

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

Date of decision: 25.05.2016

CWP No.10450 of 2016

Savita Sharma

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nirmal Singh, 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. (ORAL)

“That it has been made clear more than once that power to relief under Article 226 is a discretionary power”, observed the Supreme Court time and again.

It is one thing to insist on a right to proficiency step-up with effect from the year 1998 as is claimed by the petitioner in the year 2016 in the present petition as money due, which may have once been due, but then it is quite a different thing at law to grant relief when the petitioner stumbles in to the writ court after inordinate delay and unexplained laches and without any explanation or sufficient cause for the laches which kept him back. The grounds of delay and laches are not only relevant defences in respondents, but also the guiding factors in declining relief in a stale claim. At any rate, the right claimed is for money and if arguendo is a subsisting one technically or substantively, even then it is not fundamental in nature for the court to

consider a plea relaxing the rigours of limitation, delay etc. if the cause was just. The claim is civil in nature and only for payment of money and enhancement of terminal dues. However, if a suit was brought on the date of the petition to claim money representing the value of the proficiency step-ups, it would be barred by limitation. If a suit does not lie, the writ will ordinarily be refused in view of law in the State of Madhya Pradesh Vs. Bhailal Bhai & others, AIR 1964 SC 1006; 1964 (6) SCR 261. Neither can the claim be legitimately pressed because similarly situated persons came to this Court and obtained relief by way of CWP No.7642 of 2001 titled 'Shashi Kiran & others Vs. State of Punjab & others' decided on 28.11.2002 (P-7); CWP No.6135 of 22003 titled 'Virenderpal Vs. State of Punjab & others' decided on 05.07.2005 (P-8); CWP No.2817 of 2006 titled 'Jitender Kaur Vs. State of Punjab & others' decided on 26.11.2007 (P-9) and CWP No.11738 of 2011 titled 'Tripta Devi Vs. State of Punjab & others' decided on 25.04.2012 (P-10). They came to court early and claimed relief years ago. The petitioner cannot make a claim from this angle as well in view of the directions of the Supreme Court in State of U.P. & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347, the petitioner having sat on the fence cannot be permitted to claim the same relief by reason of unreasonable delay and laches in seeking a remedy. The right to sue is extinguishable by act and conduct, waiver and acquiescence. The contention of counsel that monetary benefits can be restricted to 36 months from the date of the petition is an artificial boundary drawn to erase the enormous delay and to overcome a time barred dispute and is rejected. It will be achieving a result indirectly what was not available directly. I would therefore reject the argument. Not all money claims arising out of rights such as proficiency step-ups and benefits of Assured Career Progression Schemes are recurring

rights in nature [while one of the exceptions being retirement pension] complaining that the cause of action arises everyday in terms of financial loss, as is frequently argued in courts of law, even then those have ceased to be reckonable as actionable claims, when the rigour mortis of delay and laches has set in. Many of the monetary rights in service law are atrophied by leaving time to pass by and cannot be left to tender mercies. Then the High Court on the writ side would stay its hands from springing a surprise on the State exchequer and the tax payers' money after passage of inordinate and unreasonable time and refuse mandamus.

According to *Halsbury's Laws of England* (3rd Edn., Vol. 24), Article 330 at p. 181:

“The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim and (3) that persons with good causes of action should pursue them with reasonable diligence.”

Rights may exist, but the remedy is taken away. Since the jurisdiction provided by Article 226 of our Constitution is discretionary in character, an order will not be passed only because it is lawful to do so. Consequently, the present petition fails and is dismissed, as the claim is found putrefied, stale and dead.

25.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE