

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case No: CM(M) No. 281/2024,
CM Nos. 2085/2025, 2659/2026,
7490/2024 & 502/2025**

*Reserved on : 08.09.2026
Pronounced on : 18.09.2026
Uploaded on 18 .09.2026*

1. Modern Hotel Shakuntla
Complex Private Limited
through Romesh Chander
Mahajan, age 85 years, son of
late Lala Ram Chand Mahajan,
R/O 72 A/D Gandhi Nagar,
Jammu.
2. Rahul Mahajan, aged 50 years,
S/O Shri Ramesh Chander
Mahajan,
R/O 72, A/D Gandhi Nagar,
Jammu.

...Petitioner(s)/Appellant(s)

Through: Mr. Anil Sethi, Advocate

Vs.

Sudhir Gandotra
S/O Late Radha Krishan,
R/O H.No. 28, Karan Nagar,
Jammu.

.... Respondent(s)

Through: Mr. Ayushman Kotwal, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioners, through the medium of the present petition, have challenged order dated 22.07.2024 passed by Assistant Labour Commissioner, Jammu, in his capacity as Controlling Authority

(under the Payment of Gratuity Act, 1972) (hereinafter referred to as “the authority”).

2. Vide the impugned order, the authority has refused to set aside the ex parte order dated 13.11.2023 passed by the said authority whereby the petitioners have been asked to deposit an amount of Rs. 9,26,024/- on account of claim of the respondent under the provisions of Payment of Wages Act.
3. According to the petitioners, the respondent was their employee w.e.f. 1984 to June, 2011 and in June, 2011 he voluntarily resigned from the office of the petitioners. It has been submitted that the respondent, while withholding the aforesaid crucial information of his voluntary abandonment of service, obtained an ex parte order from the authority on 13.11.2023, whereby the petitioners were asked to make a payment of Rs. 7,78,846/- along with interest of Rs. 1,47,178/- to the respondent.
4. It has been submitted that the authority has not found any logic in the plea of the petitioners that the respondent had voluntarily left the service, regarding which a certificate was produced before the authority. It has been submitted that the petitioners have approached the Deputy Labour Commissioner, Jammu, with an appeal, but the said authority has refused to entertain the appeal in the absence of the deposit of 100% of the awarded amount, as required under Section 7(7) of the Payment of Gratuity Act. It has been submitted that insistence upon the deposit of 100% of the amount with the appellate authority is operating harshly against the petitioners, who have a valid right to present their stand and establish the same before the Court. It

has been submitted that in the light of the certificate issued by the Provident Fund Organization, Jammu, the respondent ceased to be an employee of the petitioners from June, 2011, the period for which he claims gratuity and its arrears. It has been further submitted that even an application for setting aside the ex parte order was not properly entertained by the authority.

5. The respondent has raised a preliminary objection to the maintainability of the present petition on two counts:-

(i) That the order of the authority whereby the claims of the respondent against the petitioners have been allowed, as also the impugned order dated 22.07.2024 whereby the authority has refused to set aside the ex parte order dated 13.11.2023, are appealable in nature in terms of Section 7(7) of the Payment of Gratuity Act and, therefore, the petition is not maintainable. It has been contended that the petitioners, in order to circumvent the requirement of depositing the awarded amount at the time of filing of the appeal, have invoked the writ jurisdiction, which is impermissible in law.

(ii) That the petitioners have filed two writ petitions previously on the same cause of action, and both these writ petitions have been dismissed as withdrawn by the petitioners without obtaining liberty to file a fresh writ petition. It has been submitted that, without bringing these facts to the notice of this Court, the petitioners have again invoked the writ jurisdiction, which is not permissible under law.

6. I have heard learned counsel for the parties and perused record of the case.
7. Without going into the question as to whether the impugned order dated 22.07.2024 passed by the authority refusing to set aside the ex parte award dated 13.11.2023 is appealable in nature, this Court would like to deal with the second contention raised by the respondent in the first instance.
8. In the above context, the respondent has placed on record a copy of the petition bearing CM(M) No. 183/2024 filed under Article 227 of the Constitution, challenging order dated 22.07.2024, which is also the subject matter of the present writ petition. It appears that the said petition was withdrawn by the petitioners as is clear from order dated 09.08.2024 passed by this Court. However, liberty was given to the petitioners to seek an appropriate remedy available under law. Thereafter, the petitioners filed another writ petition under Article 226 of the Constitution, bearing WP(C) No. 2195/2024, before this Court, challenging the same order dated 22.07.2024 passed by the authority. The said writ petition was also dismissed as withdrawn in terms of order dated 09.09.2024 passed by this Court. This time, no liberty was granted to the petitioners to avail of any kind of remedy.
9. After making two attempts to challenge order dated 22.07.2024, first by filing a petition under Article 227 of the Constitution and second by filing a petition under Article 226 of the Constitution, the petitioners have filed the present petition again under Article 227 of the Constitution, challenging the same order. It is significant to mention here that, in the present petition, the petitioners have not even

made a whisper about the previous two petitions filed by them. In fact, in para No. 8 of the petition, it has been mentioned that the petitioners have not filed any other writ, suit or appeal on the same cause of action before any legal forum, including Hon'ble Supreme Court.

10.In the face of the aforesaid facts, the question arises as to whether the present petition is maintainable.

11.It is a well-settled principle of law that a subsequent writ petition on the same cause of action, after withdrawing the initial writ petition without liberty to file a fresh petition from the Court, is barred on the ground of public policy. In this context the Supreme Court, in the case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others, 1987 (1) SCC 5**, has observed as under:-

“ 9. The point for consideration is whether a petitioner after with-drawing 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.”

12. From the aforesaid observations of the Supreme Court, it is clear that the public policy prevents a litigant from filing repeated petitions for the same grievance and estops a litigant from resorting to the practice of bench hunting. In fact, resorting to such practice amounts to an abuse of judicial process. A litigant can approach the Court again only if a completely distinct and subsequent event creating a new brand of cause of action after withdrawal of the writ petition arises. Withdrawing a writ petition without liberty from the Court means that the litigant has legally abandoned his extraordinary remedy under Articles 226 and 227 of the Constitution for that specific issue.

13. In the present case, the petitioners have challenged the impugned order on two previous occasions and, on both occasions, they have

withdrawn the petitions. On the first occasion, the petitioners were given liberty to avail of an appropriate remedy, but on the second occasion, the petitioners withdrew the writ petition without any liberty. To top it all, the petitioners did not think it even appropriate to make reference to the previous attempts made by them to challenge the impugned order by way of two previous petitions and had the courage to specifically plead in the present petition that they have not filed any other writ, suit or appeal on the same cause of action. Thus, on the ground of public policy, the present petition is not maintainable.

14. Petitioner No. 2 has sworn an affidavit in support of the petition, and in the petition, it has been stated that the petitioners have not filed any other writ, suit or appeal on the same cause of action. This statement, on the face of it, appears to be false. Therefore, petitioner No. 2 deserves to be proceeded against for having made a false statement in the present petition. Accordingly, the petition is **dismissed**, and it is further directed that a show cause notice be issued to petitioner No. 2, asking him as to why he should not be proceeded against for having committed perjury by filing a false affidavit.

15. The Registry shall post this matter on 21.10.2026 for the limited purpose of considering appropriate action against petitioner No. 2.

(Sanjay Dhar)
Judge

Jammu
18.09.2026
Madan Verma-Secy

Whether order is speaking?	Yes
Whether order is reportable?	Yes