

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.1194 of 2021(O&M)

Date of Decision: 26.03.2021

Samunder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Gopera, Advocate
for the petitioner.

Mr. Samarth Sagar, Addl.A.G.,Haryana.

ANIL KSHETARPAL, J.

Through this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner prays for the following substantive relief:-

“i) issue an appropriate, Writ, Order or direction especially in the nature of Mandamus, directing the respondents to promote the petitioner as P/Inspector from the date persons junior to the petitioner were promoted as such with a further direction to the respondents to refix the pay of the petitioner and to grant all other consequential benefits for which he is legally entitled.”

On 22.01.2021, after hearing learned counsel for the petitioner, the following order was passed:-

“The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

At the outset, learned counsel for the petitioner was requested to explain as to how this second petition is maintainable in view of the fact that the petitioner has previously filed a petition i.e. Civil Writ Petition No.37361 of 2019 but he omitted to claim the relief sought for in this writ petition particularly when he could seek it in the previous writ petition as the cause of action for seeking the relief had already arisen on 30.07.2019 when the juniors of the petitioner were promoted but the petitioner was not considered.

List on 01.02.2021, for arguments.

To be listed in urgent.”

Learned counsel representing the petitioner has been, once again, heard at length.

Some facts are required to be noticed.

The petitioner, who has since been retired, seeks promotion to the post of Inspector from the date his juniors were promoted on the ground that he was ignored for promotion on 30.07.2019.

The petitioner claims that he was enrolled as a Constable on 23.04.1984, but unfortunately while undergoing training he met with an accident and became physically handicapped to the extent of 75%. The petitioner claimed that he is entitled for extension beyond the normal age of retirement i.e. 58 years which was rejected on 19.12.2018. The petitioner filed Civil Writ Petition No.37361 of 2019, in which while issuing notice of

motion the stay of dispossession from the official accommodation was granted. The writ petition is stated to be pending. On 22.01.2021, learned counsel for the petitioner was requested to explain as to how a second writ petition is maintainable.

Learned counsel submits that both the writ petitions are based on separate cause of action. He submits that the cause of action for filing the previous writ petition arose on 19.12.2018. Whereas this writ petition is based on a cause of action which arose on 30.07.2019.

The arguments of learned counsel for the petitioner have been considered, evaluated and analyzed. The previous writ petition was filed on 28.11.2019. On the said date, the cause of action to file this writ petition had already arisen. The High Court has framed the Rules and Orders of the Punjab and Haryana High Court. Under the aforesaid Rules and Orders, the High Court has notified the Writ Jurisdiction (Punjab & Haryana) Rules, 1976, which are published in Part-I of Chapter-4-F of Volume 5 of Rules and Orders of the Punjab and Haryana High Court. Rule 32 thereof reads as under:-

32. In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure 1908, shall apply mutatis mutandis, in so far as they are not inconsistent with these rules.

It is apparent that the provisions of the Code of Civil Procedure, 1908 would be mutatis mutandis applicable unless found repugnant to the writ rules.

Learned counsel for the petitioner failed to draw the attention of the court to the provision of the writ rules which exclude the applicability

of the provision of Order 2 Rule 2 of the Code of Civil Procedure, 1908.

Further, Order 2 Rule 2 even states that the plaintiff has to include all the claims based on a single cause of action in the same suit and if he omits to do so, he cannot bring a new suit on that claim afterwards.

The principle behind Order 2 Rule 2 of the Code of Civil Procedure, 1908, is to avoid filing of multiple suits by splitting the cause of action. It has been provided that if on the day the suit is filed, the plaintiff has more than one relief to claim based on a cause of action and he omits to seek a particular relief then a second suit to claim that relief would not be maintainable.

In view thereof, the previous writ petition filed by the petitioner is also with respect to his entitlement to continue in service. The petitioner could very well include the relief sought for in this writ petition in the previously filed writ petition. On the day the previous petition was filed i.e. 28.11.2019, the cause of action in favour of the petitioner to seek promotion on the post of Inspector had already arisen because he was allegedly ignored for promotion on 30.07.2019.

Keeping in view the aforesaid facts, the writ petition is barred as per the principles of law enshrined under Order 2 Rule 2 of the Code of Civil Procedure, 1908.

Hence, the writ petition is not maintainable.

Disposed of accordingly.

26th March, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO