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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 6322/2024**

**PANKAJ KUMAR**

.....Petitioner

Through: Mr.Mushtaque Ahmed & Mr.Anjum  
Islam, Advs.

versus

**UNION OF INDIA THROUGH, SECRETARY & ORS.**

.....Respondents

Through: Mr.Amit Gupta, SPC with  
Mr.Abhinav Bhardwaj, GP.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

**22.07.2024**

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1. The petitioner, who was aspiring to join the Railway Protection Force (RPF) as a Constable (General Duty) in the selection process conducted in the year 2011, has approached this Court seeking a direction to the respondents to consider his name for appointment on the ground that even though his name was placed in the merit list for selection, he was not appointed due to an inadvertent error on his part in writing his roll number in the written examination.
2. At the outset, we have put to learned counsel for the petitioner as to how the present petition would be maintainable when his earlier writ petition being W.P.(C) 6171/2018 seeking the very same relief was withdrawn by him on 31.05.2018 without seeking any liberty to file a fresh petition. He submits that since the High Court of Judicature at Allahabad has on 13.04.2019 granted relief to similarly placed



candidate, the petitioner is also entitled to the same relief.

3. In order to appreciate the aforesaid plea of the petitioner, it would be apposite to note the order dated 31.05.2018 passed in W.P.(C) 6171/2018. The same reads as under:

*“1. The petitioner is aggrieved by the rejection of his candidature by the respondents for the post of Constable for which an Employment Notice was issued on 23.02.2011 and the list of successful candidates was declared on 17.09.2014.*  
*2. The records reveal that the petitioner alongwith two others had challenged the said result by approaching the High Court and filing W.P.(C) No.8108/2014 which was dismissed vide order dated 14.01.2015, with liberty granted to him and the other co-petitioners to file independent petitions for seeking relief. Instead of doing so, the petitioner has **sat back for almost three years and filed the present petition only in the year 2018.***  
*3. We have requested learned counsel for the petitioner to address argument on the maintainability of the present petition as **we are, prima facie, of the opinion that it is hopelessly barred by delay and latches.***  
*4. After addressing argument for some time, learned counsel for the petitioner seeks leave to withdraw the present petition.*  
*5. Leave as prayed for is granted and the petition is disposed of as withdrawn. **(Emphasis supplied)**”*

4. From a perusal of the aforesaid, what emerges is that when the petitioner had approached this Court in 2018 regarding his non-selection to the recruitment process conducted in 2011, this Court had opined that the petition was hopelessly barred by delay and latches. It is, in these circumstances, that the petitioner had withdrawn the petition. While withdrawing his petition, the petitioner neither sought any liberty to file a fresh petition nor was any such liberty granted to



him by this Court. In these circumstances, we fail to appreciate as to how the petitioner can be permitted to re-agitate the same issue once again. In this regard, reference may be made to paragraph nos.7 & 8 of the order dated 15.07.2024 passed by this Court in **W.P.(C)12094/2022** titled **Dhananjay Kumar Upadhyay v. Union of India & Ors.** The same reads as under:-

*“7. In this regard, reference may be made to the following observations of the Apex Court in **Ramesh Chandra Sankla Etc. vs. Vikram Cement Etc.** [AIR 2009 SC 713]*

*“50. From the above case law, it is clear that it is open to the petitioner to withdraw a petition filed by him. Normally, a Court of Law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the Court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlier.*

*(emphasis supplied)”*

8. We may also refer to the observations of the Apex Court in para 9 of its decision in **Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior & Ors.** [(1987) 1 SCC 5]

*“9. 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 case<sup>1</sup> 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 public policy of as explained above. It would also discourage the litigant from 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.

**(emphasis supplied) ””**

5. Furthermore, we find the only ground urged by the learned counsel



for the petitioner to approach this Court is that the Allahabad High Court has allowed a similar claim of another candidate. We are constrained to observe that though this in itself could not be a ground for the petitioner to approach this Court again for the same cause of action, the present petition has also been filed after more than five years of the decision of the Allahabad High Court. We are, therefore, of the view that the present petition is also barred by gross delay and laches.

6. The writ petition is, accordingly, dismissed.

**REKHA PALLI, J**

**SHALINDER KAUR, J**

**JULY 22, 2024**

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