

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

113

CWP-20312-2009 (O&M)
Date of Decision: 28.11.2023

Surinder Mohan Sharma**...Petitioner**

Versus

Union of India and Others**...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Sachin Kalia, Advocate for
Mr. Jatin Salwa, Advocate for the petitioner

Mr. Shivoy Dhir, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.06.2008 (Annexure P-6) whereby request of the petitioner to permit him to rejoin with respondent has been declined.

2. The petitioner in terms of Rule 19 of Border Security Force Rules, 1969 sought premature retirement. During 1996-98, premature retirement was granted to various employees. The respondents in 1998 realized that they have misread aforesaid Rule and accordingly all the employees were directed to rejoin. The petitioner vide letter dated 16.10.1998 as well as 19.11.1998 was asked to rejoin, however, he did not join. Similarly situated employees filed petitions before different Courts which ultimately reached to Hon'ble Supreme Court. By order dated 04.01.2006, the

Supreme Court observed that only those employees are entitled to pension who had rejoined and completed 20 years of service. The petitioner preferred Civil Suit which came up for consideration before Additional Civil Judge (Senior Division), Gurdaspur, who vide order dated 26.11.2002 dismissed claim of the petitioner. The civil suit was dismissed on merits and petitioner unsuccessfully assailed aforesaid order before the Additional District Judge, Gurdaspur. The petitioner despite notice by the respondents did not rejoin and admittedly, in 1998, he had not completed 20 years of service.

3. The Supreme Court in *State of Orissa and Another v. Laxmi Narayan Das (Dead) thr. LRs & Ors, 2023 LiveLaw (SC) 527* has held that writ petition is not maintainable where civil suit for the same relief has been dismissed.

4. On being confronted with aforesaid judgment, learned counsel for the petitioner expressed his inability to controvert the same.

5. In the case in hand, the petitioner admittedly filed civil suit for the same relief as is claimed in the present petition. The civil suit was dismissed and petitioner unsuccessfully challenged the same before the Additional District Judge, Gurdaspur. The petitioner did not further assail the order passed by Civil Court as well as Appellate Court. The case of the petitioner is squarely covered by recent judgment of Hon'ble Supreme Court in *State of Orissa and Another v. Laxmi Narayan Das (supra)*.

6. In the light of judgment of Hon'ble Supreme Court in *State of Orissa and Another v. Laxmi Narayan Das (supra)*, this Court is of the

considered opinion that present petition deserves to be dismissed and accordingly dismissed.

Pending application(s), if any, also stand(s) disposed of.

(JAGMOHAN BANSAL)
JUDGE

28.11.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>