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

CWP-23913-2023

Date of decision: 06.11.2023

Ranveer @ Ranbir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Randhir S. Hooda, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. A.G., Haryana
for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari calling for the records of the respondents regarding the charge dated 03.01.2022 whereby the departmental inquiry was initiated against the petitioner (Annexure P-1), charge sheet dated 02.08.2023 (Annexure P-2), departmental inquiry and report thereof dated 04.09.2023 (Annexure P-3) and show cause notice dated 27.09.2023 (Annexure P-4) whereby punishment of dismissal of service has been proposed to be passed against the petitioner.

2. Brief facts of the present case are that the petitioner had joined

as a Constable in the Haryana Police on 04.04.2003 and on 03.01.2022, he received a letter containing details of the charges against him which has been annexed as Annexure P-1 with the petition. A perusal of the same would show that one Shakir had made a complaint to the State Vigilance Bureau alleging illegal demand of money under the garb of FIR No.329/2020 registered at Police Station Hathin and the complainant/victim had produced a recording of telephonic conversation between the petitioner and complainant/victim and on the basis of same, FIR No.13 dated 24.11.2021 was registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter to be referred as “the 1988 Act”) at Police Station State Vigilance Bureau, Faridabad and thereafter, the petitioner was suspended and the Superintendent of Police, vide order dated 29.11.2021, ordered departmental enquiry to be initiated against the petitioner after complying with the due procedure.

3. It is the case of the petitioner that thereafter, charge sheet was issued by the Enquiry Officer, Deputy Superintendent of Police, Palwal on 02.08.2023 and the departmental enquiry was concluded on 04.09.2023 and the report of the Enquiry Officer, Deputy Superintendent of Police, Palwal dated 04.09.2023 has been annexed as Annexure P-3 with the present writ petition. A perusal of the said report would show that the reply of the petitioner was considered and the statements of several witnesses were recorded and it was found that in the year 2020, when the petitioner was posted as Investigating Officer, in FIR No.329 dated 23.10.2020

under Sections 148/149/323/506 of IPC, Police Station Hathin, he demanded money from Shakir for deleting six persons from FIR No.329/2020 and written complaint with respect to the same was given by Shakir and there was a recording of demand of Rs.25,000/- from Shakir by the petitioner and an FIR No.13 dated 24.11.2021 was registered against the petitioner under Section 7 of the 1988 Act and it was further observed that the petitioner had committed gross carelessness and indiscipline by demanding bribe and by diminishing the image of Police in the eyes of general public and charges against the petitioner were proved. Subsequently, a show cause notice dated 27.09.2023 was issued to the petitioner by the Superintendent of Police, Palwal by observing that after considering the departmental enquiry report and relevant documents, the Superintendent of Police was prima facie in agreement with the findings of the Enquiry Officer and was provisionally of the opinion as to why the punishment of dismissal from service be not inflicted upon the petitioner and an opportunity was given to the petitioner to file reply within a period of 7 days from the receipt of the said communication and it was further stated that if no such reply is filed within the stipulated time then it will be presumed that the petitioner has nothing to say in this regard and final order as proposed would be passed accordingly. Liberty was granted to the petitioner to appear before the Superintendent of Police, Palwal on any working day for personal hearing along with written reply. Learned counsel for the petitioner has fairly submitted that after the filing of the present writ petition, he had filed a reply to the said notice.

4. Learned State Counsel has pointed out that vide order dated 20.10.2023, the Superintendent of Police, Palwal, after examining the findings of the Enquiry Officer, all the relevant records to the enquiry and all the other factors, had passed the order of punishment of dismissal from service upon the petitioner and liberty was granted to the petitioner to file an appeal, if any, against the said order, before the Appellate Authority i.e., the Inspector General of Police, South Range, Rewari. A copy of the said order has been handed over to the Court which is taken on record and marked as Mark 'A'. The said order is not the subject matter of challenge before this Court.

5. It would be relevant to note that after the issuance of letter-cum-details of charges dated 03.01.2022 (Annexure P-1), the petitioner had filed a writ petition bearing No.CWP-28959-2022 (although, the number of the writ petition has been wrongly mentioned as CWP-29859-2022 in para 27 of the writ petition and the order passed in the said writ petition has not been annexed with the present petition) which was drafted on 12.12.2022 and the same had come up for hearing before the Coordinate Bench of this Court on 15.12.2022 on which date, the following order was passed:-

“Learned counsel for the petitioner prays for time to apprise the Court as to whether the petitioner has filed a reply to the impugned chargesheet.

Adjourned to 20.12.2022.

