



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

LPA No.339 of 2017

Date of Decision: 20.11.2024

Surinder Kumar

...Appellant

Versus

State of Punjab and another

...Respondents

**CORAM: *HON'BLE MRS. JUSTICE LISA GILL*
 *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Madhav Pokhrel, Advocate
 for the appellant.

Mr. S.S. Gill, Senior DAG, Punjab.

LISA GILL, J.(Oral)

Prayer in this appeal is for setting aside order dated 03.11.2016 passed by learned Single Bench whereby CWP No.22010 of 2016 filed by the appellant has been dismissed.

2. Appellant filed CWP No.22010 of 2016 seeking direction to respondents to grant deemed promotion to him to the post of Headmaster in the sub-category of hearing impaired from the date persons alleged to be his juniors were promoted as Masters on 02.04.2012. Earlier appellant had filed CWP No.16398 of 2012 seeking promotion to the post of Headmaster being a physically handicapped candidate. The said petition was dismissed as infructuous as promotion to the post of Headmaster had been afforded to the appellant on 31.03.2015. CWP No.22010 of 2016, thereafter filed by appellant seeking promotion with effect from 02.04.2012 was dismissed by learned Single Judge vide impugned order dated 03.11.2016 with the



observations that it was open to the appellant to have raised this issue in his earlier writ petition as principles governing under Order 2 Rule 2 CPC mandate that all claims should be raised at the first instance. Aggrieved therefrom, present appeal has been filed.

3. Learned counsel for appellant vehemently argues that learned Single Judge has erred in dismissing the writ petition filed by appellant. It was contended that cause of action, in fact, arose to the appellant subsequent to the passing of order dated 28.04.2015. It was only when appellant examined the seniority list dated 19.07.2013 of Social Studies Masters that he came to know that one Kashmir Singh and Gurpreet Singh were junior to him in the Master Category and they have been promoted to the post of Headmasters on 02.04.2012. Gurpreet Singh and Kashmir Singh were candidates in the category of visually impaired. Learned counsel for appellant further argues that provisions of Code of Civil Procedure are not applicable to writ proceedings, thus the writ petition has been erroneously dismissed. It is, thus, prayed that this appeal be allowed, order dated 03.11.2016 be set-aside and writ petition filed by appellant be allowed as prayed for.

4. Learned counsel for State, however, opposes this appeal, while submitting that learned Single Bench has correctly passed impugned order dated 03.11.2016. Appellant was very well aware of the entire facts and circumstances when he filed the earlier writ petition, i.e CWP No.16398 of 2012, therefore, once having been satisfied with the promotion given to him on 31.03.2015 and clearly stating before learned Writ Court on 28.04.2015 that nothing survived in the petition, with the writ petition being dismissed as infructuous, it was not open to appellant to have filed the subsequent writ petition for the relief which necessarily could have



been claimed at that point of time. Dismissal of appeal is, thus, sought.

5. We have heard learned counsel for parties and have perused the file with their able assistance.

6. It is a matter of record that appellant earlier filed CWP No.16398 of 2012 seeking promotion to the post of Headmaster out of the disabled quota in hearing impaired category. During the course of hearing, learned counsel for appellant had furnished a copy of CWP No.16398 of 2012 filed on 23.08.2012 by appellant. Perusal of said petition itself reveals that in his representation dated 25.06.2012 attached as Annexure P-11 with said writ petition and Annexure P-20 with CWP No.22010 of 2016, i.e the writ petition out of which present appeal arises, there is a specific reference to promotion given to other physically handicapped persons including 08 blind persons working on the post of Masters and 04 others whose disability has not been revealed. In his representation dated 04.04.2012, Annexure P-19 with the subsequent writ petition, there is a specific reference to order dated 02.04.2012 whereby promotion was afforded to persons stated to be junior to him. List of persons to whom promotion was afforded is also attached with the earlier writ petition. CWP No.16398 of 2012 was dismissed vide order dated 28.04.2015 which reads as under: -

“ Learned counsel for the petitioner submits that since the petitioner has been granted appointment, nothing substantiate survives in the petition and the same is dismissed as having become infructuous.

Ordered accordingly.”

7. In the given facts and circumstances, learned Single Bench has correctly dismissed the writ petition filed by appellant. Once the relief of



promotion from the date his alleged juniors had been promoted, i.e from 02.04.2012, was not claimed/pressed for on 28.04.2015 when CWP No.16398 of 2012 was dismissed as infructuous, it is not open to appellant to have filed a subsequent writ petition for the said relief. Appellant was apparently satisfied with his promotion to the post of Headmaster w.e.f. 31.03.2015 and accepted the same. Relief which was available to him at that point of time but clearly not pressed for, cannot be subsequently claimed by filing another writ petition. Argument raised by learned counsel for appellant that he came to know about seniority of persons promoted in 2012 subsequently, is absolutely unsubstantiated by any material on record. Perusal of writ petition reveals that appellant was very well aware of the ground reality. Argument raised by learned counsel for appellant that learned Writ Court has erroneously proceeded to apply provisions of Order 2 Rule 2 CPC to writ proceedings is of no avail to him for the reason that even if such argument is to be accepted, ultimate conclusion of learned Writ Court is correct. Decision of the Division Bench of this Court in **Pritam Singh versus State of Punjab and others, 2007(4) S.C.T. 599** cited by learned counsel for appellant clarifies the entire position. It was concluded by the Division Bench that an erroneous reasoning adopted by the Writ Court will not vary the ultimate conclusion which can be supported by taking the correct view. It was observed in the said case that relief of reinstatement claimed in a subsequent writ petition which was available to be claimed in the earlier Civil Suit but not pressed/abandoned, cannot be claimed by filing a subsequent writ petition. Similarly, judgment of Hon'ble the Supreme Court in **Union of India versus H.K. Dhruv, 2005(10) SCC 218** relied upon by learned counsel for appellant is of no avail to him and in fact supports the argument of the State.



8. Learned counsel for appellant is unable to point out any illegality, infirmity or perversity in the impugned order which calls for interference.
9. No other argument has been raised.
10. Present appeal is, accordingly, dismissed being devoid of any merit.

(LISA GILL)
JUDGE

20.11.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No