



CWP-5033-2026 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-5033-2026 (O&M)

Date of decision: 19.05.2026

Shri Mahant Gyan Dev Singh

....Petitioner

Vs.

State of Punjab and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vijay Kumar Jindal, Sr. Advocate assisted by
Mr. Abhishesk Shukla, Advocate,
Mr. Vijayveer Singh, Advocate and
Mr. Sooraj Singh, Advocate
for the petitioner.

Mr. Harpreet Singh, AAG, Punjab.

Mr. R.S. Rai, Senior Advocate and
Mr. Sunil Chadha, Senior Advocate with
Mr. R.P.S. Bara, Advocate,
Mr. Opinder Walia, Advocate and
Ms. Taanvi Dhull, Advocate
for respondent No.6.

HARSH BUNGER J.

1. I have heard the learned Senior Counsel appearing for the petitioner and learned Senior Counsel appearing on behalf of respondent No.6 as well as learned State Counsel.

2. The present petition herein is, under Articles 226/227 of the Constitution of India, filed by petitioner - Shri Mahant Gyan Dev Singh, with the following prayers:-

- (i). issue an appropriate writ, order or direction, including a writ in nature of *certiorari* for quashing/setting aside the impugned order dated 04.07.2024 (Annexure P-17)



passed by the learned Financial Commissioner, Department of Revenue, Punjab whereby the Petitioner was removed from the post of Mohatmim of the Nirmala Panchayati Akhara, Dera Dharam Dhwaja, Top Khana Mor, Patiala

- (ii). issue an appropriate writ, order or direction, including a Writ in the nature of *certiorari* quashing/setting aside the impugned order dated 20.09.2024 (Annexure P-18) passed by learned Financial Commissioner, Department of Revenue, Punjab under Para 44 of the FCR's Standing Order No. 7 appointing Respondent No. 6 Mahant Resham Singh as Mohatmim of the Nirmala Panchayati Akhara, Dera Dharam Dhwaja, Top Khana Mor, Patiala
- (iii). issue an appropriate writ, order or direction, including a writ in the nature of *certiorari* quashing/setting aside the order dated 23.09.2024 (Annexure P-19) passed by learned Financial Commissioner, Department of Revenue, Punjab whereby the Respondent No. 6 - Mahant Resham Singh was appointed as Mohatmim of the Nirmala Panchayati Akhara, Dera Dharam Dhwaja, Top Khana Mor, Patiala illegally without any authority.

3. In paragraph Nos.23 to 25 of the writ petition, following averments have been made:-

“23. That it would be relevant to mention here that previously Ld. FCR under Para 44 of FCR's standing order No.7 issued in favour of the petitioner, wherein, the petitioner was recommended to be appointed as the Mohatmim of the Dera did not include the properties situated at Nirmal Kot, Tehsil Patran and Dalamgarh (Tehsil Samana), however, in the above-mentioned FCR's standing order issued in favour of the Respondent No.6, the said



*properties which otherwise do not form the part of the Dera in question and are also not maufi land have been Included malafidely and illegally. The respondent No.6 in view of the said order of the FCR is trying to interfere in the possession and ownership of the petitioners on the said land of which the petitioner is still the Mohatmim. On account of the same, the Akhara Dharam Dhaja Sadha Nirmla Biatamam filed two civil suits before Ld. Addl. Civil Judge (SD) Samana, District Patiala, regarding the property situated at Village Nirmal Kot, Tehsil Patran, Patiala. Copy of the said civil suits are annexed herewith as **Annexure P-25 & Annexure P-26.***

24. *That it would be relevant to mention here that the abovesaid civil suits have been filed by the Panchayati Akhara Nirmal Kankhal, Haridwar, as the Dera at Patiala falls within the Deras under the Management of Panchayati Akhara Nirmal Kankhal and as per the rules of the society, the Mohatmim of the Dera at Kankhal is also the Mohatmim at the Deras under the Kankhal Dera, including Dera at Patiala. It would be pertinent to mention here that the present writ is being filed by the petitioner in his individual capacity aggrieved against his illegal removal from the post of Mohatmim Patiala and also the appointment of the Respondent No.6 as Mohtamim of the Dera. Further, it is evident from the prayers of the civil suits as mentioned above, that the illegal removal of the petitioner as Mohatmim has not been challenged as the same has been challenged by the petitioner in civil writ petition bearing CWP No. 17296 of 2024 which has been withdrawn by the petitioner on account of subsequent orders having been passed and this Hon'ble Court was pleased to grant liberty to the petitioner to file a fresh writ petition.*



