

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.1222 of 2015
Date of decision:23.01.2015**

Krishan Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Ashwani Verma Thakur, Advocate,
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

The present writ petition is directed against the order dated 23.7.1999 (Annexure P-5), whereby the petitioner was awarded punishment of stoppage of two annual grade increments with cumulative effect.

Learned counsel for the petitioner submits that since the petitioner was not feeling well, the absence was beyond his control. He only over stayed leave for a period of nine months. Thereafter, he reported for duty and was allowed to join. However, the impugned order dated 23.7.1999 (Annexure P-5) was passed by the competent authority in the most arbitrary manner. Petitioner filed his appeal on 26.10.2002 vide Annexure P-6 but the same was also dismissed by the competent authority vide order dated 6.12.2002 (Annexure P-7). He further submits that since petitioner was being transferred from one place to another place, he could not pursue his cause any further, before filing the representation dated 20.3.2014 (Annexure P-8). Even the said representation of the petitioner

was rejected by the respondent authorities vide order dated 21.3.2014 (Annexure P-9). Another representation dated 29.4.2014 (Annexure P-10) filed by the petitioner was again rejected by the respondent authorities vide communication dated 7.11.2014 (Annexure P-11), thereby compelling the petitioner to approach this Court. He concluded by submitting that since the respondent authorities have proceeded on an arbitrary approach, while issuing the impugned communications, the same were not sustainable in law. In support of his contentions, he places reliance on a judgment of the Hon'ble Supreme Court in **State of Bihar v. Kameshwar Prasad Singh, 2000 (2) SCT 889**. He prays for setting aside the impugned order dated 23.7.1999 (Annexure P-5), by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, the instant writ petition has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that after having overstayed leave for about a period of nine months, petitioner was awarded the punishment of stoppage of two annual grade increments with cumulative effect vide order dated 23.7.1999 (Annexure P-5) passed by the competent authority. A perusal of the impugned order (Annexure P-5) would show that principles of natural justice were meticulously complied with by the

respondent authorities. Disciplinary proceedings were initiated. A charge-sheet was issued against the petitioner, containing three specific charges. Enquiry was conducted during which the petitioner was associated throughout. He was granted full opportunity to defend himself. On conclusion of the regular departmental enquiry, the competent authority discussed each and every aspect of the matter in detail and only thereafter a reasoned and speaking order was passed.

A lenient view was taken, while awarding punishment of stoppage of two annual grade increments of the petitioner with cumulative effect. It is neither pleaded nor argued case on behalf of the petitioner that anyone out of the respondent authorities was biased against the petitioner or he was not granted due opportunity to defend himself. Having said that, this Court feels no hesitation to conclude that the respondent authorities committed no error of law, while passing the impugned order (Annexure P-5) which deserves to be upheld.

It seems that after passing of the above-said order (Annexure P-5), petitioner felt satisfied. He did nothing for about 3½ years. Thereafter, he woke up from the slumber and moved his appeal (Annexure P-6) as late as on 26.10.2002 vide Annexure P-6, which was dismissed by the competent authority vide order dated 6.12.2002 (Annexure P-7). Thereafter, petitioner again went into deep slumber and did nothing for about 12 long years. Petitioner sought review of the above-said order vide representation dated 20.3.2014 (Annexure P-8), which was rightly rejected by the respondent authorities vide communication dated 21.3.2014 (Annexure P-9). Petitioner again submitted another representation dated 29.4.2014 (Annexure P-10), which was also rejected by the respondent

authorities vide communication dated 7.11.2014 (Annexure P-11).

It is pertinent to note here that the communications dated 6.12.2002, 21.3.2014 and 7.11.2014 Annexures P-7, P-9 and P-11 respectively, are not even under challenge before this Court. Under these circumstances, it can be safely concluded that the petitioner was not at all interested in pursuing his cause at any relevant point of time. He had been proceeding on a very casual approach, as if no law of limitation would operate against him. Further, during the course of hearing, learned counsel for the petitioner, despite his best efforts, could not furnish any plausible explanation for this inordinate long delay of more than 15 years and rightly so, because it was a matter of record. In this view of the matter, it is unhesitatingly held that the present writ petition suffers from delay and laches and the same is liable to be dismissed, for this reason also.

Coming to the judgment relied upon by the learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has been found distinguishable on facts and is of no help to the petitioner. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others,** 2002 (3) SCC 533.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **B.S.Bajwa and another Vs. State of Punjab and others, (1998) 2 SCC 523; Union of**

India and others Vs. A. Durairaj (dead) by Lrs, (2010) 14 SCC 389; Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and others, 2013 (10) SCC 627; Government of India and another Vs. George Philip (2006) 13 SCC 1 and Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu, 2014 (4) SCC 108.

The relevant observations made by the Hon'ble Supreme Court in para 16 of the judgment in **T.T. Murali Babu's** case (supra), which can be gainfully followed in the present case, read as under:-

“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 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’. 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.”

Reverting back to the facts of the present case and respectfully following the law laid down in the cases, referred to hereinabove, the present writ petition has since been found to be suffering from delay and laches as well as it is without any merit whatsoever, therefore, the same is liable to be dismissed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant writ petition is wholly misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant writ petition stands dismissed, however, with no order as to costs.

23.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE