

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 126

Civil Writ Petition No.5308 of 2018 (O & M)
Date of Decision: March 06, 2018

Rattan Singh Bajwa

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. I.D. Singla, Advocate, for the petitioner.

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Jaspal Singh, J

By virtue of instant civil writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari, quashing the entire proceedings effecting recovery of ₹ 72,982/- from the account of petitioner vide Transfer Entry dated January 04, 2006 (Annexure P-3), pursuant to communication/ letter dated November 16, 2006 (Annexure P-2) from respondent No.2 to respondent No.3, as well as for issuance of a writ in the nature of Mandamus, directing the respondents to refund the aforesaid amount or proportionately reduce the monthly recovery of ₹ 1,431/- on account of commutation value of pension and to pay the same to petitioner alongwith interest thereon as per bank rates.

The petitioner retired from service w.e.f. September 01, 2003. He was paid commuted value of pension to the tune of ₹ 1,79,620/- at the time of retirement, which was to be recovered on monthly basis at the rate of ₹ 1,431/- for 15 years. Vide letter dated December 21, 2005, issued by respondent No.2 to respondent No.3 to the effect that a sum of ₹ 72,982/- was paid to the petitioner in excess to value of commutation of pension of ₹ 1,79,620/-. Thereafter, vide letter dated November 16, 2006 (Annexure P-3), respondent No.2 directed respondent No.3 to recover the amount of ₹ 72,982/- from account of the petitioner, pursuant to which, respondent No.3 deducted a sum of ₹ 72,982/- and refunded the same to respondent No.2 – District Treasury Officer, Gurdaspur against bank voucher dated January 14, 2006 (Annexure P-3). In this background of facts, petitioner prays that monthly recovery of ₹ 1,431/- may also be reduced proportionately.

The recovery proceedings started in the month of December 2005 and the instant petition has been filed in February 2018. There is no explanation as to why he did not prefer any such petition claiming relief, which has been claimed through the instant petition. There is an inordinate delay in filing the petition. Thus, petitioner is guilty of long delay and latches 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.

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."

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."

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:-

" x x x

(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.

x x x

(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."

A glance at the aforesaid principles makes it crystal clear that increasing tendency to perceive delay as a non-serious matter and, hence, apathetic tendency can be exhibited in a nonchalant manner requires to be curbed.

6. Adverting to the case in hand, petitioner has challenged the validity of action of the respondents in effecting recovery of ₹ 72,982/- vide letter dated November 16, 2006 (Annexure P-2), in the year 2018 i.e. after more than almost 12 years from the accrual of cause of action. In view of the legal position discussed above and 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.

6. Dismissed. No costs.

(Jaspal Singh)
Judge

March 06, 2018
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No