

CWP No. 13641-2006

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

CWP No. 13641-2006

Date of Decision: 16.01.2015

Kesar Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Gurcharan Dass, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. A. G. Punjab.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing memo No.E3(2)-06/499-A dated 01.03.2006 (Annexure P-21) issued by respondent no.2 whereby claim of the petitioner for promotion to the post of Auditor has been rejected.

I have heard learned counsel for the parties and perused the record.

For ready reference, a relevant extract of memo No.E3(2)-06/499-A dated 01.03.2006 (Annexure P-21) is being extracted which reads as under:

“2. The contents of para Nos.1 to 3 of your legal

CWP No. 13641-2006

notice are correct, but so far as the contents of para Nos.4 to 7 are concerned, you are informed that you have never given your consent earlier for the post of Junior Auditor, due to which you have not been considered for the post of Junior Auditor. Therefore, though you were senior to other employees, but you have not been promoted as Junior Auditor as you did not give your consent. So far as para 8 is concerned, application dated 17.11.2004 submitted by you has been considered and in the meantime due to your retirement on 31.05.2005, promotion to the post of Junior Auditor has not been given to you nor any other employee at the district level has been promoted to the post of Junior Auditor during this time who may be junior to you. Besides this, the position in para 7 is clarified that the action has been taken in this connection in the light of decision of the court.”

Perusal of file shows that the petitioner retired from service on 31.05.2005. According to the petitioner, he was not promoted to the post of Accountant/Auditor in spite of the fact that respondent no.4 who was junior to him was promoted to the post of Accountant/Auditor vide office order dated 17.10.1995 (Annexure P-5) (actually endorsed vide Endst. No.E2(2)-95/2071 dated 27.11.1995). Admittedly, the petitioner retired on 31.05.2005 and did not assail the promotion order of respondent no.4 and after about a decade from the date of promotion of respondent no.4 and after retiring from service, he has filed the instant petition claiming notional promotion and consequential claim of re-

CWP No. 13641-2006

fixation of pay-scale. Thus, the cause of action to seek promotion and re-fixation of pay-scale had arisen to the petitioner in the year 1995, when his junior was promoted to the post.

It is well settled that if a person has a legal or statutory right to be enforced against the respondents, he should ventilate his grievance before the competent authorities, within a time limit, if provided under the statutory rules or any Government instructions issued from time to time. If there is no such rule or instructions prescribing a time limit, then such person alleges infringement of rights or denial of any benefit, arising under Government rules and instructions, ought to have approached the Court, within a reasonable time.

What is reasonable time has not been spelt out in any rule. However, the Hon'ble Supreme Court in *Veerayeeammal v. Seeniammal* 2002 (1) SCC 134, has explained the words "reasonable time", and held as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances

CWP No. 13641-2006

permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

In the present case, the delay and laches on the part of the petitioner is apparent. The issue of delay and laches and exercise of jurisdiction under Article 226 of the Constitution of India has been dealt with by the Hon'ble Supreme Court in various decisions. In this context, it would be appropriate to refer to a few decisions dealing with delay and laches.

In ***P.S.Sadasivaswamy v. State of Tamil Nadu reported in AIR 1974 SC 2271***, the Apex Court held as follows;-

"..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it

CWP No. 13641-2006

would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

The Hon'ble Supreme Court in ***M/s.Rup Diamonds and Ors. v. Union of India and Ors.***, (1989) 2 SCC 356, while dealing with a belated claim on the basis of the order passed in some other Writ Petitions, observed that those people who were sitting on the fence till somebody else took up the matter to the court, cannot be given the benefit. In that context, their Lordships held as follows:

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an

CWP No. 13641-2006

unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal.

In ***Chairman, U.P. Jal Nigam and another v. Jaswant Singh*** AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay held as follows:

"13. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

In ***A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others***, (2007) 2 SCC 725 as well, same issue was considered and

CWP No. 13641-2006

following the earlier judgment in *U. P. Jal Nigam's case (supra)*, it was opined as under:

“40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.”

(Emphasis supplied)

In *Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu*, 2014(1) RSJ 542, Hon'ble the Supreme Court opined as under:

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be

regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

14. *In State of Maharashtra v. Digambar, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court*

CWP No. 13641-2006

refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

*15. In **State of M. P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.**, AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.*

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to

CWP No. 13641-2006

scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'.

CWP No. 13641-2006

In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

[Emphasis supplied]

In view of the above authoritative enunciation of law by Hon'ble the Supreme Court, the present writ petition filed by the petitioner nearly after 11 years of promotion of respondent no.4 and after more than one year of his retirement to claim certain benefits to which petitioner may have been entitled as per law while in service, is highly belated and deserves to be dismissed on account of delay and laches alone, as there is no satisfactory explanation available for delay.

Dismissed accordingly.

16.01.2015

parveen kumar

**[Paramjeet Singh]
Judge**