

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 152

Civil Writ Petition No.18627 of 2017 (O & M)
Date of Decision: August 21, 2017

Sube Singh

..... PETITIONER

VERSUS

DHBVN & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Manoj Chahal, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of instant civil writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of Mandamus directing the respondents to first regularize his services as per his entitlement w.e.f. October 01, 2003 under the policy of department remained in force and then grant him pensionary benefits as he had put in more than 15 years of services as ALM on adhoc basis, with all consequential benefits alongwith 18% interest from the date of accrual till final payment.

2. Petitioner joined the respondent – department as ALM on adhoc basis on April 11, 1973 being selected by the competent authority after considering the claims of all candidates. He worked as such upto December 09, 1977 in the office of Xen Operation Division, HSEB, Hansi.

Due to some mental disease, petitioner could not attend his duty for a long time. Petitioner was allowed to join duty w.e.f. March 12, 1997 vide order dated March 10, 1997. He was chargesheeted for aforesaid absence from duty vide memo No.16317 dated November 21, 2002. After enquiry, absence period of petitioner was treated as break in service vide order dated July 31, 2008. Petitioner was superannuated on May 31, 2007. Petitioner was not granted pension on the ground that a departmental enquiry was pending against him as well as he was not a regular employee. Departmental enquiry was decided on July 31, 2008. Petitioner served a legal notice dated October 30, 2008 for grant of pensionary benefits but no action was taken thereupon. Petitioner filed CWP No.16593 of 2009 seeking aforesaid relief but that was dismissed as withdrawn vide order dated January 06, 2011 with liberty to file a fresh one on the same cause of action.

3. In case **Union of India & others vs. C.K. Dharagupta & others, 1992(2) SCT 117 (SC) : (1997) 3 SCC 395**, it was observed as under:-

“We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17.-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.”

In case **Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC) : (1997) 6 SCC 538**, the Hon’ble Apex Court observed that if a person chose to sit over the matter and woke up after the decision of Court, then such person cannot stand to benefit. In that case, it was observed as follows:-

“The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants’ desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.”

In **Brijesh Kumar and others vs. State of Haryana and others, 2014 (11) SCC 351**, the Hon’ble Supreme Court has laid down various principles in which law of limitation has legal maxim. While relying upon the judgment in case of **Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785**, the Hon’ble Apex Court principles regarding delay and laches were laid down which can be summarized as under:-

“ x x x

(v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

x x x

(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

4. It is crystal clear from the perusal of the aforesaid findings that there is an increasing tendency to perceive delay as a non-serious matter. Hence, apathetic tendency exhibited in a nonchalant manner requires to be curbed.

5. In the instant case, petitioner earlier preferred a writ petition but it was withdrawn to file afresh on the same cause of action, which was not done. There is an inordinate delay in arisen of cause of action till the date of superannuation of petitioner and subsequent thereto in filing the first petition. The instant petition has also been filed after a delay of more than seven years. Thus, petitioner is guilty of long delay and laches which is suggestive of the fact that he is deemed to have acquiesced or waived off his claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay. In view of the legal position discussed above, on the basis of various authoritative pronouncements of the Hon'ble Apex Court, it can be safely observed that instant petition suffers from delay and latches.

6. In the light of what has been discussed above and in view of the authoritative pronouncements, referred to above, instant petition being devoid of merits is dismissed.

August 21, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No