

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26778 of 2016

Date of decision: 22.12.2016

Krishan Kumar

... Petitioner

Versus

State of Haryana & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mohan Singh Rana, Advocate, for
Mr. Sanjeev Kumar Panwar, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

The petitioner does not call for interference in the removal order passed in the year 2012. After many years, one fine morning he woke up on the soothsayer's prediction and made a representation on 4.12.2015 to the Chief Administrator, HUDA, Panchkula, Haryana expecting a miracle to happen, and has now approached this court after waiting another year to challenge the order of removal from service. Even in the present petition, the petitioner has not claimed setting aside of the dismissal order but has prayed for a writ in the nature of mandamus directing the respondents to take back the petitioner to his parent department by deciding his representation. He has claimed parity of treatment with one SP Sethi and Kapoor Singh without spelling out the common features to bring his case within the teeth of discrimination.

Be that as it may, this petition has been filed after close to five years of the cause of action and it suffers from the patent vice of delay and laches. Even if a suit was brought challenging the order of removal it will be barred by limitation. In case the limitation has run out as against the cause of action, ordinarily the writ Court would not interfere in view of the

Constitution Bench decision in State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006.

Even greater is the fatal blow to the dead claim of the petitioner against the order of removal by approaching the court belatedly is the judgment of the Supreme Court in State of Punjab v. Gurdev Singh, AIR 1991 SC 2219 as a leading authority in service law on Article 113 of The Limitation Act, 1963 as to what happens on expiry of three years of the cause of action. Two of our Division judgments to the contrary holding that void orders can be challenged at any time were set aside. In thumb nail, the right to challenge the adverse order may continue but the remedy stands extinguished. This is where the distinction lies.

The desperate prayer made at the fag end of arguments by the learned counsel for last minute directions to the respondents to compel them by a command by the weight of a writ of mandamus to decide the representation and to pass speaking orders on the representation is rejected. The Court is not a facilitator. It is not a fisherman of relief in a sea of litigation. There is neither hook, nor line, nor sinker with the fishing line in the hand of the Court waiting for a bite to draw relief. A casual order as prayed for deciding a representation which is apparently barred by time would not be passed mechanically. Any allowance of the kind given would send a wrong message to Government. that I have passed a mindless order without due reflection on limitation would bring the court into disrepute and form a bad habit in the administrator which can be prevented today by dismissing the petition at the threshold which has no life. For law on this point; See: Supreme Court in Union of India v. M.K.Sarkar, (2010) 2 SCC 1126 guiding Courts and as observing as under:-

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing ‘consideration’ of a claim or representation should examine whether the claim or representation is with reference to a ‘live’ issue or whether it is with reference to a ‘dead’ or ‘stale’ issue. If it is with reference to a ‘dead’ or ‘state’ issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct ‘consideration’ without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

The prayers in the petition are refused to be entertained and the case is accordingly dismissed in *limine* on the short ground of delay and laches.

(RAJIV NARAIN RAINA)
JUDGE

22.12.2016
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>