

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

125

CWP No.8475 of 2023

Date of decision:16.05.2023

Shri Bhagwan

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Nonish Kumar, Advocate
for the petitioner.

Mr.Pankaj Middha, Addl.A.G, Haryana
for the respondents.

SUVIR SEHGAL J.

1. This is the second petition filed by the petitioner inter alia seeking issuance of a writ in the nature of *certiorari* for quashing order dated 23.01.2017 (Annexure P-12), whereby his claim for grant of notional promotion to the post of Assistant with effect from 04.04.1995, when his juniors were promoted, has not been considered. Another prayer has been made for direction to the respondents to correct the seniority list after considering the claim of the petitioner and to place his name over and above his juniors.

2. The first petition filed by the petitioner with the same grievance and verbatim same prayer, bearing CWP No.30845 of 2019 was withdrawn by the petitioner, by way of an application (CM No.16509-2022), which was supported with his affidavit, vide order dated 27.10.2022 (Annexure P-14), which deserves to be noticed and is reproduced as under:-

“CM-16509-CWP-2022

This is an application for preponing the main case, which is slated for hearing on 14.12.2022 and withdrawal of the same.

For the reasons stated in the application, same is allowed and main case is preponed and taken on board today itself.

Learned counsel for the petitioner seeks withdrawal of the instant writ petition.

Dismissed as withdrawn.”

3. From the perusal of the above order, it is evident that the petition was voluntarily withdrawn on an application filed by the petitioner. This Court has examined the paper book of the previous writ filed by the petitioner. Not only the petitioner has claimed the same relief but even the grounds of challenge in both the writ are same. This Court, is therefore, of the view that the instant writ petition is hit by the doctrine of res judicata and cannot be entertained.

4. A Full Bench of this Court in '**Teja Singh Vs. Union Territory of Chandigarh and Ors. AIR 1982 P &H 169**', noticing the provisions of Writ Jurisdiction (Punjab and Haryana) Rules, 1976, held as under:

“25. This brings me to the provisions of Order XXIII Rule 1 of the Code. As has come in the contention of Shri Anant Swarup, the applicability of this provision was sought to be avoided solely on the plea that a petition which has been dismissed as withdrawn could not be a bar to the filing of the second petition as in a petition which is got dismissed as withdrawn, the merits of controversy are not gone into; but this approach of learned

counsel is without any merit. It is correct that in the petition which is dismissed as withdrawn, the merits of the controversy are not gone into but that fact by itself would not entitle a litigant to claim entertainment of his second petition in the wake of the provisions of Order XXIII, Rule 1 which become applicable to writ proceedings by virtue of Rule 32. It may be noticed that the applicability of the provisions of Order XXIII, Rule 1 shall have a very salutary effect as it would minimize to a great extent the chances of the abuse of the process of this Court. To elucidate the point further, I take an example. A litigant files a petition in this Court, which comes up for motion hearing. During the arguments an impression is gathered that the Bench is not agreeing and the petition is likely to be dismissed and on the basis of that impression, the petition is got dismissed as withdrawn. Thereafter, on same facts and in respect of the same cause of action, a second writ petition is filed. Now in such case, if the contention, of Mr. Anand Swarup is accepted, then the second writ petition must be entertained and disposed to on merits one way or the other by passing a speaking order. Such a course, if adopted, would, in my opinion, not only result in the abuse of the process of the Court, but would also give a handle to a dishonest and unscrupulous litigant to harass his opponent.

26. *By the applicability of the provisions of Order XXIII, Rule 1, no constitutional right of a litigant is being taken away.*

A litigant has a right to withdraw his petition; but in case he wishes to file a fresh petition on the same cause of action, then permission of the Court has to be taken; and for that purpose, proper legal foundation has to be laid.”

5. It is clear that while withdrawing the first petition, the petitioner never sought any permission or liberty to approach this Court again. On a specific query to the counsel as to the reason for the withdrawal of the first petition, he has referred to the stand taken in the instant petition to submit that the earlier petition was withdrawn on an oral assurance given by the respondents that his grievance would be redressed and also because the petitioner was on the verge of retirement. These reasons are vague and the petitioner is precluded from challenging the same action again in view of the bar under Order XXIII, Rule 1 CPC.

6. In view of the above, instant petition is dismissed being barred by the *doctrine of res judicata*.

(SUVIR SEHGAL)
JUDGE

May 16, 2023
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No