

CWP-4985-2025 (O&M)

2026:PHHC:067743



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

105+207

CWP-4985-2025 (O&M)
Date of Decision: 01.05.2026

Munish Kumar

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Ram Kumar Saini, Advocate for the petitioner.

Mr. Piyush Khanna, Addl. AG, Haryana.

Ms. Rajni Gupta, Advocate for respondents No.2 to 6.

HARPREET SINGH BRAR, J. (Oral)

CM-2379-CWP-2026

The present application has been filed under Section 151 of CPC for placing on record letters dated 04.08.2025, 06.10.2025 and 01.08.2024 (Annexures P-13 to P-15) respectively, to the captioned petition.

In view of the grounds mentioned in the application, the same is allowed, Annexures P-13 to P-15 are ordered to be taken on record.

Registry is directed to place the same at an appropriate place.

MAIN

1. The petitioner has approached this Court by way of the present writ petition under Articles 226/227 of the Constitution of India praying for

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issuance of a writ in the nature of *mandamus* directing the respondents to left the petitioner to re-join the post of Data Entry Operator and he be allowed to join service in the office of Executive Engineer, OP Division, DHBVN, Hansi (Hisar) by providing same relief on equal terms as has already been given to similarly situated employees.

2. On 02.12.2025, the following order was passed by this Court:-

“Learned counsel for the petitioner submits that FIR No.13 dated 11.01.2023 has been registered against the petitioner along with five other co-employees. After obtaining bail, the respondent/Nigam has permitted all the co-accused employees to resume their duties subject to outcome of the criminal trial, however, the petitioner has been denied this benefit. Learned counsel for the petitioner refers to the reply filed to the representation made by the petitioner wherein the respondent/Nigam itself admits that other similarly situated employees have been allowed to re-join. He further submits that yet another employee namely Vishal Sandhu has been permitted to join duty on 06.10.2025 by respondent No.6 whereas the petitioner, who falls under the same jurisdiction, has been denied re-joining solely on account of the registration of the aforesaid FIR.

Adjourned to 23.12.2025.

In the meantime, respondent No.6 is directed to file an affidavit clarifying the reasons for differential treatment and explaining why the petitioner has not been allowed to re-join the duty despite similarly situated employees having been permitted to do so.”

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3. At the very outset, learned counsel for respondents No.2 to 6 raises a preliminary objection with regard to the maintainability of the present writ petition. It is submitted that the petitioner had earlier approached this Hon'ble Court by way of filing *CWP-1388-2024* titled *Munish Kumar vs. State of Haryana and others*, which came to be decided on 05.11.2024 (Annexure P-9). During the course of hearing of the said writ petition, after addressing arguments at some length, the petitioner chose to withdraw the petition with a view to approach the competent authorities. However, no liberty was sought or granted by this Hon'ble Court to file a fresh writ petition on the same cause of action.

31. In this backdrop, it is contended that the present writ petition is barred and not maintainable in view of the law laid down by the Hon'ble Supreme Court in *Sarguja Transport Service vs. State Transport Appellate Tribunal, Gwalior, 1987 (1) SCC 5*, wherein it has been categorically held that once a writ petition is withdrawn without liberty to file afresh, a second petition on the same cause of action is not maintainable.

4. I have heard learned counsel for the parties and have perused the record of the case with their able assistance. Admittedly, there is no dispute to the fact that the petitioner had earlier approached this Hon'ble Court by filing CWP-1388-2024 and the same was withdrawn without seeking or being granted any liberty to institute fresh proceedings on the same cause of action. In such circumstances, this Court finds substance in

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the preliminary objection raised by learned counsel for the respondents regarding the maintainability of the present petition in view of the ratio laid down in *Sarguja Transport Service (supra)*.

4.1 Apart from the above, it is also not in dispute that an FIR has been registered against the petitioner under the provisions of the Prevention of Corruption Act, 1988, and the matter is still under consideration before the competent forum. The issues raised in the present petition involve seriously disputed questions of fact, which cannot be adjudicated upon in the exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

5. It is further pertinent to note that the petitioner was engaged as a contractual employee, and the rights flowing from such engagement are governed by the terms and conditions of the contract, which also require factual adjudication. This Court, in exercise of its writ jurisdiction, ordinarily refrains from entertaining such matters involving contractual disputes coupled with disputed facts.

6. It is settled law that a fresh writ petition is not maintainable in respect of the same subject-matter if the earlier writ petition had been withdrawn without obtaining permission of the Court to file a fresh petition. A two-Judge Bench of the Hon'ble Supreme Court in *Sarguja Transport Service (supra)*, speaking through Justice E.S Venkataramiah, has observed as follows:

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“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's case (*supra*) 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 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 since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution 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)

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7. Furthermore, a Division Bench of this Court in *Sukhbir Kaur vs. State of Punjab 1996(4) SCT 781*, while relying on the judgment of the Hon'ble Apex Court in *Sarguja Transport Service (supra)* reiterated this position of law. Speaking through Justice G.S. Singhvi, the following was held:

"5. Since there is nothing in the order dated 20.8.1996 to indicate that the writ petition was withdrawn with liberty to approach the departmental authorities or with permission to institute a fresh petition, the dismissal of writ petition on 20.8.1996 will have to be treated as un-conditional. We cannot accept the submission of the learned counsel for the petitioner that in addition to what has been recorded in the order sheet dated 20.8.1996 the court had made some observations which should be read as a part of the order of the court and relief should be given to the petitioner ignoring the fact that previous writ petition filed on the same subject matter stands dismissed as withdrawn.

