

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15973 OF 2018
DECIDED ON: JULY 05, 2018

HAKAM SINGH

.....PETITIONER

VERSUS

UNION OF INDIA AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ram Naresh Ojha, Advocate
for the petitioner.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ particularly in the nature of certiorari for quashing impugned order dated 31.10.2003 (P-1) passed by respondent No.2 whereby he has been illegally invalided out from service as well as order passed in the month of March, 2018 (P-2) passed by respondent No.1 whereby claim of disability pension put forth by the petitioner has been rejected. And further for issuance of writ in the nature of mandamus directing the respondents to release the service pension and disability pension to him w.e.f. the date of illegal discharge i.e. 14.11.2003 as well as arrears accrued thereupon along with interest @ 15% per annum and grant the benefit of computing disability element from 15% to 50% w.e.f. the date of his discharge i.e. 14.11.2003.

2. The contention of learned counsel for the petitioner is that petitioner was enlisted in the Para Military Civil Service in the month of May, 1988 as Constable CT/DVR and after thorough medical examination, he was found fit for service. Accordingly, he joined the respondent-department and served at different places. However, he was illegally and wrongly invalided out from service on 14.11.2003 after serving 15 years, 6 months and 8 days of service vide order No.P-III-99/03-GCH dated 31.10.2003 (P-1). He was discharged from service on 06.04.2004 and certificate of discharge was issued to him. He was granted invalid pension vide PPO No.239030405949 dated 19.03.2004 (P-4).

3. Learned counsel for the petitioner further contends that in fact, medical board never opined that petitioner is invalided out from service, rather, the medical board opined that petitioner is unfit for force duties and fit to perform duties of lighter nature whereby the entire proceedings undertaken by the authorities regarding invalided out from service are illegal in the eyes of law and petitioner is entitled to service pension.

4. At this juncture, learned counsel for the petitioner was asked about the inordinate delay of approximately 1½ decade in approaching this Court by way of instant writ petition and he could not furnish any plausible explanation except that he has been representing the department concerned in respect of the claim put forth through the instant petition. Petitioner was invalided out from service vide order dated 31.10.2003 (P-1) and instant petition has been preferred by petitioner in the month of May 2018. Even though, there is no limitation prescribed for filing a writ petition challenging the illegal act of the authorities

concerned but petitioner is obliged to explain the delay and laches, if any, and in the instant case, delay is approximately 1½ decade i.e. 15 years. Even, if no period of limitation has been prescribed, the aggrieved person may exercise his right within some reasonable period and the reasonable period would depend upon the facts and circumstances of the each case. In the instant case, petitioner approached respondents as well as this Court after an unexplained delay of approximately 15 years. Issue of limitation, delay and laches as well as condonation of delay are being examined by the Court almost daily in different cases. The law of limitation is enshrined in the legal maxim *“Interest Reipublicae Ut Sit Finis Litium”*. Undoubtedly, the rules of limitation are not to destroy/scuttle down the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. In **“P.K. Ramachandran v. State of Kerala and anr.**, 1997 (4) RCR (Civil) 242, the Honble Apex Court while delving deep a case with regard to delay and laches and condonation of delay, observed as under:-

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds.”

5. On the similar issue, Hon'ble Apex Court in case **“Esha Bhattacharjee v. Raghunathpur Nafar Academy & ors., 2013 (4) RCR (Civil) 785**, has also observed that lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact and the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. Moreover, there is increasing tendency to

take the matter regarding delay as a non-serious one which requires to be curbed, though, within legal parameters.

6. An identical view has been expressed by the Hon'ble Apex Court in ***“Jagdish Lal and ors. v. State of Haryana and ors., 1998 (1) SCT 26***, in which following observation was made:-

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios..Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre...are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

7. Adverting to the facts of the case in hand, petitioner slept over the matter for approximately 1½ decade. It appears that they woken up on one fine morning and ran to challenge the orders alleging the same to be illegal which pertains to the month of October, 2003 and March, 2018. There is no plausible explanation what to say any cogent or convincing evidence. Thus, instant petition deserves to be dismissed on the ground of delay and laches and there being no explanation for preferring the instant petition.

8. A close scrutiny of order of March 2018 (P-2) makes it abundantly clear that petitioner did not submit any representation in connection with show cause notice dated 21.09.2003 (P-10), rather, he had submitted a written application stating that he is willing to seek invalidation from service w.e.f. 21.10.2003. It was only on the basis of his written request and willingness and on the recommendations of medical board, petitioner was invalided out from

service. Not only this, his case for invalidation pension was processed and accordingly invalidation pension as well as gratuity were released and disbursed to him. Thus, in the given circumstances, petitioner is not entitled to disability pension and it has been rightly declined by the respondent vide order of March, 2018.

9. In the light of aforesaid facts as well as discussion, firstly petition is not maintainable and even otherwise on merits also, petitioner is not entitled to relief claimed, as the orders in question are absolutely inconsonance with the legal proposition and settled canons of law and passed on the basis of written request of petitioner.

10. In the light of aforesaid discussion, instant petition is dismissed. No order as to costs.

JULY 05, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes/No</i>