

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

**CWP No. 28896 of 2017
DECIDED ON: JANUARY 11, 2018**

ASHOK KUMAR

.....PETITIONER

VERSUS

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sunny Singla, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought for the issuance of writ in the nature of mandamus directing the respondents to consider and promote him as Inspector Grade-I from the post of Inspector Grade-II w.e.f. Juniors were promoted as Inspector Grade-I with all consequential benefits including arrears of pay etc.

2. Undisputably, petitioner joined the respondent-department as Shop Assistant Grade-II on April 12, 1975 and thereafter promoted as Shop Assistant Grade-I on September 27, 1977 and Inspector Grade-II on August 09, 1996. He

stood retired on attaining the age of superannuation on August 31, 2012. Now, through the instant petition petitioner has laid challenged to the order dated May 29, 2009 whereby, his juniors i.e. respondents No.3 to 9 were promoted as Inspector Grade-I from the post of Inspector Grade-II alleging that he was not considered for promotion and was ignored at that time.

3. Admittedly, at the time when his juniors were promoted he was facing the departmental proceedings in respect of charge sheets served upon him and cannot be termed to be eligible for promotion at that time. He was not to be considered for promotion on account of pendency of departmental proceedings/charge sheets against him. Otherwise also, he stood retired on August 31, 2012 i.e. after more than three years of the passing of order dated May 29, 2009 with regard to the promotion of respondents No.3 to 9. During that period petitioner did not opt to challenge the afore-said order and now after approximately 9 years, he has opted to challenge the order dated May 29, 2009 through the instant petition. A writ petition bearing CWP No. 16644 of 2001 challenging the action for initiation of departmental proceedings as well as serving of charge sheets upon him, was filed by the petitioner, which has already been admitted and is pending adjudication.

4. Apparently, there is a delay and laches on the part of petitioner in approaching the Court. There is no explanation what to talk of any plausible explanation for not taking up the matter and filing of such petition earlier.

5. 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.

6. 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.”

7. In another 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.”

8. 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:-

“XXXXXXXXX

(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.

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(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.”

9. 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.

10. 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 laches. Since the petitioner was aware of the aspect and has opted to file this frivolous petitioner, he is burdened with costs to the tune of ₹10,000/- , which shall be payable with Punjab State Legal Services Authority within a period of two months from the date of receipt of certified copy of this order

11. 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.

JANUARY 11, 2018

(JASPAL SINGH)
JUDGE

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*