15.12.2022”

6. Thereafter, on 20.12.2022, the Coordinate Bench of this Court

was pleased to pass the following order:-

“Learned counsel for the petitioner seeks unconditional withdrawal of the present petition.

Dismissed.

December 20, 2022”

7. In the said writ petition which was filed by the petitioner prior to the filing of the present writ petition, prayer was made for restraining the respondents from continuing with the present departmental enquiry during the pendency of the criminal trial in case FIR No.13 dated 24.11.2021 under Section 7 of the 1988 Act and thus, the said petition also emanates from the same department proceedings as the present writ petition.

8. Learned counsel for the petitioner has submitted that the petitioner has filed the present writ petition by raising an additional ground to the effect that the initiation of the proceedings against the petitioner is in violation of Rule 16.38 of Punjab Police Rules, 1934 (hereinafter referred to as the “1934 Rules”) as applicable to the State of Haryana. It is further submitted that the said plea was not raised in the previous writ petition and thus, the subsequent petition raising the additional plea is maintainable. It is contended that subsequent to the order of dismissal passed by the Coordinate Bench on 20.12.2022, subsequent charge sheet dated 02.08.2023, report dated 04.09.2023 and show cause notice dated 27.09.2023 for dismissal have been issued to the petitioner and the same would give a recurring cause of action to the petitioner to raise a plea which was not raised in the previous writ petition.

9. This Court has heard learned counsel for the petitioner and finds no merit in the plea raised by the learned counsel for the petitioner for the reasons stated hereinunder.

10. The Hon'ble Supreme Court of India in case titled as **"Devilal Modi Vs. Sales Tax Officer, Ratlam and others"** reported as **1965 AIR (Supreme Court) 1150**, had observed that the principle of constructive res judicata is applicable to writ petitions also and in case the said principle is not applied then a person could file as many writ petitions as he likes and raise one or two pleas every time and the same is opposed to considerations of public policy on which the principle of res judicata is based and would result into harassment and hardship of the opponent. It was held that one of the most important considerations of public policy was that the decisions pronounced by the Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities and that no one should be made to face the same kind of litigation twice and that if a plea could have been raised by a party in a proceeding between him and his opponent in the first instance, then he would not be permitted to take the said plea against the same party in a subsequent proceeding which emanates from the same cause of action. Relevant portion of the said judgment is reproduced hereinbelow:-

"1 to 8. xxx xxx xxxxx xxx But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general

principle underlying the doctrine of Res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fairplay and justice, vide Daryao v. State of U.P. 1962-1 SCR 574.

*9. It may be conceded in favour of Mr. Trivedi that the rule of constructive Res judicata which is pleaded against him in the present appeal is in a sense of somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same consideration of public policy, **because if the doctrine of constructive Res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and that plainly is inconsistent with considerations of public policy to which we have just referred.***

*10 to 12 xxx xxx xxx xxx. **Considerations of public policy and the principle of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another.***

13. xxx xxx xxx xxx At the hearing of this appeal, he has filed another petition asking for leave from this Court to take some more additional points and **that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the Appellant in the present case is barred by constructive res judicata.**

14. The result is, the appeal fails and is dismissed. There would, however, be no order as to costs.”

11. The Hon’ble Supreme Court of India in case titled as **“Y.B. Patil and others Vs. Y.L. Patil”** reported as **1976(4) SCC 66**, has further held that the principle of res judicata can be invoked not only in separate proceedings but can also get attracted in subsequent stages of the same proceedings. Relevant portion of the said judgment is reproduced hereinbelow:-

*“1 to 4 xxx xxx xxx xxx. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, **they also get attracted in subsequent stage of the same proceedings.** Once an order made in the course of a proceeding becomes final, it would be finding at the subsequent stage of that proceeding. Xxxx xxxx”*

12. Hon’ble the Supreme Court of India in case titled as **“State of U.P. Vs. Nawab Hussain”** reported as **1977(2) SCC 806**, was further

pleased to observe that the same set of facts could give rise to two or more causes of action and in case a person is allowed to choose and pursue one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation and the Courts have held the said course of action to be an abuse of process and have thus, formulated the Principle which is referred to as constructive res judicata. Relevant portion of the said judgment is reproduced hereinbelow:-

“1 to 3 xxx xxx xxx.

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell L.J., has answered it as follows in Greenhalgh v. -Mallard, (1947) 2 All England Reporter 255 at page 257:-

"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could; have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in re- spect of them."

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the

general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle.”

