

**CWP-7855-2014 and
other connected petitions**

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

Date of decision: - 17.12.2018

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|-----------------------------------|-----------------------|-----------------------|
| 1. | CWP-7855-2014 | |
| Jinder Singh and others | | ...Petitioners |
| | Versus | |
| State of Punjab and others | | ...Respondents |
| 2. | CWP-26365-2014 | |
| Ravi Kumar and others | | ..Petitioners |
| | Versus | |
| State of Punjab and others | | ...Respondents |
| 3. | CWP-25848-2014 | |
| Harbans Singh | | ..Petitioner |
| | Versus | |
| State of Punjab and others | | ...Respondents |
| 4. | CWP-27073-2016 | |
| Tarlochan Singh and others | | ..Petitioners |
| | Versus | |
| State of Punjab and others | | ...Respondents |
| 5. | CWP-26009-2014 | |
| Ranji Singh | | ..Petitioner |
| | Versus | |
| State of Punjab and others | | ...Respondents |
| 6. | CWP-5529-2014 | |
| Birbal Dogra | | ..Petitioner |
| | Versus | |
| State of Punjab and others | | ...Respondents |

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| State of Punjab and others | | ...Respondents |
| 8. | CWP-3505-2015 | |
| Inderjit Kaur | Versus | ..Petitioner |
| State of Punjab and others | | ...Respondents |
| 9. | CWP-10253-2015 | |
| Krishna Devi | Versus | ..Petitioner |
| State of Punjab and others | | ...Respondents |
| 10. | CWP-10254-2015 | |
| Gurdev Kaur | Versus | ..Petitioner |
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| Aruna Sharma | Versus | ..Petitioner |
| State of Punjab and others | | ...Respondents |
| 12. | CWP-10256-2015 | |
| Vidya Devi | Versus | ..Petitioner |
| State of Punjab and others | | ...Respondents |
| 13. | CWP-10257-2015 | |
| Mohinder Kaur | Versus | ..Petitioner |
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| Santosh Chaudhary | Versus | ..Petitioner |
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| 15. | CWP-10259-2015 | |
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| 17. | CWP-10261-2015 | |
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22.	CWP-19162-2014	
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24.	CWP-19212-2014	
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CWP-9568-2015

Garnail Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

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...Petitioners

Versus

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CWP-18538-2015

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..Petitioner

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State of Punjab and others

...Respondents

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..Petitioner

Versus

State of Punjab and others

...Respondents

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35. CWP-23483-2017

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Versus

State of Punjab and others ...Respondents

36. CWP-9443-2017

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Versus

State of Punjab and others ...Respondents

37. CWP-9542-2017

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Versus

State of Punjab and others ...Respondents

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Versus

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Versus

State of Punjab and others ...Respondents

41. CWP-32258-2018

Jagmail Singh and others ..Petitioners

Versus

State of Punjab and others ...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vikas Chatrath, Advocate,
Ms. Alka Chatrath, Advocate,
Mr. Sunny Singla, Advocate,
Mr. Shashi Kumar Rattan, Advocate,
Mr. Kapil Kakkar, Advocate and
Mr. Ranjivan Singh, Advocate
for the petitioners.

Mr. Sandeep Vermani, Additional Advocate General, Punjab
for the respondents-State.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, all the above-mentioned Civil Writ Petitions are being disposed off. For the sake of convenience, the facts are being extracted from **CWP No.7855 of 2014** titled as '**Jinder Singh and others Vs. State of Punjab and others**'.

By the above-mentioned writ petitions, the petitioners have approached this Court seeking a writ in the nature of mandamus to direct the respondents to allow them to exercise their option within a reasonable time for the grant of revised pay-scale w.e.f. 01.01.1986 in terms of the notification/circular dated 24.12.1992.

The State of Punjab, Department of Finance, issued a circular on 24.12.1992 by which the pay scales were revised and the employees were seeking to re-exercise their option to adopt the pay-scale, which had come into effect w.e.f. 01.01.1986. By the said letter, a period of seven days was given to them to exercise their option.

It is an admitted fact that large number of

Teachers/Masters/Headmasters in the Department of Education, Punjab (hereinafter referred as 'employees'), did not exercise the option for adopting the revised pay scales as issued by the respondents, vide letter dated 24.12.1992. As only a seven days time was given to the employees, a large number of employees missed the said deadline and after the said date, the State did not allow anyone to exercise the option as envisaged under the letter dated 24.12.1992.

Feeling aggrieved against non-exercise of the option, some of the employees filed **CWP No.18537 of 1995** titled '**Jawahar Lal Verma and others Vs. State of Punjab and others**'. After taking into consideration all the possible objections, which were raised by the respondents-State for not granting the petitioner another chance to give an option for adopting the pay-scales, which had come into effect from 01.01.1986, the writ petition was allowed. The relevant paragraph of the order dated 21.03.1996 by which CWP No.18537 of 1995 was allowed is as under: -

“Consequently, the writ petitions are disposed of with a direction to the respondents to consider the case of the petitioners for exercise of revised option in terms of the direction given on 21.11.1995 in Civil Writ Petition No.18380 of 1994. We further direct the Government to issue written instructions to all the competent authorities within a period of fifteen days directing them to call upon all similarly situated persons to exercise their revised option for fixation of their pay. All the competent authorities should be directed to decide the case of revised option within a specified time frame of two to three months.”

