

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3324 of 1992

Date of Decision: 02.02.2017

Rakesh Kumr Saini

... Petitioner

Versus

The Engineer-in-Chief, Irrigation
Department, Haryana, Chandigarh
and another

... Respondents

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

Present: Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was appointed on October 16, 1979 as a Tracer on ad hoc basis in the Irrigation Department, Haryana. The appointment was for a period of six months or till such regular recruits are available from the Subordinate Services Selection Board, Haryana. It is the case of the petitioner that an order in writing was not passed after expiry of six months and he continued till August 18, 1982 when his services were terminated when regular recruits were available for appointment. It is not disputed that neither notice nor wages in lieu of notice or retrenchment compensation was paid at the time of termination. After about eight years, the petitioner raised an industrial dispute by serving a demand notice on the department on May 14, 1990. This led to reference before the Presiding Officer, Labour Court, UT, Chandigarh. The reference has been declined vide impugned award dated October 01, 1991. The Labour Court has non-suited the petitioner on

grounds of unreasonable delay in raising the industrial dispute. The Labour Court reasoned that the petitioner had accepted the order as valid by not challenging it for about eight years in any Court and, therefore, the cause of action had expired and reference was highly belated. Even though limitation is not read in Section 10 (1) (c) of the Industrial Disputes Act, 1947 ("1947 Act") but still Courts have imposed restrictions on workman not to make belated claims by raising disputes after long lapse of time. This is especially true when it comes to public employment where service is governed by statutory rules and long delay would tend to disturb third party rights which are settling in everyday and prejudice the respondent department of Government. Therefore, reinstatement in such cases is neither commendable nor can flow automatically as a matter of right. Though there is a good deal of case law on the subject which need not be visited to burden this order but a reference to a recent decision of the Supreme Court may be referred, namely, Prabhakar v. Joint Director, Sericulture Department & Anr. (2015) 15 SCC 1. The Apex Court observed:-

"36. Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an "industrial dispute" cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of the petitioner on 1-4-1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for a number of years? Can it still be said that there is a dispute? Or can it be said that workmen can

make such demand after a lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workman did not raise any protest and did not demand his reinstatement, the employer presumed that the workman has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workman, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a “dispute” what had otherwise become a buried issue.

37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity “delay defeats equities”.

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner’s part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case the party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged

wrong.

41. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.”

2. The other reason that prevailed upon the Labour Court, and to my mind rightly so, was that the services of the petitioner as a Tracer were governed by the conditions of service spelled out in the appointment letter Ex.M1 which was a contract of employment for a fixed period of time. Merely because the petitioner was allowed to overstay due to administrative exigencies resulting from delay in recruitment does not take the case away from the exceptions to retrenchment in Section 2 (oo) (bb) of the 1947 Act. It is common ground that the services of the petitioner were terminated only on arrival of candidates from the Board. This was a condition known to the petitioner from the beginning by stipulation and, therefore, he could not make a legitimate grievance either in service law or under the special law under the 1947 Act. While dealing with public employment the Court cannot disregard the principles of service jurisprudence and of delay and laches. At best the petitioner can claim compensation for violation of Section 25-F of the 1947 Act but the Labour Court in its discretion has not

granted any relief which to my mind is unexceptionable in the facts and circumstances of this case.

3. I find no justifying reason in writ jurisdiction to interfere with the award of the Labour Court and would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

02.02.2017
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Whether speaking/reasoned	Yes
Whether reportable	No