

Civil Writ Petition No.5908 of 2013

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

Sr. No.255

**Civil Writ Petition No.5908 of 2013
DECIDED ON: July 07, 2017**

BALBIR SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. J.K. Khetarpal, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab,
for respondent No.1.

Mr. Ashok Kumar Bazaz, Advocate,
for respondent No.2.

JASPAL SINGH, J.

By virtue of the instant Civil Writ Petition preferred under Article 226/227 of the Constitution of India, petitioner has sought the issuance of appropriate writ, order or direction especially in the nature of mandamus; directing the respondent No.2 to consider his case as he is

entitled to pay the protection of equal to pay scale last drawn from Department of Animal Husbandry and Dairy Development, Government of Punjab (for short 'Department' only) prior to joining services of respondent No.2; to grant of last pay drawn scale as granted to him as Veterinary Pharmacist in the Department w.e.f. March 19, 1984 onwards with all consequential pay revisions and benefits flowing therefrom by counting his past service rendered with said Department; to pay the arrears after re-fixing pay scales of the petitioner within a time bound period as well as to fix consequential pensionary benefits.

2. The facts leading to the filing of present writ petition are that on December 02, 1978, petitioner was appointed as Veterinary Pharmacist under the Department and accordingly he joined in Civil Veterinary Dispensary, Village Shampur, District Jalandhar. Subsequent thereto, respondent No.2-Municipal Corporation, Ludhiana (for short 'Corporation') issued an advertisement for filling up a vacant post of Veterinary Dispenser in Health Branch of Municipal Corporation to which he applied. After interview, he was selected for the post of Veterinary Dispenser in the Corporation/respondent No.2 and joined his duty on the conditions that he would submit his resignation certificate duly accepted by the State Government as well as no dues certificate from his previous Department. At the time, he was informed that his pay would be fixed later on after receipt of his past service record from the former Department. As such, he remained under a bonafide impression that he would get same basic pay from respondent No.2 which was last drawn by him from the Department as on March 19, 1984. Moreover, the post of the petitioner was identical in the

Corporation as that of the Department. After rendering continuous service of more than five years i.e. w.e.f. December 02, 1978 to March 19, 1984, petitioner joined as Veterinary Dispenser with the Corporation and his work & conduct remained to fully satisfaction of his superiors. Accordingly, appointment letter was issued to him for his appointment as Veterinary Dispenser on the initial sanctioned grade i.e. ₹400-600 on probation period for one year, whereas for his last pay drawn prior to joining of the Department, he was drawing basic pay of ₹495/- per month and had to suffer loss of ₹120/- per month. The petitioner was retired on December 31, 2004 for attaining the age of superannuation, but he was illegally deprived of basic pay of his ₹495/- while working in Corporation/respondent No.2. He was given basic pay scale of ₹400/- which is violative of Articles 14 and 16 of the Constitution of India. The petitioner has been pursuing his matter in respect of basic pay scale and all consequential benefits with respondent No.2-Corporation. Since the date of his retirement, he made several representations, but no action has been taken till date despite assurances, which necessitating the filing of instant petition.

3. In response to notice of motion, petition has been resisted by respondent No.1 including Corporation/respondent No.2 alleging that petitioner was appointed as 'Veterinary Dispenser' and not for 'Veterinary Pharmacist' in the sanctioned pay scale of ₹400-600 that too, after making him aware, he would get only pay scale of ₹400-600 and not the one which was being drawn by him in his previous Department. However, it has been

alleged that instant petition suffers from “delay and latches” as cause of action, if any, arose to him in the year 1984, but instant petition was preferred in the month of March, 2013 approximately after three decades and further that he has not approached the court with clean hands and suppressed the material facts and petition deserves to be dismissed that too, with special costs.

4. While reiterating the facts contained in the writ petition, learned counsel for the petitioner has assailed the action of the respondents submitting that non-grant of basic pay @ ₹495/- per month as was being earlier drawn by him in his previous Department is violation of Articles 14 and 16 of the Constitution of India. It is well settled proposition of law that pay of an employee which he was drawing in other Department of the Government cannot be reduced after his appointment in another Department of the Government. The interview letter for the post of Veterinary Dispenser was issued on January 17, 1984. Two persons i.e. Balbir Singh-petitioner and Balwinder Singh attended the interview. Petitioner has already been serving in District Jalandhar as Veterinary Pharmacist, a condition was laid that he was allowed to join his duty only after he submits resignation certificate duly accepted by the Government and no dues certificate from his previous Department. It was also reflected in the said note that his pay would be fixed later on after receipt of service record. Similarly, it was also mentioned that age of relaxation will be considered after his joining report keeping in view his experience. But petitioner was not granted the benefit of basic pay which he was drawing earlier in his previous Department and he was deprived of the benefits and had to suffer

huge pecuniary loss. Since, petitioner is legally entitled to basic pay @ ₹495/- which he was drawing prior to his joining in the Corporation/respondent No.2, he is entitled to retain the said basic pay and respondent No.2 is legally bound to fix his basic pay @ ₹495/- from the date of his joining in the Corporation.

