

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-LP-1-2022 in LPA-1187-2021
Date of decision: 23.2.2022

Shiv Bahadur

... Applicant/Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Applicant in person.

ARUN PALLI, J. (ORAL)

The applicant (appellant) seeks review of our order, dated January 19, 2022:-

“ After arguing at length and finding that this Court is not inclined to accept the arguments of learned counsel for the appellant, the appellant prays for and is permitted to withdraw this appeal.

As prayed, appeal is dismissed as withdrawn.”

Ex facie, the appeal was dismissed as withdrawn, pursuant to the statement of the learned counsel for the appellant. And ordinarily, we would have straightaway declined the prayer for review without having to delve into the merits. But, since the applicant is appearing in person and to demonstrate as to in what circumstances the counsel for the appellant withdrew the appeal, a brief narration of facts that has led him to the current stage shall be expedient.

The applicant was employed with P.G.S.D. High School, Hisar (respondent No.4), as Chowkidar. For his services were no longer required, he was terminated during probation on 21.11.1987. The Industrial Tribunal-cum-Labour Court, Hisar, vide an award dated 16.9.1993, held termination

of his services to be justified. A writ petition (CWP No.15852 of 1993), preferred against the said award was dismissed on merits by the learned Single Judge on 23.01.2014. The said decision was assailed by the applicant in an intra-court appeal (LPA No.510 of 2014), which was withdrawn by the counsel for the applicant with liberty to avail alternate remedy. What we wish to emphasize is that the judgment (*ibid*), rendered by the learned Single Judge, was not varied or disturbed. Now, what could be the ramifications, consequent to withdrawal of the said appeal, in law, qua any subsequent proceedings, was another significant question. The applicant, thereafter, assailed the order of termination, dated 21.11.1987, in an appeal before the District Education Officer, Hisar (respondent No.3), which was dismissed on 21.8.2017. However, a further appeal against the said order to the Director Secondary Education, Haryana, (respondent No.2), was accepted, and vide order dated 27.11.2017, the applicant was ordered to be reinstated. The said order was assailed by respondent No.4, vide CWP No.28214 of 2017, which was allowed by the learned Single Judge, vide a detailed order and judgment dated 04.10.2021. And consequently, the order dated 27.11.2017 (*ibid*) was set aside on multiple grounds. The said judgment was assailed by the applicant in an appeal (LPA No. 1187 of 2021), which, as indicated above, was withdrawn by the counsel for the applicant.

The short ground, upon which the review is being prayed for, is:

“That the applicant was present during the hearing of the present LPA, at that time the Hon’ble Court put a query, “Whether you want an order on merit with cost or you wish to withdraw the present petition”. Upon this query the Counsel for applicant asked the applicant, whether he wish to withdraw the present petition or he wish to bear the cost. Upon that the applicant had replied that kindly ask the department to first permit me to join the duty, only then I’ll

withdraw the appeal. Due to the communication gap the Counsel for applicant has withdrawn the present appeal. When the order came, than the applicant found that no liberty has been granted to him. Then he asked his Counsel to file an application for review. As the applicant has not given any fees/charges to his Counsel for the present appeal, therefore he denied to file the present application. Therefore, the applicant is filing the present application in person.”

We may point out that having heard the learned counsel for the appellant at length and in reference to the first round of litigation between the parties, as indicated above, and now again an adjudication of the matter by the learned Single Judge vide impugned judgment, we observed that the appeal was not only devoid of merit, but also an abuse of process.

Faced with the above, learned counsel for the appellant submitted that let the applicant withdraw the appeal with liberty to again represent to the authorities. But, we declined to grant any such liberty and observed that if despite the impugned order and judgment, the applicant still, on his own, intended to represent to the authorities, there was nothing stopping him. Upon which, learned counsel, on instructions from the applicant, withdrew the appeal.

What is now sought to be urged is: although the applicant had conveyed to his counsel that he would withdraw the appeal provided the authorities first permit him to join duty, however, owing to communication gap, the counsel for the applicant withdrew the appeal.

Significantly, the learned counsel, who represented the applicant, neither chose to move this application, nor appear for the applicant to lend credence to his version. We may also point out that the order under review was passed on 19.1.2022 in the presence of the applicant and his counsel, and was

sought to be set up by the applicant is: **“when the order came, than the applicant found that no liberty has been granted to him. Then he asked his counsel to file an application for review.”** Meaning thereby, the applicant acquired knowledge qua the contents of the order passed by this Court on 20.1.2022, and also that he has not been granted any such liberty. But, rather than moving a review application, as per the averments set out in paragraph 4 of the application itself, he submitted an application to the respondent authorities on 24.01.2022, as regards his claim and concerns, which, the authorities purportedly declined. Whereafter, he appeared to have a thought of moving the review application, which was filed on 4.2.2022. Thus, there is an apparent dichotomy in the version of the applicant. Significantly, copy of the application, dated 24.1.2022 (*ibid*), has not been placed on record either. Which, in our opinion, would have unraveled the true and actual position. Thus, the application at hand appears to be speculative and lacks bonafide.

In the wake of the above, the application being bereft of merit, is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 23, 2022
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: YES/NO