25. *That pursuant to the liberty granted in CWP No. 17296 of 2024 vide order dated 01.08.2025, the Petitioner filed a fresh writ petition bearing CWP No. 23928 of 2025 challenging both the orders i.e. order of removal of Petitioner from post of Mohatmim of Dera Patiala as well as appointment of Respondent No. 6 as Mohatmim of Dera Patiala. The said writ petition came up for hearing before the Hon'ble Bench on dated 10.11.2025, wherein the Hon'ble Bench was pleased to dismiss the writ as withdrawn with liberty."*

4. From a perusal of the above-extracted averments made in para Nos.23 to 25 of the writ petition, it is apparent that the petitioner - Shri Mahant Gyan Dev Singh, had earlier filed a writ petition i.e. CWP No.23928 of 2025, wherein also, the petitioner had laid challenge to the orders dated 04.07.2024, 20.09.2024 and 23.09.2024, passed by learned Financial Commissioner, Punjab. The abovesaid writ petition i.e. CWP No.23928 of 2025, came to be dismissed as withdrawn by the petitioner vide order dated 10.11.2025 (Annexure P-27) with liberty to avail his remedies before the learned Civil Court and/or to avail any other remedies as may be available to the petitioner, in accordance with law. The relevant extract of the order dated 10.11.2025 (Annexure P-27), reads as under:-

"The instant writ petition has been filed under Articles 226/227 of the Constitution of India inter alia seeking a writ in the nature of Certiorari for setting aside the orders dated 04.07.2024 (Annexure P-16), 20.09.2024 (Annexure P-17) and 23.09.2024 (Annexure P-18) passed by the learned Financial Commissioner, Department of Revenue, Government of Punjab.



2. At the outset, learned Senior Counsel representing the petitioner submits that he may be permitted to withdraw the instant writ petition with liberty to the petitioner to avail his remedies before the Civil Court and/or to avail any other remedies as may be available to the petitioner, in accordance with law.

3. Keeping in view the aforesaid submission made by learned counsel for the petitioner, the present writ petition is dismissed as withdrawn with the liberty aforesaid.”

5. In paragraph No.26 of the instant writ petition, it is stated by the petitioner that the writ petition is being filed in pursuance to the liberty granted to the petitioner vide the above-extracted order dated 10.11.2025 (Annexure P-27).

6. It is also made out from the above-extracted paragraph Nos.23 to 25 that the order dated 20.09.2024, which is being challenged in the present writ petition has also been challenged before the Civil Court of learned Additional Civil Judge (Senior Division), Samana, District Patiala by filing a suit for declaration (Annexure P-26) by Akhara Dharam Daja Sadha Nirmla, through the present petitioner - Shri Mahant Gyan Dev Singh, wherein *inter alia*, following prayer has been made:-

“It is prayed that the suit of the plaintiff for to the effect that the plaintiff is Mohitmim/Manager of Akhara Dharam Dhaja Sadha Nirmla, Kankhal, Jawalapur Tehsil and District Haridwar and the appointment of the defendant as Mohitmim /Manager of Akhara Dharamdhaja, Nirmla Sadha by Financial Commissioner Revenue, Punjab dated 20.9.2024 is illegal null and void ultra vires arbitrary and in operative and ineffective qua the constitutional rights of the plaintiff and is liable to be set aside.”



7. On account of the fact that petitioner had earlier also filed a writ petition laying challenge to the orders which are now impugned in the present writ petition, a preliminary objection has been raised by learned Senior Counsel appearing for respondent No.6, as regards the maintainability of the present writ petition before this Court. Accordingly, this Court deems it appropriate to deal with the issue as regards the maintainability of the instant writ petition in the peculiar facts and circumstances of the case.

8. From a perusal of the prayers made in the present writ petition (CWP-5033-2026) and also the earlier writ petition (CWP-23928-2025), both filed by same petitioner (Shri Mahant Gyan Dev Singh Ji); it would be apparent that essentially, almost identical prayers are made in both the petitions.

8.1 It is also to be borne in mind that the earlier Writ Petition No. 23928 of 2025 was withdrawn without seeking any liberty to file a second writ petition but the liberty was granted to the petitioner to “***avail his remedy before the civil court and/or to avail other remedies, as may be available to the petitioner***”.

