

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

Reserved on 20th of March, 2023

Pronounced on 31st May, 2023

CWP No.2711 of 2016

Jarnail Singh

....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Sehaj Bir Singh, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Petitioner herein prays for issuance of a writ in the nature of mandamus in the form of directions to the respondent-Corporation to release the interest in favour of the petitioner on the delayed payment of 9 year and 16 year promotional scale.

2. The precise issue involved in the present writ petition is :
'whether the petitioner is entitled for interest on delayed payments made to him on account of 9 and 16 years promotional scales which became due to him on 12th of April, 1998 and 12th of April, 2005 in the facts & circumstances of the present case?'

3. The petitioner was booked in FIR No.88 registered for offences punishable under Sections 7, 13(2) of the Prevention of Corruption Act, at Police Station Vigilance Bureau, Patiala, on 5th of November, 1997. The

trial culminated in judgment of conviction by Special Judge, Ludhiana on 16th January, 2003. In the appeal preferred by the petitioner conviction was stayed vide order dated 1st of May, 2003. The petitioner retired from services on attaining age of superannuation on 31st of August, 2008. Appeal preferred by the petitioner was finally allowed vide judgment dated 21st of August, 2014 wherein he was ordered to be acquitted of all the charges. On acquittal the petitioner was paid his dues including terminal benefits and arrears w.r.t. the promotional scales of 9 and 16 years regular service on 29th of July, 2015.

4. The petitioner approached this Court by way of CWP No.1032 of 2016 which was decided on 1st of December, 2016 and the petitioner was awarded 9% interest per annum on the delayed payment of DCRG starting three months from the date of retirement till the date of actual payment. In the present writ petition, petitioner prays for interest on arrears of time bound pay scales.

5. Admittedly the first writ petition was filed in the year 2016. The claim of the petitioner at that time was ripe and the relief in respect thereof ought to have been prayed for in the said writ petition. However the petitioner omitted to do so.

6. In the considered opinion of this Court, the present writ petition would be barred under Order 2 Rule 2 of the Civil Procedure Code by the principle of constructive *res judicata*. Punjab & Haryana High Court has framed Rules to regulate proceedings under Article 226 of the

Constitution of India called as, 'Writ Jurisdiction (Punjab and Haryana) Rules 1976'. Rule 32 thereof reads as under :-

32. Application of C.P.C. - In all matter 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.”

7. Thus the provisions of Code of Civil Procedure, 1908 are applicable *mutatis mutandis* to all matters filed under Article 226 of the Constitution of India for which no provision has been made in the Rules. Order 2 Rule 2 of the CPC reads as under :-

“ORDER II
FRAME OF SUIT

1. xxx

2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation. - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed

respectively to constitute but one cause of action.”
(emphasis supplied)

8. In view of the above, once the petitioner has omitted to sue respondents for interest on the delayed payment of arrears of time bound promotional scales for 9 years and 16 years of regular service in the earlier writ petition he cannot be allowed to claim the abandoned relief in this writ petition. Thus, the present writ petition would be barred by the principles of constructive *res judicata*. Resultantly, the same is ordered to be dismissed.

May 31, 2023 (PANKAJ JAIN)
Dpr JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No