

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

CWP No.8120 of 2016

Date of Decision: 04.10.2016

Tejinder Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Madhav Pokhrel, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside order dated 21.09.2012 (Annexure P-9), whereby, the request of the petitioner for premature retirement was rejected and also for setting aside the impugned order of dismissal dated 05.03.2013 (Annexure P-10).

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was appointed as Science Mistress (Non Medical) on 21.02.1992. She applied for leave for a period of three years from 02.02.2010 to 01.02.2013 and her request was forwarded by the Headmaster Government High School, Burj Hakima to District Education Officer (Secondary Education) Ludhiana on 28.01.2010. On 31.05.2011, the petitioner made a request for voluntary retirement and it was duly endorsed and forwarded by the Headmaster to District Education Officer. Thereafter,

the petitioner submitted a representation to the Director Public Instruction (Secondary Education) Punjab but no action was taken thereupon. The petitioner filed **CWP No. 11001 of 2012**, which was disposed of with a direction to the respondent-Department to decide the representation of the petitioner by passing a speaking order. Subsequently, the respondent-Department passed order dated 21.09.2012, whereby, the claim of the petitioner was rejected on the ground that she has neither served for 20 years nor attained the age of 50 years. Thereafter, the order of her dismissal dated 05.03.2013 was passed on the ground of absence from duty since 02.02.2010.

The impugned order dated 21.09.2012 , whereby, the request of the petitioner for premature retirement was rejected as well as the order of dismissal dated 05.03.2013 have been challenged in the present petition.

Learned counsel for the petitioner submits that the petitioner applied for leave from 02.02.2010 to 01.02.2013 and her application was duly forwarded by the Headmaster to District Education Officer but no intimation to this effect was given to her. Learned counsel also submits that the petitioner was under impression that her leave has been sanctioned, otherwise, there was no ground for her to remain absent from duty. Learned counsel also submits that neither the request of the petitioner was accepted nor rejected before the expiry of period of three years and there was no reason to presume the situation otherwise. The claim of the petitioner for voluntary retirement was wrongly rejected as she was having qualifying service of ten years and she was entitled for proportionate pension by considering the total length of service. The order of dismissal was wrongly passed on the ground of remaining absent without any intimation to the

petitioner as neither any opportunity of hearing was given nor any inquiry was conducted.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents available on the file.

Admittedly, the petitioner applied for leave for a period of three years i.e from 02.02.2010 to 01.02.2013 but the same was not sanctioned. She remained on an un-authorized leave till a request for voluntary retirement was made on 31.05.2011. It is also not disputed that the petitioner filed **CWP No.11001 of 2012** to decide the representation filed by her which was rejected vide order dated 21.09.2012 on the ground that she did not fulfill the condition of having qualifying service of 20 years or 50 years of age. Subsequently, the order of dismissal from service was passed on 05.03.2013, wherein, it is mentioned that the petitioner had remained absent for a long period and had abandoned the department. A public notice was also published in daily newspaper 'Hindustan Times' as the petitioner remained absent from 02.02.2010. The period of 30 days was given to explain regarding her absence but neither any written request was received nor she appeared personally before the concerned authority. By considering the un-authorized absent, the order of dismissal was passed. In case of long un-authorized absence, it is presumed that the candidate has abandoned the job and no inquiry is required. The order of dismissal was passed on the ground that the petitioner remained absent from duty for years together without informing the department and did not turn up even after publication of notice in the newspaper. Learned counsel for the petitioner has not given any reason to explain the delay or any document to show that the petitioner

has made any effort to inquire as to what was the status of her leave and how it was presumed that her leave had been sanctioned. The order of rejecting the claim for voluntary retirement was passed on 21.09.2012; the order of dismissal was passed on 05.03.2013 but the present petition has been filed in the month of December, 2015 and the delay has not been explained. The petition suffers from inordinate delay and laches as no reasonable explanation has come forward neither in the petition nor in the arguments.

On the issue of rejection of stale claims, Hon'ble the Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T. T. Murali Babu** reported as **2014 (2) S.C.T. 193** has held 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.”

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, Hon'ble the Apex Court observed that power of the High Court is to be exercised under Article 226 of the Constitution, even if it is discretionary but it is to be exercised in a judicious and reasonable manner. It is for that reason, a person's entitlement for relief 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.

In *State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251*, Hon'ble the Apex 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 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.

It has further been held that the doctrine of delay and laches cannot be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court is to bear in

mind that it is exercising an extraordinary and equitable jurisdiction. No doubt, the court 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. Delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in certain circumstances, the inordinate delay may 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.

The observation of Hon'ble the Apex Court is to the extent that the 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 ignored without any justification. 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 by presuming that the leaves have been sanctioned. At the cost of repetition remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in-injustice as 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. Further, it has been held that a court is not expected to give

indulgence to such indolent persons – who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. 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.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in ***Suraj Mal vs. State of Haryana*** reported as ***2015 (1) SCT 31***, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

The following observations have been made by the Apex Court in the case of ***Chairman, U. P. Jal Nigam and another vs. Jaswant Singh and another*** reported as ***2006 (11) SCC 464*** :-

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of

the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such person should be granted the same relief or not?

*7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of **M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356**, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, 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 not prejudice petitioners' case in any such appeal."

8, 9, 10 xxx

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*11. In the case of **Government of W.B. v. Tarun K. Roy & Ors.**, reported in 2004(1) SCT 78 (SC) : (2004) 1 SCC 347, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :*

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.

Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part; and
(ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter.

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 the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”
[Emphasis supplied by me].

In the present case also, the petitioner remained absent from duty for years together on the basis of unauthorized leave which was never sanctioned. Even she did not bother about the public notice published in the newspaper. Not only unauthorized absence from duty was there but the petitioner also left the country without seeking any permission and that too at the cost of interest of the children. The unauthorized absence from duty for such a long period amounts to a presumption that the petitioner was not interested in pursuing her job and has abandoned it and as such, the action of the respondent is justified. In case of long unauthorized absence from duty, a reasonable presumption can be that the incumbent is not interested

in job and for passing order, no notice or inquiry is required. The petitioner has also challenged the impugned orders after a long delay, which has not been explained.

Accordingly, keeping in view the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

04.10.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes