

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

**CWP No. 630 of 2001
Date of decision : 18.05.2016**

Vijay Kumar Sud

....Petitioner

versus

Punjab & Haryana High Court, Chandigarh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Sud, Advocate
for the petitioner.

Mr. Vikas Suri, Advocate
for the respondent

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

RITU BAHRI, J.

Petitioner by way of present writ petition, is seeking a writ of certiorari, for quashing orders dated 30.09.1986 (P-4) and letter dated 01.03.2000 (P-6) and further prayer is for issuance of direction to the respondents to grant him two special increments as granted to other employees of this Court in April, 1990

Brief facts of the case, which can be culled out from the pleadings, reads as under:-

Petitioner was initially appointed as Clerk in the High Court establishment on 05.08.1966 and was promoted to the post of Assistant on 17.03.1980 and Supdt. Grade-II on 24.10.1998. Petitioner was granted the senior scale of Assistant vide order dated 08.08.1989 (P-1) w.e.f 01.01.1978. Petitioner was granted proficiency step up, vide order dated 04.05.1990 w.e.f 13.05.1988. Thereafter, sub-Committee of this Court made recommendations on 19.12.1989 with regard to grant of premature increments to class III

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employees of this Court. The relevant portion of which reads as under:-

“xx xx xx xx

In case of Class III employees, six years good record may be seen and if they are getting 4 good (+B) reports in the preceding 6 years they may be granted 2 increments. In case of employee of Class III who got outstanding (A+) reports out of 6 preceding years they may be granted 3 increments.

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Moreover, no person shall be eligible for advance increment if he is facing departmental action or has suffered penalty during the said period.”

However, this Court vide letter dated 30.09.1986 after considering the explanation of the petitioner dated 13.12.1986 and 21.02.1986 and statement recorded by the Deputy Registrar (Admn) in the matter relating to loss of Crl. Misc. No. 1768 of 1970 in Crl. A. No. 984 of 1970 filed by Madan Lal Bhasin, found the same to be unsatisfactory and Hon'ble the Chief Justice imposed the minor penalty of 'Censure' upon the petitioner.

However, during the above said period for which the punishment of 'censure' was awarded to the petitioner, he was awarded good (B+) report.

Thereafter, petitioner made a representation dated 18.11.1997 (P-5) requested grant of premature increment as granted to other staff members in March, 1990, which was considered by the Hon'ble the Chief Justice and Hon'ble Judges and the same was declined vide letter dated 01.03.2000 (P-6) on the ground that the petitioner has been awarded the penalty of censure in the year 1986, which was during the six years, which has to be considered for

grant of premature increments. Further it has been observed that there is no condition that a person who has been awarded a penalty, shall not be eligible for grant of proficiency step up and the selection grade.

Learned counsel for the petitioner is challenging order dated 30.09.1986 (P-4) on the ground that the petitioner was not supplied any preliminary enquiry report before passing the above said order. Further, neither show cause notice was issued to the petitioner nor he was given the copy of fact finding enquiry, as per provision of Punishment and Appeal Rules. He has further submitted that the loss of file for which the petitioner was awarded punishment of 'Censure' was not entrusted to him, as he had been directed by Hon'ble Judges to collect some papers from the Court of District Judge, Ambala and the petitioner remained at Ambala for collecting the papers for four days during which the loss of file in question occurred. Further S.K. Kapur was the dealing clerk, who was the son of Sh. K.K. Kapur (who was under suspension for so many years on the grounds of destruction of official record), the then Deputy Registrar (Admn) conducted the preliminary enquiry. Thus, the then Deputy Registrar (Admn) in order to save his son, put blame on the petitioner with the connivance of the then Assistant.

Reference has been made to judgment of this Court in a case of ***Surjit Singh Aulakh, Reader v. High Court of Punjab and Haryana, passed in CWP No. 7448 of 1991 , decided on 17.12.1991***

On the other hand, learned counsel for the respondent has argued that the impugned order dated 30.09.1986 (P-4) was passed after giving an opportunity of hearing to the petitioner and the order was passed on 30.09.1986 and petitioner had challenged the above said order after a gap of almost 15 years by filing the present writ petition in the year 2001.

Learned counsel for the respondent further submits that **Surjit Singh Aulakh's case (supra)** would not be applicable to the facts of the present case as in that case, petitioner had been awarded the punishment of warning and as per Civil Service Rules, the punishment of warning would not amount to major punishment and thus it was held that the benefit of premature increments cannot be denied to the petitioner. In this background, the writ petition was allowed.

Further reference has been made to order dated 15.07.1993 whereby one annual grade increment of the petitioner was stopped (R-2) and another warning was administered to the petitioner on 29.04.1994 (R-3). These orders were conveyed to the petitioner from time to time in accordance with law.

Learned counsel for the respondent submits that once the punishment of censure was not challenged by the petitioner in time, the same has become final and if the punishment of censure becomes final, petitioner was rightly held not entitled for grant of two premature increments, as per the guidelines laid down by the Sub Committee wherein there was a condition that ***no person shall be eligible for advance increment if he is facing departmental action or has suffered penalty during the said period.***

Heard learned counsel for the parties at length and have gone through the contents of the writ petition.

Reference at this stage can be made to a judgment passed by a Division Bench of this Court in a case of **Gurbax Singh Patial vs. High Court of Punjab and Haryana, 1999(2) PLR 94** whereby this Court has uphold the judgment passed by learned Single Judge on the ground that the punishment order was passed in December, 1988 and the writ petition was

filed in the year 1993. The writ petition was initially filed only by challenging non-grant of special increment. Even though the writ was amended in the year 1997 but there was no reasonable explanation given for delay of eight years and hence it was held that the writ petition is highly belated. In para 5, it has been observed as under:-

*5. Faced with the above situation, learned counsel has contended that there is no period of limitation prescribed for the filing of writ petition. It is undoubtedly so. However, it is a settled proposition of law that the writ Court can refuse to exercise its discretion when there is an unexplained delay. Still further, it has been held in **State of Madhya Pradesh and another v. Bhailal Bhai and others, AIR 1964 Supreme Court 1006**, that whenever a triable issue of limitation arises, the writ Court can refuse to interfere. In the present case, even if the appellant had to file a suit to challenge the order of imposition of a penalty of censure, he had to do so by December 1991. He had filed the writ petition in 1993 and challenged the order for the first time in the year 1997. Consequently, the learned Single Judge was right in taking the view that the claim was belated.”*

In the present case as well, the punishment of 'Censure' was imposed upon the petitioner, vide order dated 30.09.1986 and he had challenged this order by way of filing the present writ petition in the year 2001. Thus, the above said judgment is directly applicable to the facts of the present case and is liable to be dismissed on the ground of delay and latches.

Further once the punishment order was not liable to be dismissed by this Court, therefore, the two premature increments were also rightly not

been awarded to the petitioner, as per the guidelines laid down by the Sub Committee, as he was facing the above said punishment of 'Censure'.

In the light of the above mentioned facts and the delay on the part of the petitioner in approaching this Court, this Court is of the view that the present writ petition deserves to be dismissed, as the punishment order has attained finality and once the punishment order has attained finality, the petitioner has rightly not been given the two premature increments, as granted to other employees of this Court.

Finding no merits in the present writ petition, the same stands dismissed.

18.05.2016
G Arora

(RITU BAHRI)
JUDGE