

CWP-4031-2016

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

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Date of Decision: 16.05.2016

Surjeet Singh

... Petitioner(s)

Versus

Financial Commissioner (Revenue) and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- | | |
|--|------------|
| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

Present: Mr. Ashish Yadav, Advocate for
Mr. Deepak Sonak, Advocate,
for the petitioner.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 08.10.2015 (Annexure P-5) passed by respondent No.1-Financial Commissioner whereby revision filed by the petitioner, impugned the order dated 04.09.2014 (Annexure P-4) passed by the Commissioner, Gurgaon Division, Gurgaon, has been dismissed, being time barred.

Brief facts of the case are that to fill up the vacancy caused on account of death of Sheo Narayan, Lambardar (SC) of village Dhani Chand Nagar, applications were invited from the interested persons by

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making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of the proclamation, 6 candidates submitted their applications out of which 3 candidates did not appear and ultimately, the petitioner, respondent No.2 and Ashok were left in fray. The Collector after appreciating the comparative merit of the candidates found respondent No.2-Jai Bhagwan to be fit and suitable candidate and vide order dated 28.06.2011, appointed him Lambardar of the village. Feeling aggrieved, the petitioner preferred appeal before the Commissioner, Gurgaon Division, who set aside the order dated 28.06.2011 passed by the Collector and remanded the case to the Collector for fresh decision, vide order dated 01.12.2011 (Annexure P-3). Thereafter, respondent No.2 filed petition before respondent No.1 impugning the order dated 01.12.2011 (Annexure P-3) and respondent No.1 vide order dated 31.10.2012, remanded the matter to the Commissioner, Gurgaon Division with a direction to decide the case on merits. Thereafter, the Commissioner, Gurgaon Division, Gurgaon proceeded with the matter and vide order dated 04.09.2014 (Annexure P-4) dismissed the appeal of the petitioner and upheld the order dated 28.06.2011 passed by the Collector. Thereafter, the petitioner filed revision before respondent No.1 who has dismissed the same being time barred vide impugned order dated 08.10.2015 (Annexure P-5). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended

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that the petitioner had to go out of station for his personal urgent work in the month of December, 2014 and returned in the month of May, 2015, therefore, he could not file revision before respondent No.1 well in time. The delay has been duly explained by the petitioner but respondent No.1 wrongly dismissed the revision being time barred in a hasty manner. Otherwise also, the petitioner is more meritorious than respondent No.2, therefore, he should be appointed Lambardar. In support of his contentions, learned counsel relied upon ***G. Ramegowda, Major vs. Spl. Land Acquisition Officer***, (1988) 2 SCC 142, ***Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others*** AIR 1987 (SC) 1353, ***State of Nagaland vs. Lipok AO and Ors.*** 2005(2) R.C.R. (Civil) 375 and ***Jagir Singh and others vs. State of Punjab and others 2015 (1) PLJ 170.***

I have considered the contentions of learned counsel for the petitioner.

The issue of unreasonable or inordinate delay has received attention in several cases in our courts of law. There are no hard and fast rules as to the manner in which the discretion to condone delay in filing revision/appeal etc., is to be exercised. Often, period of delay and reason thereof, the prejudice, if any, caused to the respondents are taken into account. A close and careful examination of all these circumstances will determine whether delay should be condoned or not. There may be instances in which delay is relatively slight but if condoned serious prejudice is caused to the respondents and in other cases delay may be

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inordinate but due to condonation thereof prejudice is slight. Basically, the Court while condoning delay takes into account sufficient cause and reasons for delay. In view of this, it would be highly undesirable and indeed impossible to attempt to lay down a specific period i.e. so many years, more on the one side, lessor period on the other side. What is or is not inordinate or unreasonable delay depends upon the facts of each particular case. These vary from case to case, if delay is inordinate credible excuse is necessary to explain it otherwise natural inference would be that it is an inexcusable. These factors have been considered in numerous cases by various Courts of law. While assessing the delay objectively, it is to be seen from the point of view that due to delay the party has lost interest in pursuing the matter.

In the present case, following factors are required to be considered for condonation of delay:-

- a) Is the delay in filing the revision is highly excessive and is there any reasonable explanation for the delay?*
- b) Will the respondents suffer, if delay is condoned?*

It is well settled that if a person has a legal or statutory right to be enforced against the respondents, he should ventilate his grievance before the competent authorities, within a time limit, if provided under the statutory rules or any Government instructions issued from time to time. If there is no such rule or instructions prescribing a time limit, then the person who alleges infringement of rights or denial of any benefit, arising under Government rules and instructions, ought to have

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approached the Court within a reasonable time.

What is reasonable time has not been spelt out in any rule. However, the Hon'ble Supreme Court in *Veerayeeammal v. Seeniammal* 2002 (1) SCC 134, has explained the words "reasonable time", and held as follows:

'13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable." The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

'A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.'

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In the present case, the delay and laches on the part of the petitioner is apparent. The issue of delay and laches and exercise of jurisdiction under Article 226 of the Constitution of India has been dealt with by the Hon'ble Supreme Court in various decisions. In this context, it would be appropriate to refer to a few decisions dealing with delay and laches.

In ***P.S.Sadasivaswamy v. State of Tamil Nadu reported in AIR 1974 SC 2271***, the Apex Court held as follows;-

"..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing

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the appellant's petition as well as the appeal."

