

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

**CWP No.27713 of 2018 (O&M)
Date of Decision:30.10.2018**

Baljit Singh

...Petitioner

Versus

The Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Mahavir Singh, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, for quashing of order dated 04.03.1996 (Annexure P-1) whereby he was removed from service by the Commandant, C.R.P.F. on the ground that he was not a fit person to be retained on the post on account of his unauthorized absence from 03.05.1995 to 17.08.1995 and 22.01.1996 to 03.03.1996.

A perusal of the order would go on to show that the petitioner had proceeded on medical leave and on account of non-reporting on duty, proceedings had been initiated against him. Copy of the enquiry report had also been sent to him before the order was passed and his name was struck off from the Unit w.e.f. 04.03.1996 (Annexure P-1).

After a period of 20 years, representation was made on 03.01.2017 (Annexure P-2) for setting aside the order of removal. Thereafter, legal notice dated 02.05.2018 (Annexure P-3) was served which was replied on 25.06.2018 (Annexure P-5) wherein it had been

mentioned that proper departmental enquiry proceedings had been conducted and, therefore, there was no question for grant of pensionary benefits to a person who was removed from the service. Resultantly, the said order has been challenged.

It is settled principle that a person who sleeps over his rights is not entitled to invoke extraordinary writ jurisdiction of this Court. Though there is no prescribed period of limitation as such for invoking the extraordinary jurisdiction but writ Court would not exercise the same in favour of a person who has chosen not to agitate his right within a reasonable time. Even perusal of the above facts would go on to show that proper procedure was followed and, therefore, it does not lie in the mouth of the petitioner to agitate for his claim after two decades. Merely because the respondents have chosen to reply to the legal notice would not as such give a fresh cause of action.

In **P.S. Sadasivaswamyy Vs. State of Tamil Nadu, 1975(1) SCC 152** the Apex Court, while dealing with the issue of promotion noticed that after a lapse of 14 long years, the dispute had been sought to be agitated. It was accordingly held that Court should be approached within at the most a year though there is no such limitation prescribed for the said claims and efforts to unsettle settled matter by filing such petitions, resulted in wasting the time of the Court. The relevant portion reads as under:

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there can never be a case where the Courts cannot interfere in a

matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

Reliance can be placed upon the judgment of the Apex Court in **Pundlik Jalam Patil (D) by LRs Vs. Ex. Eng. Jalgaon Medium Project and Ors, 2009(1) RCR 128** wherein, it has been held that the law is for the vigilant and not for those who sleep over their rights. The relevant portion reads thus:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into

belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.'

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18. Shri Mohta, learned senior counsel relying on the decision of this court in N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed: It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

Similarly, in **State of Uttar Pradesh and others Vs. Arvind**

Kumar Srivastava and others, 2014 AIR (SCW) 6519 it was held that

the fence-sitters cannot be permitted to agitate for their grievances. The relevant portion reads as under:

23. *The legal principles which emerge from the reading*

of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of

regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

Accordingly, there is no merit in the present writ petition and the same is dismissed in limine.

30.10.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

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