IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17104 of 2015 (O&M)

Date of Decision:19.8.2015

Ramesh Kumar Mehra …Petitioner

Versus

State of Punjab and others …Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Onkar Singh, Advocate for the petitioner

1.To be referred to the Reporter or not?

2.Whether the judgment should be reported in the Digest?

…

1. The petitioner is a superannuated Taxation Inspector. He retired from service on 31st January, 2002. He retired facing a charge-sheet issued to him on 19th August, 2000 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 ("the PCS Rules") for misconduct relating to his disputed educational qualifications earned while in service on which he secured promotion.

2. The moot issue which forms the substance of the charge-sheet was whether the petitioner's B.A.(Pass) Certificate of 2 years duration obtained from the Magadh University, Bodh Gaya, Bihar is equivalent to a three years B.A. degree course. The petitioner says that he applied for permission to appear in the B.A. Examination of the Magadh University in the year 1991. Request for permission to pursue further studies while in service was granted.

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Trouble began for the petitioner in the year 1994 when the petitioner applied for incorporating his newly acquired qualification in the seniority list of the ministerial establishment of Patiala Division of the Taxation Department. His prayer was not allowed and in the year 1994, the Assistant Excise and Taxation Commissioner, Ludhiana made a reference to the Administrative Officer of Magadh University, Bodh Gaya, Bihar for verification of B.A. Degree submitted by the petitioner. Magadh University, Bihar informed the authorities that the degree and detailed marks certificates issued to the petitioner were genuine. This was in the year 1994. On the strength of this communication, the petitioner again requested inclusion of his name in the seniority list by entering his B.A. qualification and he was accordingly promoted on temporary basis as a Taxation Inspector from the feeder Ministerial Post. This was on 25th October, 1994. The matter had not been set at rest in the department. The petitioner received a letter dated 6th June, 2000 asking him to substantiate that BA pass degree from Magadh University, Bodh Gaya of two years duration is meant for full fledged BA degree. The petitioner submitted reply on 3rd July, 2000. He was put under suspension on 10th July, 2000. The petitioner cited the case of one *Subhash Chander Kaushal* who had also passed Graduation from the Magadh University at about the same time as the petitioner and received information from the Panjab University, Chandigarh that the BA (Pass) Examination conducted by the Magadh University is recognized as equivalent to BA Examination conducted by the Panjab University, Chandigarh for the purpose of admission to higher courses. The department was not satisfied with the reply and it wrote to the UGC, New Delhi to clarify whether the Second Year Examination of three years Bachelor's Pass Degree Course can be treated as

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Graduate. This was on 8th August, 2000. On 9th August, 2000, the petitioner was charge-sheeted under Rule 8 of the PCS Rules. The petitioner was reinstated in service on 1st January, 2002 and retired at the end of the month. The petitioner complains that the Enquiry officer did not complete the enquiry even over a period of three years which omission of duty had led to the filing of CWP No.2263 of 2004 seeking directions to the respondents to expedite conclusion of the enquiry within a reasonable period. The case was referred to the Vigilance Department on 4th August, 2004 which registered Enquiry No.7 dated 1st April, 2004. It is the petitioner's case that the Vigilance Enquiry went in his favour and the Excise and Taxation Commissioner, Punjab at Patiala was informed that the charge was not proven. However, the punishing authority did not agree with the report of the Vigilance Bureau and appointed Sh.Rahul Bhandari, IAS, as the Enquiry Officer. This was on 11th August, 2004. Aggrieved, the petitioner represented to the Financial Commissioner (Taxation) etc. against the order appointing Shri Rahul Bhandari, IAS as the Enquiry Officer. This elicited no response and was thus ignored. The enquiry report was submitted on 2nd December, 2004. The petitioner's promotion as Taxation Inspector was cancelled from where he was reverted to his previous post and punishment inflicted upon him by imposing a 5% cut in pension. The order inflicting punishment was passed on 2nd January, 2006 after about a passage of a year. The suspension period from 25th July, 2000 to 1st January, 2002 was treated as period spent on duty. Dissatisfied with the punishment order, the petitioner preferred an appeal to the Financial Commissioner (Taxation) on 7th August, 2006. The appeal was dismissed summarily on the ground of limitation on 24th July, 2006. The petitioner did not litigate his grievance in a court of law. He woke up when Subhash Chander Kaushal who

