

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13213 of 2017

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Gautam Kapoor son of late Shiv Nandan Prasad Sinha resident of village/P.O.
Gonawan, P.S./Distt. - Nawada. Petitioner

Versus

1. South Bihar Power Distribution Company Limited, having it's registered office at Bidyut Bhawan, Beli Road, Patna through it's Managing Director
2. The Dy. General Manager (Human Resources), South Bihar Power Distribution Company Limited, having it's registered office at Bidyut Bhawan Beli Road, Patna
3. The Electrical Executive Engineer, Electric Supply Division, Nawada.
4. The Electrical Executive Engineer, Electric Supply Division, Sheikhpura.
5. The Assistant Electrical Engineer, Electric Supply Sub Division, Nawada.
6. The Assistant Electrical Engineer, Electric Supply Sub-Division, Rajauli, Distt - Nawada.
7. The Assistant Electrical Engineer, Electric Supply Sub-Division, Warsaliganj, Distt. - Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sidhendra Narayan Singh, Advocate
For the Respondent/s	:	Mr. A. K. Ojha, Standing Counsel, Mr. A. K. Karna, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 13-11-2019 Heard learned counsel for the petitioner and learned
counsel representing the Power Company.

The petitioner in the present case is aggrieved by and dissatisfied with the Memo No. 623 dated 29.05.2014 as contained in Annexure '15' to the writ application by which the 'LOA' issued under Office Order No. 780 B dated 11.07.2013 (Annexure '5') for supply of Manav Bal / Worker has been cancelled by respondent no. '3'. The petitioner has also prayed



for quashing of letter no. 2031 dated 19.12.2015 issued under the signature of the Electrical Executive Engineer, Electric Supply Division, Nawada by which the representation of the petitioner filed on 14.09.2015 (Annexure '20') in compliance of the order dated 19.08.2015 passed in C.W.J.C. No. 13414 of 2014 has been disposed of. Upon quashing of the aforesaid Memo and the Letter, the petitioner has prayed for further consequential reliefs.

The facts are not much in dispute. The petitioner was earlier impanelled with the South Bihar Power Distribution Company Limited as an agency for making available the personnel / staffs required in the electrical circle division. Annexure '1' is the copy of the information under which the petitioner is said to have applied for his empanelment. Clause '4' of Annexure '1' clearly stipulates that the panel will be valid for a period of three years and in case the work of the agency is found unsatisfactory, the name of the agency shall be removed after giving 15 days notice.

It is the case of the petitioner that while there was no complaint against the petitioner, all of a sudden, the petitioner received the Memo dated 29.05.2015 (Annexure '15' to the writ application) by which the 'LOA' issued to the petitioner for



supply of 37 Manav Bal under Officer Order No. 780 B dated 11.07.2013 had been cancelled.

However, it is a matter of record that the petitioner had challenged the Memo dated 29.05.2014 before this Court in C.W.J.C. No. 13414 of 2014. The reliefs prayed in the said writ application are quoted by the petitioner in Annexure '21' of the present writ application from which it will appear that a specific prayer was made in the earlier writ application to quash the Memo No. 623 dated 29.05.2014 and for a direction to the respondents to take supply of Manav Bal (worker) from the petitioner treating it as a impanelled agency.

It further appears from the records that when the said writ application was pending before this Court, the matter was mentioned before the learned co-ordinate Bench and a statement was made that the petitioner is confining his relief claimed in the writ application only in respect of his Bill dated 11.07.2014 for the month of June, 2014 as contained in Annexure '13' of the said writ application. The writ application was prayed confining the relief and thereupon the learned co-ordinate Bench of this Court vide it's order dated 19.08.2015 passed the following order:

“4. Having regard to the submissions on behalf of the petitioner and with his consent, the writ petition is



disposed of, granting liberty to the petitioner to approach the concerned respondent with a fresh representation, who will examine the matter and take steps for payment of the admitted dues of the petitioner, if possible within a period of three months from the date of receipt/production of a copy of this order. It is further clarified that if the entire claim of the petitioner is not found admitted then he should be communicated the reasons for reaching such conclusion.”

Pursuant to the aforesaid order, when a representation was made by the petitioner, the petitioner raised his grievance once again with respect to the cancellation of ‘LOA’, however, the same was not considered and the representation of the petitioner has been disposed of by the Electrical Executive Engineer, Electric Supply Division, Nawada vide Annexure ‘20’ dated 19.12.2015 stating therein that the Bills submitted by the petitioner had already been paid by the Company through the various cheques, description of those cheques have been provided in paragraph ‘4’ of the letter dated 19.12.2015 (Annexure ‘20’).

