

(2024) 11 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : CWP No. 12637 Of 2024

Vinod Kumar

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 11-11-2024

Acts Referred:

Constitution of India, 1950 — Article 21, 32, 226, 227

Citation : (2024) 11 SHI CK 0028

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Amrick Singh, Pushpinder Jaswal, Rohan Tomar, Tim Saran

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

a) "Issue an appropriate writ, order or direction by quashing and setting aside the impugned transfer order dated 04.10.2024 (Annexure P-3) in the interest of justice.

b) Respondents may kindly be directed to permit the petitioner to perform his duties at with respondent No.2 at Shimla, H.P."

2. A perusal of the documents appended with the petition demonstrate that the petitioner had earlier approached this Court by way of CWP No.11451 of 2024, titled Vinod Kumar versus State of Himachal Pradesh and others, decided on 29.10.2024, which writ petition was dismissed by this Court as withdrawn in the following terms:-

"When the case was taken up for consideration today, learned counsel appearing for respondent No.2 has apprised the Court that the petitioner is appointed by a private firm, which incidentally has not been made party in the writ petition. He

further submitted that this private firm has engaged the petitioner on outsource basis and as there is no relationship of employee and employer between the petitioner and the respondents, therefore, the petition is not maintainable.

At this stage, learned counsel for the petitioner prays for and is permitted to withdraw the petition.

Petition is dismissed as withdrawn, as prayed for, so also pending miscellaneous applications, if any."

3. Today, learned counsel for the petitioner has submitted that, because, now, the petitioner has impleaded the private firm as a party, therefore, the writ petition is maintainable.

4. The Court is really appalled and surprised that despite the fact that the previous writ petition filed by the petitioner was dismissed as withdrawn without any liberty having been granted by the Court to approach the Court afresh by impleading a third party as a party respondent, how the petitioner could have had filed another writ petition on the same facts. In fact, in the course of the hearing of the previous writ petition, when the Court was on the verge of dismissing the petition as not maintainable in the light of the fact that the petitioner happened to be an outsource employee engaged by a private entity, the learned counsel, who was then representing the petitioner prayed for and was permitted to withdraw the petition. As observed hereinabove, no liberty was granted by this Court to the petitioner to file a fresh case on the same cause. Rather then, taking the order of dismissal, learned counsel prayed for and was allowed to withdraw the writ petition, therefore, the filing of this writ petition is nothing but abuse of the process of law.

5. At this stage, this Court would like to refer to the judgment of the Hon'ble Supreme Court of India in AIR 1987 Supreme Court 88, in which, Hon'ble the Supreme Court was called upon to consider the effect of withdrawal of a writ petition filed under Article 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition.

6. While deciding this issue, Hon'ble Supreme Court of India was pleased to hold as under:-

"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.”

7. Thus, it is apparent and evident from the judgment of the Hon’ble Supreme Court of India that until and unless the Court grants liberty while dismissing a petition as withdrawn to approach the Court afresh on the same cause, no fresh petition is maintainable. Thus, it is apparent that this writ petition is nothing, but abuse of the process of law, therefore, the same is dismissed. Pending miscellaneous applications, if any, also stand disposed of.