

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 26.11.2018****CWP No.29709 of 2018**

Dinesh Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. C.R.Narwal, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner was a Clinical Psychologist in Pt. B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak working on contract basis under the Scheme of District Mental Health Programme, Hisar. His services were terminated vide impugned order dated 30.07.2008 due to non availability of funds to support employment. He has placed on record representations dated 28.10.2010 and 17.02.2011 (Annex P-9 colly) as well as dated 23.01.2018 (Annex P-10) praying in which he may be reinstated to service. He approached this Court by way of CWP No.10675 of 2018 only to withdraw it to enable him to represent to the authorities as regards his grievance, in the first instance.

2. Thereafter, he submitted a legal notice dated 06.07.2018 (Annex P-12) to the Director, Pt. B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak. Finding no response, the petitioner has approached this Court seeking directions to set aside the impugned order.

3. Having considered the submissions of the petitioner, I have absolutely no doubt in my mind that this petition has to be dismissed on the ground of inordinate delay and unexplained laches of 10½ years from the date of termination. It has not been explained as to what kept back the petitioner for these years and if he is unable to do so showing sufficient cause, then this is clearly a case of waiver and acquiescence spread over a long period of time. The petitioner may have had a right to challenge the termination within reasonable time, but has lost his remedy which stands extinguished by lapse of time. Even if a suit was brought against the impugned order dated 30.07.2008, it would be barred by limitation. Where a civil suit is barred by limitation, it would be prudent for the writ Court not to interfere unless there are demanding features such as violation of a fundamental right. In this case, there is no breach of any of the fundamental rights of the petitioner.

4. Merely because the petitioner approached this Court by way of non-statutory representations in 2010 and 2011 or by way of the earlier writ petition i.e. CWP No.10675 of 2018 that would not mean that the delay has to be condoned by this Court for the asking. This sort of situation has been explained by the Supreme Court in Union of India Vs. M.K.Sarkar, (2010) 2 SCC 1126. The Supreme Court observed:

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a

court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

5. That apart, way back in the 60s the Supreme Court in State of Madhya Pradesh & another Vs. Bhailal Bhaj, AIR 1964 Supreme Court 1006, held that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226, however, the maximum period fixed by the Legislature as the time within which relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. Further, the view taken was that Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

6. As a result of the above circumstances, delay is loaded against the petitioner and accordingly no ground for interference at this highly

belated stage is made out. With the result the merits of the case are not to be seen.

7. Consequently, the present writ petition is dismissed in limine on the ground of delay and laches and the bar of limitation coming in inexorably.

26.11.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*