The judgment dated 21.03.1996 was complied with by the

respondents-State but was limited only to the petitioner therein, which necessitated filing of another writ petition by the similarly situated aggrieved persons. **CWP No.7643 of 1997** titled as '**Narinder Kumar and others Vs. State of Punjab and others**', was filed again with the same prayer for allowing them to re-exercise their option for the pay-scales as revised vide letter dated 24.12.1992, which came into effect 01.01.1986. The said writ petition was also allowed on 21.07.1998 and the relevant paragraph is as under: -

“Consequently, this petition is allowed in the same terms and the petitioners are allowed to give fresh options of the date within a period of one month w.e.f. which they want revision of their pay and if they do give the fresh options, then their pay scales be accordingly revised but the arrears so calculated would be confined to 3 years and two months prior to the filing of the present writ petitions, which was filed on 29.05.1997. If fresh options are given by the petitioners as aforesaid, the respondents will consider the case of the revision of their pay accordingly within a period of six months of the receipt of the options.”

After the decision by this Court, a SLP was filed by the State of Punjab, which was converted into a Civil Appeal No.5486 of 2000. The said appeal was dismissed by the Hon'ble Supreme Court on 03.04.2007.

Even after the dismissal of the appeal, the relief was being limited to the petitioners, who had approached this Court, seeking a chance to exercise the option again for adopting the pay-scale w.e.f. 01.01.1986.

Another writ petition being **CWP No.7464 of 2009** was filed

titled as 'Surinder Kumar and others Vs. State of Punjab and others'.

Keeping in view the fact that similarly situated persons had already been granted relief, this Court allowed the said writ petition on 25.02.2010 but as the petition was filed in the year 2009, though the petitioners therein were allowed to re-exercise their option, but the benefit arising of the said re-exercise of option were given to them notionally (without any arrears). The relevant paragraph of the said judgment is as under: -

“(9) The petitioners’ move appears to be very calculative as they want to re-exercise their options retrospectively in respect of the pay-scales which came in force w.e.f. 01.01.1986 only when they are sure of monetary advantages at the stages of later revisions in pay scales. True that this Court in **Jawahar Lal Verma** and **Narinder Kumar’s** cases (supra) did confer a right upon the petitioners to re-exercise their options in terms of the Finance Department Circular dated 24.12.1992, the fact that they have come forward at a belated stage and without any plausible explanation, has to be kept in view by this Court while exercising its discretionary writ jurisdiction.

(10). Consequently, the writ petitions are allowed in part to the extent that while the respondents are directed to permit the petitioners to re-exercise their options in terms of the Finance Department’s Circular dated 24.12.1992 (Annexure P1) within a period of *one month* from the date of receipt of a certified copy of this order, no resultant arrears of pay shall be paid to them and they shall be entitled to only the notional pay fixation w.e.f. 01.01.1986, 01.01.1996 and 01.01.2006, as the case may be. The petitioners, however, shall be paid emoluments/pension as per the re-fixed pay w.e.f. 01.03.2010 onwards.

(11). Ordered accordingly.”

Thereafter, the similarly situated employees started approaching this Court and all the writ petitions were allowed by granting

them notional fixation of pay after the re-exercise of the option. The CWP No.8936 of 2010 was allowed on 14.05.2010; CWP No.9140 of 2010 was allowed on 18.05.2010 and CWP No.9765 of 2010 was allowed on 25.05.2010 by this Court.

It is an admitted case that all the petitioners in the above-mentioned writ petitions have already been granted the benefit of exercise of re-option as envisaged under letter dated 24.12.1992.

Even though, the State of Punjab, has already issued instructions to grant the benefit to all similarly situated persons in respect of the judgment which is attained finality. Despite the fact that the instructions were there, but the judgments were being implemented by the respondents-State only qua the petitioners, who approached this Court, which necessitated every person to approach this Court in order to get relief which has already been extended to the similarly situated persons not only by this Court, but also by the respondents-State.

Present is the bunch of writ petitions filed by the similarly situated persons, who are seeking the similar relief of allowing them to exercise an option in pursuance to the letter dated 24.12.1992 by which pay scales were further revised by the respondents.

