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

+ **W.P.(C) 1599/2019**

MAHENDRA SINGH

.....Petitioner

Through: Mr. K.K. Sharma and Mr. Harshit
Agarwal, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Vikram Jetly, CGSC, UOI with
Ms. Shreya Jetly, Advocates.
Mr. Ajay Pal, Law Officer and Insp.
Athurv from CRPF.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

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12.09.2025

1. The instant petition has been filed with the following prayers:

“(a) To declare the inaction of the respondents in fixing the basic pay scale of the Petitioner @ Rs. 10230/- + Rs. 4200/- Grade Pay while granting him the benefit of 2nd ACP w.e.f. 01.05.2006 as illegal and arbitrary and accordingly the order dated 06.01.2015 may kindly be quashed;

(b) To declare the inaction of the respondents by reducing the basic pay of the petitioner @ Rs. 52000/- from Rs. 55200/- and started recovery of Rs. 10161/- p.m. from December 2017 vide order dated 23.02.2018 as illegal and accordingly order dated 23.02.2018 may kindly be quashed;

(c) To direct the Respondents for fixing the basic pay scale of the Petitioner @ Rs. 10230/- + Rs. 4200/- Grade Pay while granting him the benefit of 2nd ACP w.e.f. 23.06.2005;



(d) To direct the respondents to fix/revise/step up of basic pay scale of the Petitioner @ Rs. 5500 1.86 = 10230/- + Rs. 4200/- Grade Pay (i.e. Rs. 5,500*1.86= Rs. 10,230/- + Rs. 4200/- Grade Pay) from the date of completion of 24 years of his service i.e. from 23.06.2005 while granting him the benefit of 2nd ACP financial benefit;*

(e) To direct the Respondents to return the legitimate dues of the petitioner which the respondents recovered by the petitioner since December 2017 and also direct to give the arrears to the petitioner due to the revision/fixation in pay scale along with subsequent benefits arising therefrom;

(f) Any other relief/order/direction as the Hon'ble Court may deem fit and proper.”

2. Shorn of unnecessary details, it is the case of the Petitioner that he joined the Central Reserve Police Force as a Constable/GD on 24.06.1981. The Petitioner completed 12 years of his service as a Constable on 23.06.1993. Thereafter, he was promoted as a Head Constable on 10.10.1997.

3. Pursuant to the 5th Central Pay Commission (*hereinafter referred to as “CPC”*), the Government of India (MHA) vide Letter No. 35034/1/97-Esst.LDN dated 09.08.1999 introduced an Assured Career Progression Scheme (*hereinafter referred to as ‘ACP Scheme’*) with two financial benefits to the employees in order to avoid stagnation and frustration for those employees who are in service. Under the said scheme, an employee who had rendered 12 years of service and had not earned any promotion, subject to fitness, was entitled to first financial upgradation and upon completion of 24 years of service, subject to fitness, was entitled to second



financial upgradation. The Petitioner had completed 24 years of service as on 23.06.2005 and also received the subsidiary benefits for the same.

4. It is stated that the 6th CPC was implemented w.e.f. 01.01.2006 and the CCS (Revised Pay) Rules, 2008 has also been made applicable retrospectively from 01.01.2006. However, it is the case of the Petitioner that he received the 2nd ACP benefit on 01.05.2006, which is only after the 6th CPC came into effect, whereas his 24 years of service was completed on 23.06.2005. He also stated that the financial benefits were also not given in accordance with the dues which he was entitled to.

5. Mr. Vikram Jetly, learned Standing Counsel appearing for Union of India raised a preliminary objection that the Petitioner has already approached the Hon'ble High Court of Rajasthan by filing a Writ Petition bearing 1443/2017 with the same prayer and that he withdrew the said Writ Petition on 05.12.2018. He stated that the said objection has also been raised in the counter affidavit of UOI.