Learned counsel for the petitioner has, at this stage, while reiterating the reliefs prayed in the writ application submitted that from Annexure ‘22’ to the writ application which is a forwarding letter of the Appellate Authority under Right to



Information Act, 2005 together with a copy of the inquiry report of the Electrical Superintending Engineer, Electric Supply Circle, Biharsharif, Nalanda it would appear that the Electrical Superintending Engineer had given his opinion saying that there was no complaint against the petitioner and the personnel / Staffs of the petitioner who had allegedly made complaint against the petitioner had sworn an affidavit that they had no grievance with the petitioner and for this reason he came to a conclusion that the cancellation of 'LOA' of the petitioner was not just and proper.

Learned counsel submits that on the face of the opinion of the Electrical Superintending Engineer which has been made available to the petitioner recently, the petitioner has got a fresh cause of action to agitate this issue and therefore, in the present writ application the reliefs which were prayed in the earlier writ application has once again been agitated.

Learned counsel for the Power Company submits that it is evident from Annexure '21' of the present writ application that identical reliefs which were prayed in C.W.J.C. No. 13414 of 2014 has been sought to be prayed in the present writ application.

Learned counsel submits that a bare perusal of the



order dated 19.08.2015 passed in C.W.J.C. No. 13414 of 2014 would show that while pressing the said writ application the petitioner had abandoned and given up the challenge to the cancellation of 'LOA' and if he had done so, at this stage, he cannot be allowed to agitate the same relief which he has already abandoned. In this regard learned counsel placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Sarguja Transport Services V. State Transport Appellate Tribunal, Gwalior and Others** . reported in **AIR 1987 SC page 88**. Paragraph '7' and '8' thereof have been relied upon.

Learned counsel submits that from a reading of the report of the Electrical Superintending Engineer itself it would appear that the personnel / staffs who had been provided by the petitioner had made a complaint against the petitioner. Later on if the petitioner brought affidavits of those very staffs / personnel and pleaded that there is no complaint against him, the same cannot be made a basis to take a view that the cancellation of 'LOA' was wholly without any reason. In his submission, the panel was prepared for a period of three years and three years period has already lapsed on or about June, 2016. It is, thus, submitted that at this stage no direction need be



issued to take the petitioner in the panel and/or revive the 'LOA' which has already been cancelled long back.

Mr. Ojha, learned counsel for the Power Company pointing out paragraph '5' and '6' of the counter affidavit has submitted that no rejoinder thereto has been filed by the petitioner.

Having heard learned counsel for the parties and perusal of the record, this Court finds substance in the submission of learned counsel for the Power Company. It is evident from Annexure '21' of the writ application that identical reliefs were prayed in C.W.J.C. No. 13414 of 2014. It is further evident from the order of this Court passed on 13.08.2015 in C.W.J.C. No. 13414 of 2014 that the petitioner had confined his relief claimed in the writ application only with respect to one of his Bills dated 11.07.2014. Keeping that in mind when a direction was issued by this Court, the petitioner submitted his representation. It is not in dispute now that his Bill dated 11.07.2014 has already been paid.

In the case of **Sarguja Transport** (supra) their Lordships have in paragraph '7' and '8' held as under :

“7. The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws



from a suit without the permission, referred to in Sub-rule (3) of R. 1 of O. XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying R. 1 of O. XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. *Invito beneficium non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Sub-rule (3) of R. 1 of O. XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of *res judicata* contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of *res judicata* applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of



abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in Sub-rule (4) of R. 1 of O. XXIII of the Code when the first suit is withdrawn without the permission referred to in Sub-rule (3) in order to prevent the abuse of the process of the Court.

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying R. 1 of O. XXIII of the Code is adopted in respect of writ petitions filed under Art. 226/227 of the Constitution also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao v. The State of U.P.*, (1962) SCR 574: (AIR 1961 SC 1457) in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Art. 32 of the Constitution because in such a case there has been no decision on the merits by the High Court. The relevant observation



of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:

“If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other.”

The contention of learned counsel for the petitioner that because of the opinion of the Electrical Superintending Engineer which have been made available to the petitioner vide Annexure '22' to the writ application, the petitioner may agitate this issue afresh would not appeal to this Court because once the petitioner has on his own sweet will abandoned his relief in C.W.J.C. No. 13414 of 2014, at this stage, he cannot be allowed to re-agitate the same issue because at the relevant time the petitioner had not prayed for any liberty from the learned co-ordinate Bench to re-agitate this issue in a future proceeding. Moreover, it appears to this Court that the opinion expressed by the Electrical Superintending Engineer alone cannot be a basis to go into the issues which have already died their natural death over the period. The maximum period of empanelment after three years has also lapsed.

In these circumstances, this Court is not willing to



exercise its extra ordinary writ jurisdiction under Article 226 of the Constitution of India to allow the petitioner to re-agitate the issue.

The writ application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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