff Selection Commission (respondent No.1) advertised the post of Constables (GD) in Central Armed Police Forces (CAPF) (i.e BSF, CRPF, CISF, ITBP, SSB), NIA, SSF and Rifleman (GD) in Assam Rifles. The petitioner is permanent

resident of Himachal Pradesh and belongs to OBC category. She is a Graduate from Himachal Pradesh University, Shimla and holds the 'C' certificate from NCC. Being eligible, she applied for the above said post online. She was issued an admit card to undergo Physical Standard Test (PST)/Physical Endurance Test (PET) on 30.05.2015 followed by a written examination thereafter and on passing of written examination the short listed candidates were to undergo medical examination to be conducted by Ministry of Home Affairs/Co-ordinating CAPF i.e. CRPF. The petitioner's contention is that despite having duly qualified in the written examination by securing 61 marks and also qualifying the Detailed Medical Examination held on 13.05.2016, her name did not find mention in the final merit list dated 02.02.2017 (Annexure P-14).

9. The petitioner filed representations dated 15.03.2017 and 31.03.2017 (Annexures P-18 and P-19 respectively), to consider her for the above said vacant post. The said representations did not yield any result compelling the petitioner to file CWP No. 7168 of 2017 before this Court. The said writ petition was disposed of vide a detailed judgment, the relevant part whereof is extracted herein below:-

"9. The petitioner had secured 61 marks which are equivalent to marks of last selected candidate in CRPF. The instant case is Tie case and the method to resolve Tie cases has clearly been mentioned in the Notice of Examination which is as under:-

“(a). The tie is resolved by the Commission by referring to the total marks in the written examination i.e., a candidate having more marks in the written examination gets preference over the candidate(s) with less marks.

(b). If the tie still persists then the marks in Part A are referred to i.e., a candidate having more marks in Part A is given preference.

(c). If the tie still persists, the candidate older in age gets preference.

(d). If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e., a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.”

10. The last candidate selected in CRPF having total 61 marks had scored 20 marks in Part-A but the petitioner had scored only 16 marks in Part-A. She was not selected being lower in merit in Part-A. As per the respondents, the Commission functions within the ambit of the Notice of Examination and provisions of Notice of Examination are binding on one and all. However, the petitioner has tried to mislead this Court by stating that the respondents have selected candidates with less marks though the petitioner could be considered against the vacancies for female OBC category candidates belonging to General Area of domicile of Himachal Pradesh as per provisions of the Notice and there is no violation of the Notice of examination. Otherwise, the writ petition filed by the petitioner deserves to be dismissed being covered as per view taken by this Court in **Rahul Kaushik Vs. UOI and Ors, CWP No. 3209 of 2013**, decided on 4.2.2016 and prayed that the present writ petition be also dismissed.

11. In view of the above, there is no merit in the present writ petition and the same stands dismissed.”

10. A perusal of the above judgment vis-a-vis the impugned order Annexure P-26 herein shows that the issue in hand has already been dealt with by co-ordinate Bench of this Court even though Annexure P-26 was not directly under challenge in earlier writ petition. Hon'ble the Supreme Court in **"Canara Bank vs N.G. Subbaraya Setty" 2018 AIR (SC) 3395** has reiterated the principles of res judicata as given under Section 11 of CPC by holding that where the matter relates to the same parties and the question involved in the previous and subsequent litigation is directly and substantially the same, the parties cannot be allowed to re-agitate the matter again and again. Three exceptions, however, have been carved out where the matter relates to pure question of law. In other words, on a question of law, the principle of res judicata does not apply if it falls under the said three exceptions. The said three exceptions to the general principle of res judicata enunciated by the Supreme Court are as under:-

(i) Where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the Court, an erroneous decision in the former suit or proceeding is not res judicata in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceeding.

(ii) An issue of law which arises between the same parties in a subsequent suit or proceeding is not res judicata if, by an erroneous decision given on a statutory prohibition in the former suit or proceeding,

the statutory prohibition is not given effect to.

(iii) Another exception to this general rule follows from the matter in issue being an issue of law different from that in the previous suit or proceeding. "

Herein, none of the above three exceptions are attracted and, therefore, the present writ petition is liable to be dismissed.

10. Having already exhausted her remedy of judicial review under Article 226 of the Constitution of India and thereafter having also resorted to the Letters Patent Appellate jurisdiction of this Court wherein the appeal was albeit withdrawn with liberty to resort to the remedies as admissible in law, it cannot now be construed that the petitioner is entitled to reopen the entire controversy by filing another writ petition. Grant of liberty to resort to the remedies as admissible in law does not mean resorting to extra ordinary writ jurisdiction under Article 226 of Constitution of India particularly, having once already exhausted the said remedy before this Court wherein the learned Single Judge rendered a judgment on merits of the case. The present writ petition is misconceived and is, therefore, dismissed both on principles of res judicata as well as on merits.

11. No order as to costs.

(ARUN MONGA)
JUDGE

NOVEMBER 19, 2018

shalini

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No