

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 274

Civil Writ Petition No.4413 of 2015 (O & M)
Date of Decision: *October 31, 2017*

Kulwant Singh

..... PETITIONER

VERSUS

Punjab Agro Industries Corporation Ltd. & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Subhash Aggarwal, Advocate, for the petitioner.

Mr. Anupam Singla, Advocate, for the respondents.

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Jaspal Singh, J

Through the instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought for issuance of a writ in the nature of certiorari, quashing letter dated January 30, 2015 (Annexure P-10) ordering recovery of ₹ 70,409/- without adjusting his outstanding dues i.e. Gratuity, Salary, Bills etc. Prayer has also been made for issuance of a writ in the nature Mandamus directing the respondents to release the outstanding dues of petitioner arising during his service i.e. Gratuity, Salary, Earned Leave, TA Bills etc. and to adjust the same in the recoverable amount, as mentioned in his

representations dated August 07, 2013 and February 08, 2014 (Annexure P-8 and P-8, respectively), as well as to restrain the respondents from auctioning the articles of house of petitioner for the purpose of recovering the amount.

Heard.

Reply filed on behalf of the respondents transpires that petitioner was an employee of the respondent – Corporation, as Storeman. He remained absent from duty w.e.f. January 24, 1986 to July 09, 1986. His services were terminated vide order No.20353-59 dated December 14, 1993 and he was directed to deposit an amount of ₹ 69,848/- and ₹ 57,449/- in respect of loss caused by him to the respondents.

As far as the amount of ₹ 69,848/- is concerned, petitioner filed a suit before the civil court challenging the action of the respondents for recovery of the amount but that civil suit filed by him was dismissed being time barred. Then, he preferred an appeal before the first appellate court but it stood dismissed. Even regular second appeal preferred the petitioner also met the same fate.

As regards another amount of ₹ 57,449/-, respondents filed a separate suit to recover it, wherein petitioner was found guilty of embezzlement of a sum of ₹ 57,449/- in the sale proceeds of fertilizer. The decree of civil court was upheld by this Court vide judgment dated December 17, 2008 and petitioner was held liable to pay the amount with interest from the date of inquiry report dated June 24, 1993.

The respondents have calculated the dues payable to the petitioner which come to ₹ 22,736/- i.e. ₹ 14,979/- for gratuity and leave encashment of ₹ 7,939/- but the recoverable amount is much more. The petitioner has been found guilty of embezzling the amount.

Besides this, petitioner has concealed the fact that he was terminated from service vide order dated December 14, 1993. He only pleaded that he left the service, whereas a perusal of reply clearly depicts that he remained absent from duty w.e.f. January 24, 1986 to July 09, 1986 without getting sanctioned any leave and his services were terminated vide order dated December 14, 1993. Thus, this Court is of the considered view that petitioner has not come to court with clean hands and is guilty of abuse of the process of court. This Court in Shri Kant vs. State of Punjab, 1997(2) SCT 446 has held that if the writ petition has been filed by concealment of material facts or by misstatement of facts to mislead the Court, the petitioners are disentitled to any relief from the Court. Such writ petitions are liable to be dismissed with heavy costs to discourage misuse of the process of the Court and the law to stall the rights of the persons entitled to the benefits under the law.

Here, it will also be pertinent to mention that petitioner has never challenged order dated December 14, 1993 vide which he was terminated from service. However, under the garb of filing this petition in the year 2015, he indirectly intends to challenge the aforesaid order of 1993 which is impermissible. Apart from this,

petitioner is guilty of long delay and latches 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. The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. This Court in CWP No.5308 of 2018 titled 'Rattan Singh Bajwa vs. State of Punjab & others', decided on March 06, 2018, while relying upon judgments of Hon'ble Apex Court has held that increasing tendency to perceive delay as a non-serious matter and apathetic tendency can be exhibited in a nonchalant manner has to be curbed. Thus, taking into consideration the case of the petitioner from any of the angles, this Court does not find any merit therein.

In view of what has been discussed above, there is no merit in the instant petition and same is dismissed with costs.

October 31, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No