

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

Civil Writ Petition No.17516 of 2015 (O&M)

Date of decision: 22.9.2015

Iqbal Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.B.S.Sewak, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. The petitioner was proceeded against departmentally for committing misconduct when a charge sheet was issued to him on 16th January, 1995. The inquiry report was submitted on 12th June, 2001. The punishing authority issued show cause notice to the petitioner on 12th June, 2001 proposing punishment of stoppage of 4 increments with cumulative effect. The show cause notice was accompanied with the inquiry report for the petitioner to have a say in the matter. After considering the reply, he was imposed punishment of withholding of three increments with cumulative effect vide order dated 10th August, 2001, one less than what was proposed.

2. Aggrieved, the petitioner carried an appeal to the appellate authority being the Director, Health Services & Family Welfare, Punjab,

Chandigarh. After hearing the petitioner, the punishing authority further reduced the punishment to stoppage of 2 increments with cumulative effect vide order dated 4th October, 2004. The appellate authority was the Secretary to the Government in the Department of Health, Punjab. Challenge in this petition is to the appellate order inflicting major penalty.

3. When this matter came up on 21st August, 2015 for preliminary hearing, this Court passed an order calling upon the petitioner to furnish dates on which further appeal, if any, before any State Government was filed against the order of the appellate authority to measure delay, laches and limitation in belatedly approaching the writ court.

4. An application No.12227 of 2015 has been filed by the learned counsel for the petitioner duly supported by an affidavit of the petitioner stating in paragraph 3 that the petitioner filed a memorial to the Governor of Punjab on 5th June, 2007 which was rejected on 19th November, 2008. This fact is not mentioned in the body of the petition and is of fundamental value in measuring limitation, delay and laches against the adverse orders of punishment which have become final when not agitated till this petition was filed on 20th August, 2015 after 7 years of inordinate and unexplained delay in seeking legal redress.

5. Learned counsel submits that the cause of action is continuing as the petitioner is facing recurring loss of income due to infliction of penalty. If the punishment order is set aside, it will impact his pay and allowances to his advantage and increase his rate of pension when he retires from service on reaching the age of superannuation. He relies on the Full

Bench decision of this Court in **Saroj Kumari v. State of Punjab**; 1998 (3)

SCT 664 : 1998 (3) RSJ 350 to contend that the writ petition should not be dismissed on the ground of delay and laches. While he relies on the judgment, he fails to read its ratio. The case involved pay fixation which was held to be a recurring cause of action. In case, such relief was granted it would not affect any third party rights and the Court can at the most restrict arrears up to 38 months from the date of filing of the petition and disallow the arrears even if a suit, if filed, has become time barred. The Full Bench while holding that delay and laches would not visit destruction of recurring rights of pay fixation has itself been pleased to point out that when the case is based on a one-time action of dismissal or termination, the position would be different. In the present case, the punishment order has been inflicted after holding regular inquiry and following due procedure laid down in rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. It is certainly an order adverse to petitioner's interest. It is well settled that even against void orders of punishment, limitation prescribed under Article 113 of the Limitation Act, 1963 would apply. The Supreme Court in **State of Punjab and others v. Gurdev Singh**; AIR 1991 SC 2291 : 1991 SCR (3) 663 as said so emphatically while disapproving the ratio in two Division Bench decisions of this court rendered in the 80's. Article 113 is a residuary article for cases not covered by any other prescription of limitation in the limitation Act, 1963. The said article prescribes a period of three years when the right to sue accrues. Generally, the right to sue accrues only when the cause of action arises and allows the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit or proceeding is infringed and when there is a clear and irrevocable threat

against whom the suit is instituted. The Supreme Court in *Gurdev Singh* held that even when the ground is pleaded that the dismissal is void, the suit is governed by the law of limitation. The decision to the contrary taken by Punjab & Haryana High Court in two DBs in rulings **State of Punjab v. Ajit Singh**; [1998] 1 SLR 96 and **State of Punjab v. Ram Singh** [1998] 3 SLR 379 were held not to present the correct legal position and were overruled.

6. Therefore, even in cases where the order is castigated as void, the action must be brought within the time allowed to bring a suit. Where the suit is barred, then ordinarily, the writ jurisdiction cannot be invoked which a discretionary remedy is provided by Article 226 of the Constitution of India and the Supreme Court has guided in such a case that it would be prudent for the writ Court not to interfere in writ jurisdiction. This is the legal position in **State of Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006: 1964 SCR 6261. What is true of dismissal and termination is equally true of an order inflicting major punishment or withholding of 2 increments with cumulative effect. The last adverse order admittedly came into existence when the memorial of the petitioner was rejected by the Governor of Punjab on 19th November, 2008 which is about 7 years ago. In case memorial was not a statutory remedy, then limitation ran out when the Secretary to Government declined the appeal on 4th October, 2004. To take measurement from either of these dates, the petition suffers from gross delay and laches and the rigour mortis of limitation had set in long years ago, which dissuades this Court from entertaining the petition or passing orders thereon in favour of the petitioner. There is not a whisper of a fundamental

right involved in this case to override a consideration of bar of limitation.

7. In the reported decision in **Ex-Constable Gurdev Singh v. Union of India and others** in RSA No.1906 of 1999 decided on 25th July, 2013 rendered by the learned Single Judge and relied upon to rejuvenate the cause of action is of no help to the petitioner since the cause of action there related to arrears of disability pension which is a recurring cause of action with subsisting right to sue and would abide the ratio of cases such as **Saroj Kumari** (supra).

8. For these reasons, the petition is held not maintainable and is accordingly dismissed on grounds of laches even when the delay remains unexplained on case papers.

(RAJIV NARAIN RAINA)

JUDGE

September 22, 2015

Paritosh Kumar