

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.15316 of 2015

Reserved on :04.10.2017

Date of decision: 01.11.2017

Prem Singh

....Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.K.G.Chaudhary, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

G.S. SANDHAWALIA, J.

The petitioner challenges the order dated 23.01.2015 (Annexure P-4) whereby his representation/demand notice, has been rejected and the same has been filed after consideration, by respondent No.2. Similarly, challenge has also been raised to the order dated 08.04.2003 (Annexure P-1), whereby the petitioner was dismissed from service from the post of Driver.

Counsel for the petitioner has vehemently argued that the order of dismissal was liable to be converted into that of a compulsory retirement, as the petitioner had completed 25 years of service, as he had joined as a Helper on 16.01.1978 and had been promoted to the post of Driver in the year 1982 and therefore, the subsequent decision dated 23.01.2015 was a non-speaking order, not containing any reasons.

It is to be noticed that the dismissal from service was on account of absence from duty from 02.07.1998 to 22.07.1998 and thereafter, from 07.01.1999. The petitioner was, accordingly, charge-sheeted, separately, under Rule 7 of the Haryana Civil Services (Punishment &

Appeals) Rules, 1987, by respondent No.2, on 24.04.2001 and vide letter dated 02.08.2001.

As per the first charge-sheet, apart from the period of absence from the initial service, he had also hypothecated the log-book relating to Government van to private taxi stand. Thereafter, as per the second charge-sheet, he had been absent from 30.04.2001 and had not handed-over the keys of the jeep and the log-book in the office. Telegram and registered letter had also been sent to him to attend the office immediately but he did not present himself. Resultantly, Enquiry Officer had been appointed on 23.04.2002, wherein the employee had appeared and admitted his guilt in both the charge-sheets. The report dated 03.07.2002 and 28.06.2002 had been submitted and he had been served a show cause notice dated 16.10.2002 but he did not give any reply. A reminder had also been issued on 13.12.2002. Resultantly, the order of dismissal from service had been passed, on the ground that the petitioner was habitual of committing such irregularities and was not interested in Government service.

It is to be noticed that it is the stand of the State that the petitioner had preferred not to file any appeal against the said order and was satisfied with the dismissal from service. Resultantly, the present writ petition is patently barred on the principles of delay, laches and acquiescence. Merely because he has served a representation dated 27.08.2014 (Annexure P-2), after a period of 11 years, which has now been filed vide order dated 23.01.2015, would not revive the cause of

action to the petitioner. It is settled principle that even if the order is void, it still has to be challenged and be declared a nullity.

The Apex Court in **State of Punjab & others Vs. Gurdev Singh & another 1991 (3) SCT 488** has held that the party aggrieved by the invalidity of the order, would have to approach the Court within the prescribed period of limitation. The period having expired, the Court cannot give a declaration, as sought for. The same principles would also apply to a party who approaches the Court under Article 226 of the Constitution of India whereby the discretionary relief has to be exercised with due care and caution. Thus, in the present case, after a period of 11 years, at the asking of the petitioner, the order impugned is not liable to be interfered with.

The Apex Court in **State of Uttranchal & another Vs. Sri Shiv Charan Singh Bhandari & others 2013 (6) SLR 629** and **Bharat Sanchar Nigam Ltd. Vs. Ghanshyam Dass & others (2011) 4 SCC 374**, has held that merely serving of legal notice would not revive the cause of action and would debar the employee to seek consideration afresh and thereafter, to claim seniority, having accepted the position, while placing reliance upon the judgments in **C.Jacob Vs. Director of Geology & Mining (2008) 10 SCC 115** and **Union of India Vs. M.K.Sarkar (2010) 2 SCC 59**, apart from other judgments. Relevant observations read as under:

“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.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*, 2006 (2) S.C.T. 417 : (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. [In State of Orissa v. Pyarimohan Samantaray](#) (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in [State of Orissa v. Arun Kumar Patnaik](#), (1976) 3 SCC 579.

17. [In Bharat Sanchar Nigam Limited v. Ghanshyam Dass](#) (2) and others, 2011 (2) S.C.T. 712 : (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in [Jagdish Lal v. State of Haryana](#), 1998 (1) S.C.T. 26 : (1997) 6 SCC 538, and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. [In State of T.N. v. Seshachalam](#), 2007 (4) S.C.T. 472 : (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. [Article 14](#) of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in [Ghulam Rasool Lone v. State of Jammu and Kashmir and another](#), 2010 (1) S.C.T. 169 : (2009) 15 SCC 321.

20. [In New Delhi Municipal Council v. Pan Singh and others](#), 2007 (2) S.C.T. 601 : (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under [Article 226](#) of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in [P.S. Sadasivasway v. State of Tamil Nadu](#), (1975) 1 SCC 152, wherein it has been laid down that 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.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There

may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

In **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu 2014 (4) SCC 108**, the order of dismissal challenged successfully before the High Court, was set aside on the ground of delay and laches, by holding that it does not foster the cause of justice, but brings injustice as it is likely to effect others precious ripened rights.

The procedure prescribed, as such, which has been followed by resorting to the disciplinary proceedings, has not been challenged in any manner, alleging the same to be invalid, at any stage. The dismissal order, thus, was passed on a justified basis, on account of the absence from service and the irregularities committed by the petitioner. At this belated stage, the petitioner cannot turn around and contest the order dated 08.04.2003 (Annexure P-1).

Accordingly, finding no merit in the present writ petition, the same is, hereby, dismissed.

01.11.2017
Sailesh/Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No