
(2010) 09 AHC CK 0487
In the Allahabad High Court
Case No : C.M.W.P. No. 13013 of 2008

Kripa Ram Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2011) 128 FLR 972

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—The Petitioner was retired compulsorily at a premature stage under the order dated 14.2.2006 which is under challenge together with the order dated 24.11.2006 which was passed on the Representation/Appeal filed by the Petitioner.

2. The writ petition was entertained and a counter affidavit has been filed on behalf of the Respondents. The Respondents have taken a preliminary objection and Sri Satya Prakash learned Counsel submits that the Petitioner, after passing of the aforesaid orders filed Writ Petition No. 5882 of 2007 before the High Court of Punjab and Haryana at Chandigarh, where he did not raise any challenge to the aforesaid orders and only made a claim for release of certain emoluments along with interest to which he was entitled including contributory provident fund.

3. Sri Satya Prakash submits that the Petitioner ought to have raised a challenge to the aforesaid orders in case he was not satisfied and once he has acquiesced to the same by only claiming certain emoluments, he was estopped from filing a fresh writ petition for a relief which he could have claimed before the High Court of Punjab and Haryana.

4. Having considered the submissions raised, the preliminary objection deserves to be upheld inasmuch as the principles of constructive res-judicata are clearly

applicable. Needless to say that Explanation IV to Section 11 of the CPC contains the aforesaid ingredients and the Petitioner ought to have raised this challenge in the writ petition before the Punjab and Haryana High Court which was admittedly not done. There is no plausible or cogent explanation for the same.

5. Sri Khare submits that the Petitioner cannot be precluded from raising a plea which he had not raised in the earlier writ petition. The aforesaid argument has to be noted for being rejected in view of the principles as contained in Explanation IV to Section 11. It may not be out of place to mention that the CPC may not be strictly applicable to writ proceedings yet the principles apply as held by the Apex Court in *Daryao and Others Vs. The State of U.P. and Others*, Reference may be had to the decision in the case of *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, .

6. Accordingly the writ petition cannot be entertained and is hereby dismissed.