

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

CWP No.2546 of 2019
Date of decision:-30.01.2019

Roshan Lal

.....Petitioner

versus

State of Punjab and ors.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. K.L. Arora, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

After more than six and half years of having been dismissed from service, the petitioner has invoked writ jurisdiction of this Court, seeking setting aside of the order of dismissal and reinstatement in service on the post of Clerk.

Brief facts that may be noticed are that the Punjab State Agricultural Marketing Board issued an advertisement in the year 2011 inviting applications for recruitment to various posts including 224 posts of Clerks. Petitioner applied for the post of Clerk and having successfully negotiated the recruitment process was issued appointment letter dated 29.11.2011 (Annexure P-2) calling upon him to join service in the Office of the Market Committee Sadiq (Faridkot). Petitioner was put on probation for a period of two years.

Apparently, the petitioner having absented from duty a public notice dated 27.03.2012 was issued by the Office of Market Committee, Sadiq and which was in the following terms:-

Dated: 27.03.2012

“OFFICE OF THE MARKET COMMITTEE, SADIQ (FARIDKOT)

PUBLIC NOTICE

*Sh. Roshan Lal, Clerk, Market Committee, Sadiq was given notice vide letter No.953 dated 14.12.2011, letter No.976 dated 23.12.2011 and letter No.22 dated 16.01.2012 for being absent from duty. The official was directed that he should give his clarification about his being absent. However, no reply was given by the official **within the period fixed for the same**. The official is continuously absent from 08.12.2011. He was on probation for a period of 2 years. Through this Public Notice, Sh.Roshan Lal, Clerk, Market Committee, Sadiq is hereby informed that he should be present in the office of Market Committee within 15 days upto 11.00 A.M. and give his explanation about being absent. In case the official does not come present within the period fixed above and does not come present within the period fixed above and does not give his explanation, then he will be dismissed from service from 08.12.2011 under the provisions of Rule 5 (IX) of the Punjab State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988.*

*Sd/-Chairman
Market Committee,
Sadiq*

Subsequently, the order dated 15.06.2012 (Annexure P-8) had been passed by the Chairman, Market Committee Sadiq, dismissing the petitioner from service by exercising powers under Rule 5 (ix) of the Punjab State Agricultural Marketing Service (Punishment and Appeal)

Rules, 1988 (hereinafter the '1988 Rules').

Instant writ petition has seen the light of the day in the year 2019 assailing the order of dismissal dated 15.06.2012 (Annexure P-8) and seeking reinstatement in service. There is no cogent explanation coming-forth as regards the long time gap of six and half years between the date of dismissal and the date of institution of this petition.

In State of ***M.P. Versus Bhailal Bhai and ors. AIR 1964 Supreme Court 1006***, a Constitution Bench of the Supreme Court held that while exercising jurisdiction under Article 226, the High Court cannot overlook the delay and if the petition is filed after the expiry of the period of limitation prescribed for filing of a suit then ordinarily the Court should presume that the delay is unreasonable. Relevant observations of the Supreme Court in this regard are as follows:-

“The special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court to deny defence legitimately open in such actions. The power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking (seeking ?) this special remedy and what excuse there is for it.

It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought

not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

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. The 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.”

In ***M/s Tilokchand Motichand and others v. H.B. Munshi, Commissioner of Sales Tax Bombay and another AIR 1970 Supreme Court 898***, another Constitution Bench held that even though no statutory period of limitation has been prescribed for filing the writ petition under Article 226, unexplained delay in filing of writ petition is a good ground for declining relief to the petitioner. This view has been reiterated by a seven judges Bench in ***Mafatlal Industries Ltd. Etc. v. Union of India etc. JT 1996 (11) SC 283***.

Mr. K.L. Arora, learned counsel representing the petitioner, has made an attempt to justify the delay by submitting that the petitioner was constrained from approaching the writ Court on account of pressing family circumstances as also the health condition of his father. The so-called adverse family circumstances have not been dilated upon in the writ petition. As regards medical condition of the father of the petitioner is

concerned, the averments in the writ petition and the documents appended alongwith would indicate that father of the petitioner is suffering from a heart ailment. He had undergone Angiography on 08.04.2012 and thereafter Coronary Artery Bypass Grafting on 27.04.2012.

Even though it has been averred in the petition that there was none other to attend to the father at home but during the course of hearing, Mr. K.L. Arora, learned counsel has very fairly conceded that the petitioner has a bother and who happens to be a doctor.

This Court is unable to accept the justification put-forth for the inordinate delay of more than six years on the part of the petitioner to approach the writ Court. It may also be noticed that the petitioner chose not even to avail of the statutory remedy of appeal against the order of dismissal under Rule 15 of the 1988 Rules. **In State of M.P. and others versus Nandlal Jaiswal and others AIR 1987 SC 251**, it was observed that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion would not assist the tardy and the indolent or the acquiescent and the lethargic.

The petition suffers from inordinate delay.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

30.01.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No