

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Writ Petition No. 16627 of 2015(O&M)
Date of Decision : 19.12.2019

Rajender Singh

... Petitioner

versus

Union of India & Anr.

... Respondents

CORAM:-HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Kumar, Advocate
for the petitioner.

Mr. Arun Gosain, Advocate
for respondents UOI.

ARUN MONGA, J.

1. Short controversy arising herein for consideration is, whether petitioner fulfills the criteria of minimum height for the purpose of selection and appointment to the post of Constable advertised in 2010?
2. Matter has been since pending 2015 and in order to resolve the controversy, my Senior Brother Harinder Singh Sidhu, J., before issuance of notice of motion passed the following order:-

“Before proceeding to issue notice of motion in this writ petition, which has been filed after a delay of about four years, during which the petitioner pursued his remedy before the Civil Court, it would be appropriate if the height of the petitioner is measured by the Medical Officer of the High Court.

For the above purpose, the petitioner would be required to present himself before the Medical Officer of this Court on or before 14.12.2015 during working hours. On his doing so, the Medical Officer of the High Court would ascertain the height of the petitioner and submit his report to this Court.”

3. Pursuant to the above order, Medical Certificate dated 12.02.2016 has been placed on record certifying the petitioner's height to be 172 cms. Whereas, the petitioner having successfully qualified in the written examination, wherein he is stated to have obtained 77 marks, was invited for physical standard test/ physical efficiency test, but was declared unfit in the medical examination on account of his height, which was measured as 170.5 cms by the Medical Board constituted for the purposes of selection. Aggrieved by the wrong measurement of his height, the petitioner issued legal notice dated 23.07.2011(Annexure P-2) which was adverted by the respondents and order dated 23.11.2011(Annexure P-3) was passed and claim of the petitioner was denied. Dis-satisfied, petitioner filed a civil suit before the Court of Civil Judge, Bhiwani on or about 05.12.2012. The said civil suit was later on withdrawn on 19.05.2015 and the instant writ petition has been filed on the same cause of action on or about 11.08.2015.

4. Having heard the rival contentions and on perusal of the pleadings along with appended record thereto, I am of the view that at this stage the claim of the petitioner is not only belated but also hit by principles of constructive *resjudicata*. While withdrawing the suit, following order was passed:-

“File taken up today as plaintiff moved an application for seeking permission to the court to withdrawn the present suit. His statement also recorded separately in this regard. Keeping in view, his said statement, the present suit is hereby dismissed as withdrawn. File be consigned to the record room, after due compliance.”

A perusal of the above leaves no manner of doubt that doctrine of constructive *resjudicta* as envisaged under Section 11 of Civil Procedure Code (CPC) bars the petitioner to re-agitate the same cause having once consciously preferred to file suit and not seeking permission of the Court under Order 23 Rule (3) CPC to re-file a petition on the same cause of action. Having not done so, the petitioner relinquished/ abandoned his claim to seek appointment on the post of Constable in Border Security Force.

5. Apart from principle of *resjudicata*, by sheer efflux of time petitioner by now would have become overage for being considered to be appointed on the post of Constable, which was advertised way back in the year 2010. On the other hand, petitioner had a choice to appeal against the Medical Board decision dated 10.06.2011(Annexure P-1) and instead of doing so, he preferred to file a civil suit and that was withdrawn in the year 2015. In the process, by his own conduct, petitioner has created a situation where his case is hit by delay and laches. No interference, therefore, is called for.

6. Writ petition is dismissed.

7. While parting I may hasten to add here that it is quite a paradox and irony of fate that even though petitioner seems to have height of 172 cms as against 170.5 cms measured by the Medical Board, as is borne out from Medical Certificate dated 12.02.2016, placed on record pursuant to orders of this Court, but in view of self-created situation, as narrated hereinabove, no indulgence can be extended due to sheer delay, to mitigate the grievance of the petitioner. It is, however, observed that in case petitioner is not over-aged and is otherwise medically fit, he may be reconsidered for appointment in future selection process and subject, of course, to his clearing the written examination and the wrong height of 170.5 cms shall not come in his way of being rejected.

(ARUN MONGA)
JUDGE

December 19,2019

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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |