

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. Civil Writ Petition No.18544 of 2015
Date of decision: 3.9.2015**

Ranjit Singh & another

...Petitioners

Versus

State of Punjab and others

...Respondents

2. Civil Writ Petition No.18545 of 2015

Narinder Singh & others

...Petitioners

Versus

State of Punjab and others

...Respondents

3. Civil Writ Petition No.18546 of 2015

Swaran Singh & others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. R.K.Girdhar, Advocate for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Writ Petitions No.18544, 18545 and 18546 of 2015 as common question of facts and law are involved in these petitions. However, the facts have been taken from Civil Writ Petition No.18544 of 2015-Ranjit Singh and another Vs. State of Punjab and others for the purpose of deciding the present petitions.

Challenge in the present writ petition is to the order dated 4.9.2013 (Annexure P/6) whereby claims of the petitioners have been rejected by respondent no.2 on the ground that petitioner no.1 had absented from duty on 21.7.2002 while working as Home Guard. Similarly petitioner no.2 had also absented from 8.5.2002. The judgment of the Apex Court dated 10.9.2010 delivered in **Civil Appeal No.7904 of 2010 titled Davinder Singh and others Vs. State of Punjab and others** was distinguished on the ground that the petitioners were not dismissed and

they have only been called off from their duties.

Counsel for the petitioners submits that there was no enquiry and the petitioners were never given any opportunity as such, therefore, judgment of the Apex Court in Davinder Singh's case (supra) is squarely applicable. Reliance has also been placed upon the orders passed in favour of other similarly situated persons who have been reinstated on 13.12.2013 (Annexures P/8 and P/9) in view of the orders passed by this Court.

It is to be noticed that the petitioners who were working as Home Guards admittedly absented 13 years earlier from duty. Nothing has been shown and brought on record that they at any stage approached the respondents for their legal rights or filed any representation within a reasonable time saying that they should be taken back on duty. The limitation had long expired for them.

On the strength of the judgment of the Apex Court in Davinder Singh's case (supra) which was decided on 10.9.2010 (Annexure P/4) and which was a case pertaining to the act of indiscipline of the Home Guards, they have raised a cause of action. The Apex Court has held in the said case that discharging from service for the act of indiscipline was not a case of discharge simplicitor and it would cause a stigma on their competence and affect their future career. The relevant portion of the judgment reads as under:-

“To us, it appears, after going through the Act and the Rules framed thereunder, that the expression ‘volunteers’ appears to be misnomer. We do not intend to dwell on this issue, since we are told that the writ petitions for the regularization of similarly placed persons are pending before the High Court. The facts and circumstances pleaded by the appellants and the number of years they have spent as ‘volunteers’ and since they have no other avenue for their alternate employment because of their age factor, we are impelled to look into the reason for the termination of the services of the appellants. The letter discharging their services explicitly states that the reason for is charge is the indiscipline at Amritsar railway station before the appellants were to board the train for Maharashtra on election duty. Therefore, in our view, it is not a case of discharge simplicitor. Under Rule 18 of the 1963 Rules, any member appointed under the rules may be discharged at any time by the authority which had appointed him when his services are no longer required. If it is instance of discharge simplicitor, it would necessarily relate to instances

where the post has been abolished or where there is a surplus of employees or other similar circumstances. The respondents have not raised the existence of any circumstances which required the discharge of any volunteers, neither has it been urged that there exists any condition which would require the appellants specifically to be discharged apart from the allegation of indiscipline. Therefore, in our view, services of the appellants are discharged for acts of alleged misconduct. It casts a stigma on their competence and affects their future career.”

On the strength of the said judgment, the petitioners served a legal notice dated 13.5.2013(Annexure P/5) wherein it was depicted before this Court that they had worked upto 30.6.2012. This Court on that basis directed the respondents that the matter should be considered in the light of the judgment of the Apex Court in Davinder Singh's case (supra). In the impugned order the true picture has come forth. The absence was not from 2012 but was from 2002. Limitation had long expired and the petitioners had slept over their rights. Now on account of the order passed, they are seeking to agitate their cause which they had long abandoned. It is settled principle that law protects the ones who are vigilant and ones who not sleep over their rights.

Reference can be made to the judgment of the Hon'ble Apex Court in **Pundlik Jalam Patil (D) by LRs. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128.** The relevant observations read as under:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'

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PRADEEP KUMAR ARORA
2015.09.04 09:58
I attest to the accuracy and integrity
of this document
Punjab and Haryana High Court,
Chandigarh

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18. Shri Mohta, learned senior counsel relying on the decision of this court in [N. Balakrishnan vs. M. Krishnamurthy](#) [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

Reliance placed upon the similar orders passed by this Court would be of no help to the petitioners in the facts of the present case and even the judgment of the Apex Court in Davinder Singh's case (supra) would not come to help on account of observations made above.

Accordingly, the present writ petitions are dismissed.

A photo copy of this order be placed on the record of each connected case file.

September 03, 2015
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(G.S.SANDHAWALIA)
Judge