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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1572/2022

SANDEEP KUMAR

..... Petitioner

Through: Mr. T.D. Yadav, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajnish Kumar Gaind, Advocate

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Date of Decision: 04th February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

Matter has been heard by way of video conferencing.

1. Present writ petition has been filed challenging the orders dated 03rd November, 2007, 02nd December, 2007 and 27th June, 2009 whereby the petitioner was terminated from service. Petitioner also seeks directions to the respondents to reinstate the petitioner in service and extend the same benefit granted to a similarly placed persons vide orders/judgments dated 18th October, 2010 in W.P.(C) No. 1859-2010 and W.P.(C) 4983-2010 to the petitioner. Petitioner also seeks a grant of all consequential benefits upon reinstatement.



2. Learned counsel for the petitioner states that the petitioner was terminated from service on account of a pending criminal case against him which he states that the petitioner was unaware of.
3. He states that after the applications and petitions preferred by the petitioner to the respondent authorities did not yield results, the petitioner preferred W.P.(C) No. 4987 /2010 which was dismissed as withdrawn on 18th October, 2010.
4. He states that the petitioner filed another W.P.(C) No.4203/2012 which was dismissed on 17th July, 2012 on the ground that the Court had not granted liberty to the petitioner to file a fresh writ petition in the order dated 18th October, 2010.
5. Learned counsel for the petitioner fairly points out that the SLP CC No. 20878-2013 was also dismissed vide a non-speaking order dated 09th December, 2013.
6. He emphasises that the petitioner, in November 2021, came to know that in identical writ petitions, ***W.P.(C) No.1859-2010*** i.e. ***Sunil Kumar vs Union of India & Ors.*** and ***W.P.(C) 4983-2010*** i.e. ***Ex. Rectt. Amit Kumar Vs Union of India & Ors.***, a coordinate Bench of this Court had granted relief to persons similarly situated as the petitioner, who had been falsely implicated in the same criminal case as the petitioner.
7. He states in the criminal proceedings against the petitioner, the State of Uttarakhand took a decision to withdraw the prosecution and the petitioner stood acquitted from the charge-sheet vide order dated 03rd June, 2009 passed by the Court of District & Session Judge, Haridwar.
8. Learned counsel for the petitioner also relies on the judgment of the Supreme Court in the case of ***Kunhayammed & Ors Vs State of Kerala &***



Anr. (2000) 6 SCC 359 wherein it has been held that dismissal at the stage of Special Leave by a non-speaking order does not constitute *res-judicata* and would not preclude the aggrieved party from seeking relief in the writ jurisdiction or review jurisdiction of the High Court.

9. Having perused the paper book, this Court finds that the first writ petition filed by the petitioner being W.P.(C) 4987/2010 was dismissed as withdrawn vide order dated 18th October, 2010. The said order dated 18th October, 2010 is reproduced hereinbelow:-

“The original record has been produced. After some hearing, learned counsel for the petitioner prays to withdraw the writ petition.

This writ petition is dismissed as withdrawn.”

10. The second writ petition filed by the petitioner being W.P.(C) 4203/2012 was dismissed vide order dated 17th July, 2012 on the ground that a second petition on the same cause of action was not maintainable. The order dated 17th July, 2012 passed in W.P.(C) 4203/2012 is reproduced hereinbelow:-

“1. On the same cause i.e. service being terminated while staying on probation; on the allegation that while seeking employment the petitioner suppressed a material fact of his being an accused for offences punishable under the Penal Code, the petitioner had filed WP(C) No.4987/2010 which was dismissed as withdrawn as per order dated 18th October, 2010, without seeking any leave from the Court to file a fresh petition on the same cause of action.

2. A second petition on the same cause of action is obviously not maintainable and hence is dismissed.

3. No costs.”



11. A Special Leave Petition challenging the judgment and order dated 17th July, 2012 was dismissed by the Supreme Court. The order of the Supreme Court dated 09th December, 2013 dismissing the petitioner's Special Leave Petition is reproduced hereinbelow:-

*“Delay condoned.
The special leave petition is dismissed.”*

12. Admittedly, the present writ petition is the third writ petition filed by the petitioner for identical reliefs. Even though the petitioner's first writ petition was dismissed as withdrawn and second was dismissed as not maintainable, yet no leave or liberty had been granted at any stage to file a new writ petition. Consequently, the judgment of the Supreme Court in ***Kunhayammed & Ors*** (supra) is not applicable to the present case.

13. It is well settled law that subsequent writ petition on the same cause of action after withdrawing the initial writ petition without leave or liberty from the Court is barred on the ground of public policy. The Supreme court in ***Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P, Gwalior, and Ors., (1987) 1 SCC 5*** has held as under:

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke



the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

14. Keeping in view the aforesaid mandate of law, the present writ petition is dismissed as barred on ground of public policy.

न्यायमेव जयते

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 04, 2022

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