6. In the rejoinder to the instant Writ Petition, the Petitioner has candidly accepted this fact in Paragraph no. 3, which reads as under:

“That it is humbly submitted that the Counsel for the petitioner in writ Petition No. S.B. Civil Writs No. 1443/2017 titled Mahendra Singh v. UOI before Hon'ble Rajasthan High Court could not plead for “leave of the court to file fresh Writ” as he was under nervousness hence, forgot to mention about the same before the Hon'ble. The counsel for the petitioner just pleaded for the withdrawal of the Writ and the hon'ble court dismissed the writ as withdrawn without granting the leave to file fresh writ.”

7. It is now trite law that a principle akin to Order 23 Rule 1 of the Code of Civil Procedure, 1908 is applicable even to Writ Petitions. The Apex



Court in Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Ors., (1987) 1 SCC 5, has observed as under:

“8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ Petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in Daryao v. State of U.P. in a case involving the question of enforcement of fundamental right file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao case is to be found at page 593 and it is as follows:

If the petition is dismissed as withdrawn it, cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other.

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 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.”

(Emphasis supplied)

8. In the case of Upadhyay & Co. v. State of U.P., (1999) 1 SCC 81, the Apex Court further reiterated the principle of applicability of Order 23 Rule 1 of Code of Civil Procedure, 1908 and the relevant extracts are reproduced hereinunder:

“11. We made a recapitulation of the events as above for the purpose of showing that the petitioner has absolutely no case in the present SLPs. He cannot, at any rate, now challenge the order of the High Court dated 3-5-1996 over again having withdrawn the SLP which he filed in challenge of the same order. It is not a permissible practice to challenge the same order over again after



withdrawing the special leave petition without obtaining permission of the court for withdrawing it with liberty to move for special leave again subsequently.

13. The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution (Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19]). The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned, he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned Chief Justice then was) are to be quoted here: (SCC p. 12, para 9)

“[W]e are of the view that the principle underlying Rule 1 of Order 23 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 the 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.”

15. We have no doubt that the above rule of public policy, for the very same reasoning, should apply to special leave petitions filed under Article 136 of the Constitution also. Even otherwise, the order passed by the Division Bench of the High Court on 3-5-1998 does not warrant interference on merits as the learned Judges of the High Court have taken into account all the relevant facts and come to the correct conclusion.”

9. Recently, the Apex Court in HPCL BIO Fuels Ltd v. Shahaji Bhanudas Bhad, **2024 SCC OnLine SC 3190**, has observed as under:

“50. While we agree with the decision in the aforesaid case to the extent that it declined to apply the principles of Order 23 Rule 1 and refused to dismiss a bonafide subsequent application filed after the earlier one was withdrawn in good faith to attempt conciliation, we are of the view that it cannot be declared as a general rule that merely because a legal proceeding is not a ‘suit’, it would be completely exempted from the application of principles underlying Order 23 Rule 1. These principles, being in the nature of public policy, bring efficiency and certainty to the administration of justice by any court and should be invoked and enforced unless they are expressly prohibited by statute or appear to counter serve the interest of justice, rather than advancing it.

53. The principles of Order 23 Rule 1 are extended to proceedings other than suits with a view to bring in certainty, expediency and efficiency in legal proceedings. However, at the same time, it must also be kept in mind while extending the principles to legal proceedings other than suits that the principles are not applied in a rigid or hyper-technical manner. While the nature of the proceedings, that is, whether such proceeding is a suit or otherwise, should not be a consideration in deciding whether the principles of Order 23 Rule 1 should be extended to such proceedings or not, the bonafide conduct



of a party in the unique facts of a case must be considered before precluding such a party from moving ahead with the proceedings.”

10. In view of the fact that the Petitioner has already approached the High Court of Rajasthan for the same relief, having chosen to withdraw the writ petition, is precluded from approaching any other High Court and filing a fresh Writ Petition on the same grounds.

11. The instant Writ Petition is hereby, dismissed on this short ground of maintainability.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

SEPTEMBER 12, 2025/akc