The Hon'ble Supreme Court in ***M/s.Rup Diamonds and Ors. v. Union of India and Ors.***, (1989) 2 SCC 356, while dealing with a belated claim on the basis of the order passed in some other Writ Petitions, observed that those people who were sitting on the fence till somebody else took up the matter to the court, cannot be given the benefit. In that context, their Lordships held as follows:

'Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall

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not prejudice petitioners' case in any such appeal.

In ***Chairman, U.P. Jal Nigam and another v. Jaswant Singh*** AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay held as follows:

"13. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

In ***A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others***, (2007) 2 SCC 725 as well, same issue was considered and following the earlier judgment in ***U. P. Jal Nigam's case (supra)***, it was opined as under:

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

(Emphasis supplied)

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In **Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu**, 2014(1) RSJ 542, Hon'ble the Supreme Court opined as under:

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval,

which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

14. *In State of Maharashtra v. Digambar, (1995) 4 SCC 683*, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

15. *In State of M. P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251*, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the

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exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be

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ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

[Emphasis supplied]

Moreover in ***Chandgi Ram vs. State of Haryana and others*** 2013 (4) R.C.R. (Civil) 1050, this Court has held that *suo motu* powers cannot be left at the whims and sweet will of the revisional authority to be exercised whenever and wherever it wants to do so and the same cannot be exercised after expiry of several years. A relevant extract of the findings recorded in ***Chandgi Ram's case (supra)*** reads as under:

“12. On this basis a view is possible that for

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limitation purposes the period of limitation provided in Section 18 of the Act may have to be kept in view. Of course the Full Bench has also held that non fixing of upper limit for exercising suo motu powers, will not confer unfettered rights to the revisional authority to exercise this power at any moment of time accordingly to his whims.

13. *From the catena of decisions referred to herein above, it can be noticed that law is fairly well settled that the suo motu powers cannot be exercised by the revisional authority after the expiry of several years. It has been held in almost every decision that such powers should be exercised within a reasonable period and in most of decisions, it is held that it should be exercised within a few months. The view, thus, is clear that suo motu powers cannot be left at the whims and sweet will of the revisional authority to be exercised whenever and wherever it wants to do so.*

14. *There is no plea raised before me on behalf of the respondents to explain the delay on the part of revisional authority to invoke its suo motu powers. From the perusal of provisions of the Act as well as the law settled by the Hon'ble Supreme Court, impugned order (Annexure P-3) cannot be sustained as order does not disclose any reason to hold that period of 11 years is reasonable on the facts of the case nor it discloses that the power has been exercised on the facts and circumstances of the case within a reasonable period."*

So far as factor (a) in the present case is concerned, the delay of about 296 days is apparently excessive. Admittedly, revision was filed on 15.09.2015 challenging the order dated 04.09.2014 passed by the Commissioner, Gurgaon Division, Gurgaon. The limitation for

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filing revision is 90 days as provided in the Punjab Land Revenue Act, 1887. The delay of each and every date has to be explained, supported with evidence. In my view, the explanation furnished for condonation of excessive delay is not believable and no cogent reasons and sufficient grounds have been given for condoning excessive delay of 296 days in filing revision before respondent No.1. The inference is irresistible that the petitioner had decided for unexplained reasons not to file revision within limitation.

So far as factor (b) is concerned, the opposite party will suffer, if delay is condoned. The opposite party always expects that matter is brought to finality and it cannot be kept waiting for indefinite time to see that appeal/revision can be filed at any time. Once a period of statutory limitation expires, delay becomes sufficiently protracted, it becomes a sufficient and just ground to dismiss appeal/revision being time barred. Inordinate and unreasonable delay in filing the appeal/revision constitutes an abuse of process of Court and warrants dismissal of the same. It is also the duty of the petitioner to ensure that appeal/revision should be filed within the time frame in accordance with the provisions of law so that the matter may attain finality.

In view of above, this Court is of the firm view that the Financial Commissioner was right in dismissing the revision as time barred as the petitioner failed to give cogent reasons for condonation of delay of 296 days.

Now adverting to the merits of the case, it is settled that

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choice for appointment of Lambardar lies with the Collector only. The District Collector after appreciating the comparative merits found respondent no.2-Jai Bhagwan to be fit and suitable candidate for the post of Lambardar and appointed him as such. It is a settled principle of law that the choice of the Collector cannot be set aside lightly. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the order passed by the District Collector. The finding of the District Collector have been affirmed by the Commissioner.

In view of law laid down by Hon'ble the Supreme Court of India in the case of *Mahavir Singh Vs. Khiali Ram & others*, 2009(3) SCC 439, *Lila Ram Vs. Asa Ram*, 1955 Lahore Law Times 29 followed by Division Bench of this Court in the case of *Phool Kumar Vs. State of Haryana and others*, 2010(2) RCR (Civil) 819, the choice of the District Collector cannot be lightly set aside.

In *Mahavir Singh's* case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar.

The case law (supra) cited by learned counsel for the petitioner do not apply to the facts and circumstances of the present case.

In view of the above authoritative enunciation of law by

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Hon'ble the Supreme Court, the present writ petition filed by the petitioner is dismissed, the impugned orders of the revenue authorities are upheld.

Costs made easy.

16.05.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge