
(2020) 02 MP CK 0116
In the Madhya Pradesh High Court
Case No : Writ Petition No. 381 Of 2019

Jatashankar Karosiya

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 23 Rule 1
Constitution Of India, 1950 — Article 21, 32, 226

Citation : (2020) 02 MP CK 0116

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : P.R.Bhatnagar, Lokesh Mehta

Final Decision : Dismissed

Judgement

By this writ petition, the petitioner has challenged the order dated 20/12/2018 whereby the respondent State has cancelled the nomination of the petitioner as President of Safai Karmachari Commission.

Learned counsel for petitioner submits that the petitioner was appointed as President of the Commission vide order dated 11/9/2017 and prior to

cancellation of nomination, no opportunity of hearing has been given and he has also submitted that such a nomination was for a period of three years

which could not have been cancelled before expiry of the said term and in this regard he has placed reliance upon the division bench judgment dated

26th July, 2018 of Uttarakhand High Court in the matter of State & another Vs. Kiranpal Balmiki & Ors. in Special Appeal No.809/2017.

Learned counsel for State has raised an objection that earlier writ petition was filed by the petitioner which was withdrawn without liberty, therefore,

fresh petition is not maintainable and even otherwise, there is no case made out

on merit because it was only the nomination which has been cancelled.

Having heard the learned counsel for parties and on perusal of the record, it is noticed that undisputedly the petitioner has filed WP No.29882/2018

challenging the impugned order. The said writ petition was withdrawn vide order dated 04/1/2019 which reads as under:-

“Shri K.L. Yadav, counsel for the petitioner seeks permission to withdraw this petition.

Prayer is allowed.

Writ petition is accordingly dismissed as withdrawn.”

In the aforesaid order, no liberty was granted to file fresh petition. Hence, the present petition would not be maintainable in view of the judgment of

the Supreme Court in the matter of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P; Gwalior, and others reported in (1987) 1

SCC 5 wherein it has been held that:-

“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 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.

In view of the aforesaid, on the ground of public policy, the present writ petition is held to be not maintainable.

Even otherwise the petitioner has no case on merit as the nomination order dated 11/9/2017 as also the general circular dated 3/1/2008 clearly

mentions that the nomination was for a period of three years or till the nomination is withdrawn whichever is earlier. The nomination of the petitioner

was not on account of any special qualities he has. The division bench judgment of Uttarakhand High Court in the matter of Kiranpal Balmiki (*supra*)

has no application in the present case because in that case there was an appointment that too for a period of fixed tenure of three years and the

Clause similar to withdrawal of nomination before the tenure of three years was not there.

The petition is accordingly dismissed.