13. Applying the law laid down in the abovesaid judgments to the present case would clearly show that the petitioner is barred by the principle of constructive res judicata from filing the present writ petition and from raising the plea with respect to the procedure being in violation of Rule 16.38 of 1934 Rules. Although, the Rule which has been reproduced in the writ petition is not the correct Rule and learned counsel for the petitioner, during the course of arguments, has referred to the correct Rule and the said correct Rule 16.38(1) as applicable to State of Haryana is reproduced hereinbelow:-

“Rule 16.38 for Haryana

16.38. Criminal offences by police officers and strictures by courts-Procedure regarding. (1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

14. It is not in dispute that the plea with respect to the said Rule 16.38 to the effect that as per the case of the petitioner, the Superintendent of Police has not taken concurrence of the District Magistrate before the proceedings departmentally, was available to him on the date when the

previous writ petition was drafted i.e., on 12.12.2022 and was taken up for hearing on 15.12.2022 and was unconditionally withdrawn and dismissal on 20.12.2022 since, the said plea was with respect to there being some alleged illegality in the initiation of the proceedings and the proceedings had admittedly been initiated by that date and even order dated 03.01.2022 (Annexure P-1) annexed and challenged in the present writ petition had already been passed. Once, the petitioner had filed the previous writ petition with respect to the same departmental enquiry and had sought stay of the same, then, it was incumbent upon the petitioner to raise all the pleas available to him at the relevant time i.e., on the date of filing of the petition and the petitioner cannot be permitted to indulge in multiple litigations to raise pleas which were already available to him before dismissal/withdrawal of the previous writ petition by filing fresh writ petitions. The argument of learned counsel for the petitioner, to the effect that passing of the subsequent order would give a fresh cause of action to the petitioner to raise the same plea which was available to him at the time of filing of the previous writ petition, is completely misconceived and unknown to law inasmuch as it has been repeatedly held by the Hon'ble Supreme Court that the principle of constructive res judicata also applies to subsequent stages of the same proceedings. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in ***Y.B. Patil's*** case (Supra), relevant portion of which is reproduced hereinabove. Moreover, no law to the contrary has been cited on the said aspect by the learned counsel for the petitioner.

15. There are additional factors which need to be noticed. As pointed out by learned State Counsel that the proceedings which are sought to be challenged in the present writ petition have culminated into passing of the final order dated 20.10.2023 (Mark 'A') dismissing the petitioner from service has been passed and in the said order, it has been mentioned that the petitioner has a right to file an appeal against the said order before the Inspector General of Police, South Range, Rewari within the time limit as prescribed as per the PPR Rule 16.38(1). The said order is not subject matter of challenge in the present writ petition. Further, on a specific query raised by this Court, learned counsel for the petitioner has fairly submitted that plea regarding Rule 16.38 of 1934 Rules has not been raised before the authorities. In the previous writ petition filed, time was sought on behalf of the petitioner on 15.12.2022 to place on record the reply to the impugned charge sheet and the same was not done rather, the case was unconditionally withdrawn which resulted into dismissal of the previous writ petition. The said reply, even now, has not been annexed with the present petition. It would be relevant to note that Rule 16.38 which has been reproduced in the petition is not the relevant Rule applicable to the State of Haryana and thus, even the averments which have been made in para 9, are not in consonance with the Rule 16.38 for Haryana which has been referred to by learned counsel for the petitioner during the course of hearing. Pleadings are thus, not in conformity with the arguments sought to be raised by learned counsel for the petitioner based on Rule 16.38 as applicable to the State of Haryana. In para 27 of this writ

petition, reference has been made to one writ petition bearing No.CWP-29859-2022 (incorrectly mentioned) and in the said para, it was stated that the same was for challenging the letter whereby the details of charges were sent to the petitioner which was withdrawn on 20.12.2022. On 19.10.2023, this Court was pleased to pass the following order:-

“A perusal of the paragraph 27 of the present writ petition would show that the earlier writ petition filed by the petitioner has been stated to be CWP-29859-2022, whereas, the earlier petition number is CWP-28959- 2022, of which the petitioner sought unconditional withdrawal of & the same was dismissed on 20.12.2022.

Learned counsel for the petitioner prays for an adjournment to assist the Court in the matter.

Adjourned to 06.11.2023.

Registry is directed to attach the file of CWP-28959-2022, decided on 20.12.2022 with the present case.”

16. In pursuance of the above said order, Registry has attached the file of writ petition bearing No.CWP-28959-2022 which has been perused by this Court and a perusal of the same would show that apart from the other facts, although, learned counsel for the petitioner had sought unconditional withdrawal but the petition was dismissed and not dismissed as withdrawn as stated in para 27 of the petition.

17. For the reasons stated above, this Court finds no merit in the present writ petition and thus, the same is accordingly dismissed.

06.11.2023

Pawan

**Whether speaking/reasoned:-
Whether reportable:-**

(VIKAS BAHL)

JUDGE

**Yes/No
Yes/No**