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

*Date of Decision: 25.09.2024*

+ W.P.(C) 12088/2022, CM APPL.36135/2022 & 39449/2023

AJAY BISHT

.....Petitioner

Through: Mr. A.K. Mishra & Mr. Rahul, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for UOI.  
Insp./ED Janak Roy- SSB.

**CORAM:**

**HON'BLE MS. JUSTICE NAVIN CHAWLA**

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

**J U D G M E N T**

**NAVIN CHAWLA, J (ORAL)**

1. This petition has been filed by the petitioner praying for the following reliefs:

*“a. Issue a Writ of Certiorari for quashing of the order dated 18.03.2021 by which respondent has disallowed the LTC as well as next two sets of LTC and approval of recovery along with penal interest of 10 days leave encashment.*

*b. Issue a writ of mandamus directing the respondents to release the actual amount of LTC claim in favour of the petitioner.*

*c. Direct the respondents to transmit all documents and records before the Hon'ble Court as submitted by the petitioner.”*



2. The learned counsel for the respondents, at the outset, points out that the petitioner had earlier also filed a petition, being W.P.(C) No.9738/2022, titled ***Ajay Bisht vs. Union of India & Ors.***, seeking the following reliefs which are similar to the reliefs quoted hereinabove:

*“(i) Issue a Writ of Certiorari for quashing of the signal dated 18.03.2021 to the extent whereby not only disciplinary action has been directed against the petitioner;*

*(ii) Issue a writ of mandamus directing the respondents to release the actual amount of LTC claim in favour of the petitioner and not initiate any departmental proceedings against the petitioner;*

*(iii) Direct the respondents to transmit all documents and records before the Hon’ble Court as submitted by the petitioner.”*

3. Learned counsel for the respondents submits that this Court vide its Order dated 04.07.2022 passed in W.P. (C) 9738/2022, allowed the petitioner to withdraw the said petition, however, without granting any liberty to the petitioner to file a fresh petition on the same cause of action. He submits that in absence of any leave being granted to file a fresh petition on same cause of action, the present petition is not maintainable.

4. On the other hand, the learned counsel for the petitioner submits that the earlier writ petition was withdrawn by the petitioner as there were certain technical defects in the same. He submits that immediately upon withdrawal of the earlier petition, the petitioner had filed the present petition and, in fact, the same Bench, which earlier dismissed the petition as withdrawn, issued notice on the present petition. He submits that the



disclosure of the earlier petition is duly made in the present petition.

5. We have considered the submissions made by the learned counsels for the parties. In ***Sarjuga Transport Service vs State Transport Appellate Tribunal, M.P., Gwalior & Others:*** (1987) 1 SCC 5, the Supreme Court had held that though strictly the Order XXIII Rule 1 of the Code of Civil Procedure, 1908 does not apply to writ petitions under Article 226 of the Constitution of India, the salutary principles on which it is based, that is, that the petitioner should not be allowed to indulge in bench-hunting, would squarely apply even to a writ petition and for the filing of a fresh writ petition once the earlier filed writ petition is withdrawn without being granted liberty to file a fresh writ petition. We may quote from the Judgment as follows:

*“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 [AIR 1961 SC 1457 : (1962) 1 SCR 574] 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 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.”*

6. In the present case, the earlier petition was withdrawn by the petitioner and the Order that was passed by this Court speaks for itself and is reproduced hereinbelow:

*“1. After some arguments, when this Court was not inclined to grant relief to petitioner, learned counsel for petitioner seeks permission to withdraw the present petition.*



2. Accordingly, the present petition is dismissed as withdrawn.  
3. Pending application also stands disposed of.”

7. From a reading of the above Order, it is clear that while disposing of the previous writ petition, the Coordinate Bench of this Court, after hearing some arguments, was not inclined to grant relief to the petitioner and at that stage, the petitioner sought liberty to withdraw the said petition. It was not withdrawn simply because there were some technical defects in the writ petition, as is now sought to be contended by the learned counsel for the petitioner. In fact, no such excuse has even been pleaded by the petitioner in the present petition.

8. Merely because the same Coordinate Bench later issued notice on the present petition, would not make the present petition maintainable. We find that even the Order dated 04.07.2022 was not annexed with the present writ petition.

9. We therefore, find merit in the objection raised by the learned counsel for the respondents on the maintainability of the present petition, and the petition is accordingly dismissed along with pending applications. No Order as to costs.

**(NAVIN CHAWLA)  
JUDGE**

**(SHALINDER KAUR)  
JUDGE**

**SEPTEMBER 25, 2024/ab/km**