6. In *State of Maharashtra v. Ram Dass Shrinivas Nayak and another*, AIR 1982 Supreme Court 1249, a similar attempt was made before the Apex Court to draw the court into controversy about the exact happening in the proceedings of the High Court. Their Lordships repelled such attempt by observing:

"The court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statement of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a

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statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

Since the writ petition No. 12632 of 1996 was dismissed as withdrawn on the request made by the learned counsel for the petitioner and no permission was given to the petitioner to institute fresh writ petition on the same subject matter, we have no hesitation to dismiss this writ petition as not maintainable in view of the law laid down by the Supreme Court in Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others, AIR 1987 Supreme Court 88, wherein their Lordships observed as under:

"In order to prevent a litigant from abusing the process of the court by instituting suits again and again in the same cause of action without any good reason the Civil Procedure Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in Order 23 Rule 1(3). The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata. This principles underlying Rule 1 of Order 23 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. That 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 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 since such withdrawal does not amount to res judicata, the remedy under Article 226 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ."

For the reason enumerated above, the writ petition is dismissed."

(Emphasis supplied)

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8 Moreover, the issues raised in the present writ petition entail adjudication of disputed questions of fact, which would require appreciation of evidence, an exercise that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, is not equipped to undertake.

9. It is settled law that where disputed questions of facts are involved, a petition under Article 226 of the Constitution of India is not the proper remedy. A two-Judge Bench of the Hon'ble Supreme Court in ***S.P.S. Rathore vs. State of Haryana, (2005) 10 SCC 1***, speaking through Justice Y.K. Sabharwal, has held as follows:

"16. In Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In T.N. Electricity Board v. Sumathi [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When

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there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution."

10. Further a Two-Judge Bench of the Hon'ble Apex Court in ***Orissa Agro Industries Corporation Ltd. Vs. Bharati Industries 2005 (12) 725*** while speaking through Justice Arijit Pasayat, observed that as follows:

*"9. A bare perusal of the High Court's judgment shows that there was clear non-application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that essence of dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ petitioner's assertion and on a very curious reasoning that though the appellant-Corporation claimed that the value of articles lifted was nearly rupees 14.90 lakhs no details were specifically given. From the counter-affidavit filed before the High Court it is crystal clear that relevant details disputing claim of the writ petitioner were given. Value of articles lifted by the writ petitioner is a disputed factual question. **Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition.** As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinised and in such a case writ jurisdiction should not be exercised. (See : *State of Bihar v. Jain Plastic & Chemicals Ltd.*, 2002(1) SCC 216).*

10. In a catena of cases this Court has held that where dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution. (See :

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Chairman, Grid Corporation of Orissa LTd. (GRIDCO) and Ors. v. Sukamani Das (Smt.) and Anr., 1999(4) RCR (Civil) 174 (SC) : (1999(7) SCC 298)."

11. A Two-Judge bench of the Hon'ble Supreme Court in ***Chairman, Grid Corporation of Orissa Ltd. (Gridco) Vs. Smt. Sukamani Das 1999 (7) SCC 298***, while speaking through Justice G.T Nanavati made the following observations:

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. **It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy.** The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.

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12. Reliance in this regard may be placed on the judgement rendered by the Hon'ble Apex Court in *Shubhas Jain v. Rajeshwari Shivam, 2021 SCC Online SC 562*, *Union of India v. Puna Hinda, (2021) 10 SCC 690* and of this Court in *Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta and another, 1999(1) SCT 88 (SC) : JT 1998(8) SC 55*.

13. It is trite law that a writ petition under Article 226 is not an appropriate remedy for resolving disputed questions of fact. In such cases, the High Court cannot transform itself into a court of first instance to reappreciate evidence or decide intricate factual disputes.

14. Clearly, CWP No.1388 of 2024 (supra) was dismissed as withdrawn vide order dated 05.11.2024 without any liberty to file a fresh petition on the same subject matter. As such, the present petition is not maintainable and cannot be entertained by this Court in terms of the settled principles of law. Moreover, the controversy involved in the present case gives rise to disputed questions of fact, which cannot be adjudicated upon in exercise of writ jurisdiction under Article 226 of the Constitution of India. Accordingly, without going further into the merits of the case, the present writ petition is dismissed.

15. However, it is clarified that during the course of arguments, petitioner's counsel has raised a contention that similarly situated contractual employee, who was also named in FIR (supra), has been reinstated into service. The said contention has been disputed by

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respondents' counsel. In the event it is found that any such contractual employee, similarly placed and named in the aforesaid FIR, has been reinstated, the respondents shall consider the claim of the petitioner as well, and pass appropriate orders.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

01.05.2026

Puneet Chawla

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No