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was also proceeded against departmentally along with the petitioner in the same episode and in similar fashion filed a petition in this Court bearing CWP No.16252 of 2010 which was allowed on 16th August, 2012. The order was implemented on 7th July, 2014. It was on 4th October, 2014 when the petitioner made a representation for the first time after a long lapse of filing of appeal on 7th August, 2006 decided in the year of its filing. In the first-time representation dated 4th October, 2014, the petitioner requested that his case be re-opened and decided in the light of the decision in *Subhash Chander Kaushal's* case (supra). The request has been turned down on 7th March, 2015. The case of *Subhash Chander Kaushal* and the petitioner has been distinguished on the ground that the petitioner has not challenged the order dated 27th July, 2006 till the filing of the petition. In the case of *Subhash Chander Kaushal* it is seen that he had preferred an appeal against the two adverse orders dated 2nd January, 2006 and 20th January, 2006 imposing a cut on his pension and treating the suspension period as non-duty period were filed and the appeal was dismissed on 30th May, 2010 which brought *Subhash Chander Kaushal* to file CWP No.16252 of 2010 which was decided on 16th August, 2012. *Subhash Chander Kaushal* pursued his legal remedies diligently and there was no delay in his case when his petition was allowed by the learned Single Judge on 16th August, 2012 whereby both the orders dated 2nd January, 2006 and 20th January, 2006 and the certain subsequent orders were quashed and the petitioner was held entitled to consequential benefits on account of setting aside of the impugned orders. Not only were the final orders quashed in *Subhash Chander Kaushal's* case (supra), but even the enquiry report dated 2nd December, 2004 was also quashed.

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3. Learned counsel for the petitioner submits that his case is identical with the case of *Subhash Chander Kaushal* and squarely covers it. Is there any difference between the two with respect to the right to sue and the cause of action? We need to go back to the case of *Subhash Chander Kaushal* to draw a reference point for similar relief to similarly situated persons. In that case the learned Single Judge faulted the action of the disciplinary authority in holding a *de novo* enquiry after sidelining the report of the Vigilance Department which was not permissible in view of several decisions, the recitation of which was covered by the lead ruling handed down by the Supreme Court in **K.R.Deb v. Collector of Central Excise, Shillong,** 1971(1) SLR 29 (SC). The learned Single Judge held that Rule 9 of the PCS Rules which deals with action on enquiry report permits the punishing authority to record a dissenting note disagreeing with the findings of the Enquiry Officer. But the provision would not authorize the remittance of the matter for further enquiry or re-enquiry which amounts to holding *de novo* enquiry which the rule forbids. I have no doubt that there may be similarity of facts in both the cases, but at the same time that is not enough. The differential lies in the fact that the petitioner did not challenge the order adverse to him dismissing the appeal against the punishment order dated 2nd January, 2006 till the filing of this petition on 11th August, 2015 which inordinate delay conclusively leads to an assumption of waiver of personal rights in *personam* and ouster by acquiescence and for these reasons *prima facie* his case is patently barred by the principles of delay and laches. Delay in invoking writ jurisdiction is not a rule of law but of procedure. No fundamental rights are involved in this petition to depart from the view. Discrimination within the meaning of Article 14 does not result from court orders as we are told.

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4. The Supreme Court has guided courts that where limitation to bring a suit has run out then ordinarily a writ petition would not be entertained. This is the view of the Constitution Bench in **State of M.P. vs. Bhailal Bhai and others,** AIR 1964 SC 1006. The Supreme Court held: "It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus." And further: "Learned counsel is right in his submission that the provisions of the Limitation Act not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. But where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

5. There is a difference in the meaning of terms “delay” and “laches”. “Delay” refers to duration and the period of inactivity in seeking legal redress in a court of law while the doctrine of laches is not so circumscribed by time since it refers to conduct in the interregnum and in sleeping over one’s rights which both are sufficient reason for denial of relief by the writ court. In the present case, the conduct of the petitioner suffers from the vice of the two crippling principles of delay and laches.

6. The Supreme Court has recently in an elaborate and exhaustive judgment considered the issues of relief in the context of Article 14 of the Constitution in the light of decided cases applying reasonable classification of similarly situated

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persons as of whom have been active or passive in approaching court to the degrees dissuading its helping hand and the fence-sitters. The Supreme Court has thrashed out the entire legal position in the light of past dicta in cases of discrimination betwixt similarly placed citizens to guide courts whether relief is to be granted by court or denied. The Court held the normal rule is: "(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently." However, the exemption principles involved have been succinctly culled out in **State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others,** (2015) 1 SCC 347 which as are relevant to the present context read as follows:-

> "(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters

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and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C.Sharma & Ors. V. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

7. In the present matter, the case of the petitioner in the view of this court preeminently falls in the aforesaid two exemptions of the three delineated in the ruling. For these reasons, I would dismiss this petition even though pension is a recurring cause of action but a cut in pension by an adverse order is not. The court

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in *Subhash Chander Kaushal's* case was not speaking in *rem* but in *personam*. The petitioner woke up after the decision was rendered and has approached this court well after retirement to try his luck of the draw and on the fortunes of litigation based on a previous litigation where the litigant was not guilty of delay as his appeal against the similar order passed against the petitioner was decided in the year when the case was filed but the petitioner had resigned himself to his fate in cut in pension. There is another reason I would not interfere. The roles of the two delinquents are not absolutely identical. One was aggrieved by a de novo inquiry but the other succumbed to the order dated 27th July, 2006 dismissing his appeal. This writ petition has been filed after 9 years of the adverse order calling it in question.

8. This petition is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

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