

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.27708 of 2023 (O&M)
Date of decision: 05.01.2024

Mangat Rai
.....Petitioner
Versus
Punjab State Power Corporation Limited and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Brijesh Nandan, Advocate
for the petitioner.

Mr. H.S. Deol, Advocate
for the respondents.

NAMIT KUMAR J.

1. The petitioner has approached this Court by filing the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for quashing the Recovery Sheet dated 31.07.2017 (Annexure P-5) and the impugned Pension Pay Order dated 02.01.2018 (Annexure P-6) vide which the recovery of Rs.4,41,889/- has been effected from the retiral benefits of the petitioner.
2. Learned counsel for the petitioner has argued that similarly situated employees had approached this Court by filing a petition i.e. CWP No.26677 of 2017 titled as “*Manjit Singh vs Punjab State Power Corporation Limited and others*” and CWP No.18290 of 2017 titled as “*Sewak Singh vs Punjab State Power Corporation Limited and others*”,

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and their claim has been accepted by the Co-ordinate Bench of this Court vide judgment dated 26.02.2020, therefore, the present petition is maintainable and the relief as claimed in the petition be granted to the petitioner as covered with the aforesaid judgments.

3. Learned counsel for the respondents has vehemently opposed the submissions made by learned counsel for the petitioner and submits that the case of the petitioner is on different footing and not covered with the aforesaid judgments.

4. I have heard learned counsel for the parties and perused the record.

5. Admittedly, the petitioner had earlier filed CWP No.6020 of 2018, claiming the same relief by challenging the order of recovery of Rs.4,41,889/-, which was deducted from the retiral benefits of the petitioner and the respondents had taken the stand in the said writ petition that the recovery has rightly been effected from the retiral benefits of the petitioner as he had submitted an undertaking and on the basis of said undertaking the aforesaid recovery has been effected from him and therefore, the case of the petitioner is not covered by the law laid down by the Hon'ble Supreme Court in ***"State of Punjab and others vs Rafiq Masih (White Washer) and others"***, (2014) 8 SCC 883 and rather is covered against him in view of the law laid down by the Hon'ble Supreme Court in ***"High Court of Punjab and Haryana and others vs Jagdev Singh"***, (2016) 14 SCC 267.

6. The said writ petition was withdrawn by the petitioner vide order dated 30.01.2020, with liberty to approach the

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Civil Court for redressal of his grievance as raised in the said writ petition. The order dated 30.01.2020, passed in CWP No.6020 of 2018, reads as follows:-

“In the present writ petition, the challenge is to the recovery, which is being effected from the petitioner after the retirement.

Learned counsel for the petitioner argues that no recovery can be effected from a retired employee or a Class-III and Class-IV employee, keeping in view the law laid down by Hon'ble the Supreme Court of India in case of “State of Punjab Vs. Rafiq Masih(White Washer) & Ors”, (2014) 8 SCC 883.

Learned counsel for the respondents argues that in the present case, the judgment passed in Rafiq Masih's case (supra) will not be applicable as there was an undertaking, which has been given by the petitioner wherein, the petitioner has admitted and allowed the respondents that the recovery of excess amount be done from his pensionary benefits. Hence, the judgment of Rafiq Masih's case (supra) will not be applicable, keeping in view of the laid down by Hon'ble the Supreme Court of India in “High Court of Punjab and Haryana and others v Jagdev Singh”, (2016) 14 SCC 267.

Learned counsel for the petitioner raises a dispute qua the undertaking also. Learned counsel for the petitioner argues that the said undertaking was forced upon the petitioner and the same was not voluntarily given and under the circumstances, when the pensionary benefits of the petitioner were under the custody of the respondents, the petitioner had no option but to give into the forced undertaking so as to enable the respondents to recover the excess amount from the gratuity of the petitioner.

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Therefore, the said undertaking cannot be treated as an undertaking so as to enable the respondents to seek the benefit of the judgment of Jagdev Singh's case (supra).

Learned counsel for the petitioner does not deny the factum of giving of undertaking. The factum whether the undertaking was forced upon the petitioner, cannot be decided in the writ petition under Article 226 of the Constitution of India, as evidence is needed to prove the said allegation.

Faced with this situation, learned counsel for the petitioner prays that the petitioner be allowed to withdraw the present writ petition with liberty to approach the Civil Court for the redressal of the grievance as raised in the present writ petition.

Both the aforesaid petitions are dismissed as withdrawn, with the liberty, as prayed for.”

7. Thereafter, the petitioner has filed review application in the said writ petition bearing RA-CW No.119 of 2020, which was also withdrawn by the petitioner vide order dated 15.07.2021. The said order reads as under:-

“CM-4367-CWP of 2020

After arguing for some time, learned counsel for the applicant-petitioner prays that he be allowed to withdraw the present application. As prayed for, dismissed as withdrawn.

RA-CW-119-2020

After arguing for some time, learned counsel for the applicant-petitioner prays that he be allowed to withdraw the present application.

As prayed for, dismissed as withdrawn.”

8. Now again the present writ petition has been filed by the

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petitioner claiming the same relief as was claimed in CWP No.6020 of 2018.

9. Another argument raised by learned counsel for the petitioner is that the petitioner was forced upon to submit the undertaking and the same was not voluntarily given. The said argument was duly considered by this Court and it was stated in the said order dated 30.01.2020 that whether the undertaking was forced upon the petitioner, cannot be decided in a writ petition filed under Article 226 of the Constitution of India as evidence is needed to prove the said allegation.

10. Further to prove the factum of undertaking given by the petitioner, whether it was under duress or voluntarily, liberty was sought by learned counsel for the petitioner to file a civil suit to prove the said fact. In these circumstances, the second writ petition would not be maintainable as has been held by the Hon'ble Supreme Court in ***“Sarguja Transport Service vs State Transport Appellate Tribunal, Gwalior and others”***, (1987) 1 SCC 5. The operative part of the said judgment, reads as follows:-

“The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from

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indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open.”

11. Since the earlier writ petition filed by the petitioner has been withdrawn with liberty to approach the Civil Court, the second writ petition on the same cause of action would not be maintainable. The Hon'ble Supreme Court in ***“M.J. Exporters Private Limited vs Union of India”***, (2021) 3 SCC 543, has held that the principles of *res judicata* laid down under Order 23 Rule 1 CPC would be applicable.

The relevant portion of said judgment, reads as under:-

“13. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which is laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which

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principles are extendable to writ proceedings as well as held by this Court in ‘Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior and Others’ [1987 (1) SCR 200] would squarely be applicable.”

12. It is pertinent to mention here that there is no reference in the entire petition regarding filing of any civil suit by the petitioner in terms of the liberty granted to him vide order dated 30.01.2020 passed in CWP No.6020 of 2018 and rather he has filed the present petition again before this Court seeking the same relief.

13. Keeping in view the aforesaid facts and circumstances of the case and the law laid down by the Hon’ble Supreme Court in ***Sarguja Transport Service’s case (supra) and M.J. Exporters Limited’s case (supra)***, this Court is of the considered opinion that once the earlier writ petition filed by the petitioner has been withdrawn by him with liberty to approach the Civil Court for redressal of his grievance and even availed the remedy of review application, therefore, the second writ petition on the same cause of action, filed before this Court, is not maintainable as barred under the law.

14. Accordingly, the present petition is dismissed.

(NAMIT KUMAR)
JUDGE

05.01.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No