8.2 Order XXIII of the Code of Civil Procedure, 1908 (for short, CPC) is on the subject of "Withdrawal and Adjustment of Suits". The principle underlying Rule 1 of Order XXIII of the CPC is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file a fresh suit.



8.3 The question as to whether it would or would not advance the cause of justice if the principle underlying Order XXIII Rule 1 of the CPC was adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India was considered in the case of ***Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Others, reported in (1987) 1 SCC 5.***

8.4 In case of ***Sarguja Transport Service (supra)***, Hon'ble Supreme Court held that where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article though other remedies like suit or writ petition before the this Court under Article 32 would remain open to him. It was further held that the principle underlying Rule 1 Order 23 of Civil Procedure Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also. The main contention urged by the learned counsel for the petitioner in that case was that the High Court was in error in rejecting the writ petition on the ground that the petitioner had withdrawn the earlier writ petition in which he had questioned the order passed by the Tribunal on 04.10.1985 without the permission of the High Court to file a fresh petition. It was urged by the learned counsel that since the High Court had not decided the earlier petition on merits but only had permitted the petitioner to withdraw the petition, the withdrawal of the said earlier petition could not have been treated as a bar to the



subsequent writ petition. While considering the said question, this Court considered sub-rule 3 of Rule 1 Order 23 Civil Procedure Code and its applicability to writ petitions filed under Article 226/227 and held as under:-

*"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 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 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."

8.5 In case of **Avinash Nagra v. Navodaya Vidyalaya Samiti and others reported in 1997(2) S.C.C. 534**, Hon'ble Apex Court specifically held that, *"Where the first writ petition challenging the order of termination of service was withdrawn without grant of liberty by the Court to file a second writ petition, the second writ petition for that very purpose is barred by principle of constructive res judicata, therefore, not maintainable."*

9. At this stage, learned Senior Counsel appearing for petitioner has raised the submission that the instant writ petition has been filed in pursuance to the liberty granted to the petitioner vide order dated 10.11.2025 (Annexure P-27) passed in CWP No. 23928 of 2025; as the said order also contains the words **"and/or to avail other remedies, as may be available to the petitioner"**.

10. I have considered the aforesaid submission raised on behalf of the petitioner as well, however, in my considered view, the words **"and/or to avail other remedies, as may be available to the petitioner"**, would not include a second writ petition. If this court was to permit filing of a second writ petition on the same cause of action; then a specific reason would have been recorded therein as regards the circumstances in which the said writ petition (CWP No. 23928 of 2025) was being withdrawn, so as to enable the petitioner to file a second writ petition. Since no specific liberty was granted to the petitioners to file a second writ petition on same cause of action (while



withdrawing the earlier writ petition i.e. CWP No. 23928 of 2025), the petitioner cannot take benefit of the words “***and/or to avail other remedies, as may be available to the petitioner***”. I am also of the view that the conscious use of the words “***to avail other remedies, as may be available to the petitioner***”, would exclude the second writ petition on the same cause of action.

11. Here it would also be apposite to refer to another decision by a Larger Bench of Hon'ble Supreme Court of India in ***Devilal Modi v. Sales Tax Officer, Ratlam, 1965 AIR(SC) 1150***; wherein Hon'ble Supreme Court considered the issue as to whether the principle of constructive res judicata can be invoked against a writ petition. Hon'ble Supreme Court made the following observations:-

“13. The present proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the tax by prolonging legal proceedings interminably. We have already seen that in the present case the appellants sought to raise additional points when he brought his appeal before this Court by special leave; that is to say, he did not take all the points in the Writ Petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court held decided against him on the merits of those points, he has come to this Court; but that is not all. At the hearing of this appeal, he had filed another petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public



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policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata...”

12. In view of the above discussion, the preliminary objection raised by learned Senior Counsel appearing on behalf of respondent No.6 must be sustained and the present writ petition is liable to be rejected as not maintainable in view of the fact that the petitioner having earlier filed writ petition bearing CWP No.23928 of 2025, which was withdrawn by him vide order dated 10.11.2025 (Annexure P-27) without reserving any liberty onto him for filing a second writ petition on the same cause of action.

13. Resultantly, the instant writ petition fails and the same is accordingly **dismissed**.

14. All the pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

19.05.2026

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No