Counsel for the respondents-State states that all the petitioners have retired long ago and therefore, at this stage, the writ petition should not be entertained and prays that writ petitions may be dismissed on the ground of delay and laches. Reliance is being placed upon the order passed by this Court in **CWP No.13604 of 2014** titled '**Bal Krishan Vs. State of Punjab and others**', decided on **06.07.2014**. By a

detailed order, a Co-ordinate Bench of this Court dismissed the writ petition on the ground of delay and laches. The order passed by a Co-ordinate Bench is as under: -

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining

innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

Similar view was taken by this Court in **CWP No.3124 of 2011 (Harnam Singh v. State of Punjab and others)** decided on 1.3.2014. Reverting back to the facts of the present case and respectfully following the law laid down in the cases, referred to hereinabove, it is unhesitatingly held that present writ petition has since been found to be suffering from delay and laches, therefore, the same is liable to be dismissed. It is so said, because petitioner has woken up from the slumber after 28 long years. There is no explanation forthcoming for this inordinate long delay.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition is wholly misconceived and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, instant writ petition stands dismissed, however, with no order as to costs.”

Against the said order of learned Single Judge, **LPA No.1838 of 2015** titled as '**Bal Krishan Vs. State of Punjab and others**' was preferred, which came to be decided by the Division Bench on 16.02.2017. The Division Bench, keeping in view the various writ

petitions which were already allowed of the similarly situated persons, set aside the order passed by the learned Single Judge wherein the writ petition was dismissed on the ground of delay and laches. The relevant paragraph of the order passed by the Division Bench is as under:-

“The appellant's claim for allowing him to exercise fresh option for the grant of revised pay-scale has been turned down by learned Single Judge on the ground of inordinate delay and laches. Learned Single Judge has also referred to the case law, laying down that where a person acquiesced his rights or has been sleeping over such right, the writ Court can decline to exercise its discretionary jurisdiction.

2. However, after hearing learned counsel for the parties, we find that there are various orders passed by other Benches including by one of us (Surya Kant, J.) where such belated claim has been entertained though subject to the rider that the pay shall be fixed notionally and pension/emoluments shall be paid prospectively i.e. from the date of decision of this Court. In the order under appeal, learned Single Judge has not assigned any reason whatsoever to distinguish those reasons.

3. In this view of the matter, we allow this appeal; set aside the order dated 06.07.2014 and dispose of the appellant's writ petition with a direction to the respondents to consider his claim as contained in the legal notice dated 16.12.2013 (P-9) in the light of the decisions relied upon by him in the writ petition and pass an appropriate speaking order within a period of *four months* from the date of receipt of certified copy of this order.”

As per the factual matrix narrated hereinbefore, it is clear that the right to re-exercise an option under the instructions dated 24.12.1992 has been accepted by this Court and objection being taken for dismissing the writ petitions on the ground of delay and laches is liable to be rejected. Grant of another opportunity to exercise option as per letter dated 24.12.1992 by which pay scales were revised, has been upheld upto

the Hon'ble Supreme Court and there are large number of employees, who have been allowed the said exercise of an option by the respondents themselves. The exercise of an option is only being allowed after the employees' approach this Court for the grant of similar relief, which is unfortunate.

It is a settled principle of law settled by the Division Bench of this Court in case 'Satbir Singh Vs. State of Haryana, 2002(2) S.C.T. 354' wherein a Division Bench of this Court has held that when the judgment attain finality, duty is casted upon the State to grant relief to all the similarly situated employees. It is not necessary for the State to require each one of its employees to approach the Courts of law for the grant of a relief which the State ought to grant the employees in normal course of its administration. The relevant portion of the said judgment is as under: -

“When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC) the Hon'ble Apex Court held as under : -

“The allotment of seats should go according to

merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court.”

After the said judgment of the Division Bench, even the instructions have been issued by the Government of Punjab on 15.07.2002, according to which, it has already been mentioned that everyone should not be force to run to the Court to seek the similar relief and once an order has become final, the relief should be extended to all the similarly situated persons.

Counsel for the respondents-State is unable to controvert the above stated position of law as well as the instructions which have been issued by the State of Punjab.

Furthermore, it is an admitted fact that the State has been implementing the order passed by this Court wherein, a large number of employees had already been allowed to re-exercise their option in terms of the notification dated 24.12.1992. Once that be so, the State is under obligation to grant the said relief to all the similarly situated persons on the same terms and conditions without asking them/forcing them to approach this Court to seek order for allowing them to exercise the option under the instructions dated 24.12.1992, by which pay scales were revised.

Mr. Vikas Chatrath, counsel for the petitioner, states that once, the circumstances had changed due to which the instructions dated 24.12.1992, by which pay scales were revised, the same necessitated the

re-option, the same benefit should have been allowed to all without making them run to this Court.

There is no quarrel with this proposition, as the same has already been allowed more than once by this Court as mentioned in the preceding paragraphs of this judgment.

In view of the above, the present writ petitions are allowed. The respondents are directed to allow the petitioners to re-exercise their option in terms of the Finance Department circular dated 24.12.1992 by which pay scales were revised, within a period of two months from the date of receipt of a certified copy of this order. The pay shall be fixed notionally w.e.f. 01.01.1986, 01.01.1996 and 01.01.2006, as the case may be and the actual benefit which the petitioners will be entitled for in terms of this judgment will be prospectively from the date of the decision of this Court. The fixation will be done notionally without any arrears to anyone till the date of this order.

In view of above, the present writ petitions stand allowed.

December 17, 2018
naresh.k

**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	No