

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14598 of 2016 (O&M)
Date of decision : September 29, 2016

Balwinder Singh

..... Petitioner

Versus

The Punjab Scheduled Castes Land Development
and Finance Corporation

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.L. Arora, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner was working as Accounts Assistance in the respondent-Corporation i.e. the Punjab Scheduled Castes Land Development and Finance Corporation since 09.11.1978 and later on promoted to the post of Assistant District Manager. On account of some departmental proceedings, he was placed under suspension on 13.12.2002 (Annexure P-1). He was issued charge-sheet dated 03.02.2003. The departmental inquiry was conducted and vide order dated 11.07.2005 (Annexure P-2), the petitioner was censured under Staff Regulation 46(1). He was reinstated on 11.07.2005 (Annexure P-3). Petitioner retired from service on 31.12.2006 on attaining the age of superannuation.

It comes out in response to the letter dated 24.04.2007 of the petitioner, he was informed vide letter 04.06.2007 (Annexure P-7) that his suspension period i.e. from 17.12.2002 to 14.07.2005 cannot be treated as

duty period because he was awarded punishment of censure. Similarly, in response to the letters issued on 04.09.2007 and 06.09.2007 of the petitioners, similar reply was sent vide communication dated 10.10.2007 (Annexure P-8)

It also comes out that vide office order dated 26.12.2006 (Annexure P-4), the leave for the said suspension period was sanctioned as under:

Sr. No.	Suspension Period	Leave Sanctioned
1.	17.12.2002 to 24.03.2004	464 days – Earned Leave
2.	25.03.2004 to 14.07.2005	477 days– Half Pay Leave

The said order was endoresed on 27.12.2006. The letter of 16.05.2008 (Annexure P-4/1) amended the said office order, vide which 406 days of Earned Leave, 520 days of Half Pay Leave and 15 days of extraordinary leave for the suspension period from 25.03.2004 to 14.07.2005 were sanctioned/granted. Petitioner remained silent for about six years.

Subsequently, a representation was made on 20.10.2015 (Annexure P-6/13) i.e. after about more than 6-7 years, on which the Department sent the reply on 16.03.2016 (Annexure P-10), vide which the Department maintained its stand for grant of said leave for the suspension period.

Learned counsel for the petitioner was directed to satisfy this Court about the latches.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

Learned counsel for the petitioner has argued that on account of the said illegal order, he had not been paid the leave encashment. The said illegal order can be challenged at any time. It is continuous cause of action. He has also referred to the following authorities of this Court:

1. “*Basant Singh vs State of Punjab*”, 1996(1) S.C.T. 585.
2. “*Harbans Singh Virdi vs State of Punjab*”, 1997(4) S.C.T. 30.
3. CWP No.58 of 1984, titled as “*Isher Singh vs The State of Haryana and others*”, decided on 04.08.1989.

It has been pressed that delay and laches cannot stand in the way of justice. In *Basant Singh's case (supra)*, it was a case, where there was a dispute regarding pension and gratuity. The case was admitted and heard after a long delay.

In *Harbans Singh Virdi's case (supra)*, there is delay in payment of gratuity and leave encashment and the delay in approaching the Court was ignored.

Similarly, in “*Isher Singh's case (supra)*”, it was a case, where the employee was debarred from promotion and was reverted to the post of Demonstrator. Here also delay was ignored. But the present case is a different case. Here, the petitioner was placed under suspension and his suspension period was ordered to be treated as leave of the kind due. Even thereafter, the leave was sanctioned vide order dated 27.12.2006 (Annexure P-4) and amended vide order dated 16.05.2008 (Annexure P-4/1). The petitioner remained silent for about eight years and did not challenge the said orders. As such, until and unless the said order is be set aside, the petitioner is not entitled to the leave encashment for the suspension period, which is treated as earned leave, half pay leave and extraordinary leave.

The filing of the representation in the year 2016 and passing of order in the year 2016 will not bring the case within limitation. Therefore, the present petition is patently barred by delay and latches. Thus, this Court does not find it a fit case to exercise the extraordinary writ jurisdiction.

As such, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

September 29, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No