5. On the other hand, learned counsel for the respondents has submitted that neither petitioner had approached the court with clean hands as has disclosed the real facts nor he has approached this Court at the earliest when cause of action arose. Instant petition has been filed after expiry of approximately three decades from the date of his joining in the Corporation. He remained tight lipped and did not raise any voice and after his retirement, he preferred instant petition, which is otherwise not legally maintainable. Moreover, petitioner is also estopped from filing instant petition in view of his act and conduct as he was ready to join his duty as Veterinary Dispenser with Corporation with basic pay of ₹400-600. He was made aware of all pros and cons of the matter prior to his joining the Corporation/respondent No.2. Thus, instant petition is liable to be dismissed.

6. After bestowing due consideration to the aforesaid rival contentions of the learned counsel for the parties and appraisal of documents available on record, this Court is of the considered view that various submissions made by learned counsel for the petitioner do not carry any legal weight. Rather, this Court is of the considered view that there is no explanation with regard to filing of instant petition after an inordinate delay approximately three decades. It is well settled proposition of law that

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a litigant who is guilty of long “delay and laches” is deemed to have acquiesced or waived off his claim or right as has been observed by the Hon'ble Apex Court in case “*Chairman U.P. Jal Nigam & Anr. vs. Jaswant Singh & Anr.*”, 2007 (1) SCT 224.

7. Similarly, petitioner is also guilty of concealment of real facts, he did not unfold the real picture at the time of filing of instant petition rather withheld the basic and material information, which was available with him and he was aware prior to joining of his service with Corporation/respondent No.2.

8. As far as, inordinate delay is concerned on the part of petitioner in filing instant petition is concerned, he has challenged the order dated March 19, 1984 passed by Municipal Corporation, Ludhiana circulated vide office order dated March 26, 1984. There is no explanation what to say any plausible explanation for this inordinate delay. In case “*S.S. Rathore vs. State of Madhya Pradesh*”, AIR 1989 Supreme Court 10, the Hon'ble Apex Court has held that where a statutory remedy is provided in the Service Rules for making an appeal or filing of representation against any order and if such appeal is filed and entertained and no order is made, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when the case of action have first arisen and that the aggrieved employee can approach the Hon'ble Court for redressal of his grievance, within a period of 3 years. Hence, the present civil writ petition is hopelessly time barred and also suffers from the vice of “delay and laches”, therefore, the civil writ petition merit rejection with costs.

9. Not only this, here it would also be pertinent to mention that petitioner is guilty of concealment of the actual facts from this Court while filing instant petition. In fact, report of the Committee of the Officer(s) was not accepted by the Commissioner, the appointing authority. In pursuance of this decision taken by the Commissioner, petitioner was informed vide letter dated February 06, 1984 and sought his option, if, he intends to join service without claiming any benefit of his past service, is ready to join on initial pay scale of post and shall produce “nothing due certificate” of Punjab Government after resigning his earlier post. In response to the aforesaid letter, petitioner also wrote a letter unfolding that he shall suffer loss of ₹120/- per month, in case, his pay is not protected and considering his experience, his pay may be protected. However, he (petitioner) accepted all other conditions of the letter dated February 06, 1984. But request of petitioner that his pay be protected was declined by the Commissioner vide letter dated February 23, 1984 on the ground that Corporation cannot be put to permanent loss of ₹120/- per month especially when petitioner is not of any exceptional merit and in case, he is not willing to join then next candidate on the selected list may be appointed. Despite all this, petitioner joined the service foregoing his right or protection of his pay. All these facts were not unfolded by the petitioner for the reasons close to his chest. It is well settled proposition of law that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Here we can have the reference of pronouncement of the Hon’ble Apex Court made in case “*Dalip Singh vs. State of U.P. and ors.*”, 2010 (2) Supreme

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Court Cases 114, which was subsequently relied upon by the Hon’ble Apex Court in case “*V. Chandershekhran vs. The Administrative Officer and ors.*”
Passed in Civil Appeal No.6342-6343 of 2012.

10. Moreover, petitioner is also estopped from challenging the conditions of his appointment and claiming basic pay which was drawing prior to his joining in the Corporation. Firstly, he did not unfold all terms and conditions clearly of the appointment letter in the petition and secondly, in view of all terms and conditions of letter, he cannot be allowed to approbate or reprobate rather he stands estopped from raising any such plea that too after an inordinate delay approximately three decades, which is absolutely unexplained.

11. As an upshot of the aforesaid discussion and taking the case of the petitioner from any of the angles, this Court does not find any merit in instant petition. As such, same is dismissed.

12. No order as to costs.

July 07, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No