

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

LPA No. 1557 of 2015 (O&M)

DATE OF DECISION : 29.10.2015

Ramesh Kumar Mehra

.... APPELLANT

Versus

State of Punjab and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present : Mr. Onkar Singh, Advocate,
for the appellant.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 19.08.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 17104 of 2015) filed by the appellant challenging the order of punishment inflicted on him by imposing a cut of 5% in his pension has been dismissed on the ground of delay and laches.

Though there is delay of 9 days in filing the instant appeal and the appellant has filed application (CM No. 3338-LPA of 2015) for condonation of delay in filing the appeal, yet we have heard learned counsel for the appellant on merits and have gone through the impugned order passed by the learned Single Judge.

In this case, the appellant retired from service on 31.01.2002. At that time, a departmental enquiry with regard to genuineness of his B.A degree was pending against him. The said enquiry was decided against him and vide order dated 02.01.2006, punishment of imposing 5% cut of his pension was imposed. The appeal filed by the appellant against the said decision was dismissed on 24.07.2006. The appellant did not challenge the said order in the court of law, therefore, the same attained finality.

In the year 2015, the appellant challenged the aforesaid orders by filing Civil Writ Petition No. 17104 of 2015 on the ground that the similar punishment imposed upon his co-employee, namely Subhash Chander Kaushal, against whom there were similar charges, was set aside by this court vide order dated 16.08.2012 passed in Civil Writ Petition No. 16252 of 2010. The learned Single Judge has dismissed the writ petition filed by the appellant on the ground of delay and laches, while observing as under :

“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.”

Learned counsel for the appellant argued that the same punishment imposed upon Subhash Chander Kaushal for exactly the same charges, was set aside by this court, therefore, the order of punishment imposed upon the appellant should also be set aside on the same ground, ignoring the delay and laches in the present case, as the appellant has a continuous cause of action to challenge the orders passed by the punishing and the appellate authorities. Similar contention was raised before the learned Single Judge. The learned Single Judge, while relying upon a decision of the Apex Court in **State of Uttar Pradesh and others Versus Arvind Kumar Srivastava and others**, (2015) 1 SCC 347, rejected the contention by observing that though pension is a recurring cause of action but cut in pension by an adverse order is not. With regard to discrimination between two similarly situated employees in service matters, it has been held that normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently. But to this rule, there is an exception which has been dealt with

by the Apex Court in Arvind Kumar Srivastava's case (supra), where the following observations were made by the Apex Court :-

“(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 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.”

In the light of the aforesaid observations, it has been held by the learned Single Judge that the decision in the case of Subhash Chander Kaushal was a judgment in *personam* and not in *rem*, therefore, benefit of the said judgment cannot be given to the appellant, particularly when he had filed the writ petition after more than 9 years of the adverse orders passed against him, which have attained finality. Hence, we do not find any illegality or perversity in the exhaustive order passed by the learned Single Judge, dealing with every aspect of the matter.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

October 29, 2015
ndj

(SNEH PRASHAR)
JUDGE