

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

CWP No.5069 of 2019

Date of Decision : 27.11.2019.

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

.... Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. D.S. Nain, Advocate for the petitioner.

B.S.Walia, J.

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order Annexure P/2 dated 25.11.1998 and Annexure P/4 dated 23.05.2017 to the extent of treating period w.e.f. 01.07.1998 to 30.11.1998 i.e. the period for which the petitioner remained out of service, as extra ordinary leave. Prayer is also for the issuance of a writ of Mandamus for directing the respondents to grant salary to the petitioner for the period for which he remained out of service along with interest @ 12% per annum by treating said period as period on duty for all intents and purposes.

2. Brief facts of the case leading to the filing of the writ petition are that the petitioner was appointed as regular Driver in the office of respondent No.2. However, on 30.06.1998, on account of absence, another bus bearing No.3526 was allotted to the petitioner for driving to Baijnath.

However, the petitioner refused to go to Baijnath, whereupon, the same

was taken back from him. Further on the allegations of the petitioner having misbehaved with the Work Duty Inspector as also of threatening the Workshop Manager, the petitioner was dismissed from service. Grievance is that his services were terminated without issuing charge sheet or conducting regular inquiry by passing order dated 01.07.1998, under Article 311 (2) of the Constitution of India. The petitioner filed appeal against order dated 01.07.1998, before respondent No.2, who reinstated him in service vide order Annexure P/3 dated 16.12.1998, while directing the period the petitioner remained out of service i.e. 01.07.1998 to 30.11.1998 as extra ordinary leave. The petitioner filed appeal against order Annexure P/3 dated 16.12.1998, before respondent No.1, but the same was dismissed vide order Annexure P/4 dated 23.05.2017, on the ground of the same being time barred. No date with regard to filing of appeal has been mentioned in the writ petition. However, on query, learned counsel for the petitioner stated that the same had been filed against order Annexure P/3 dated 16.12.1998, shortly prior to the passing of order dated 23.05.2017. If that be the position, then the same was rightly dismissed as being time barred as the impugned order Annexure P/3 is dated 16.12.1998, whereas the appeal was filed at best in the year 2016 or 2017 i.e. close to 19-20 years after the passing of the impugned order.

3. A Division Bench of this Court in **Naresh Kumar vs. State of Haryana and others 2004 (4) RSJ 652**, while considering the writ petition filed by the petitioner therein challenging his termination after delay of nine years, dismissed the writ petition by relying upon the decision of a Constitution Bench of Hon'ble the Supreme Court in **State of Madhya**

Pradesh and another vs Bhailal Bhai and others AIR 1964 Supreme**Court 1006.** Relevant extract of the same is reproduced as under:-

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 or 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 this special remedy and what excuse there is for it.

xx xx xx

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.

xx xx xx

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 the 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.

4. The decision in Bhailal Bhai's case (supra) was reiterated by Hon'ble the Supreme Court in **M/s Tilokchand Motichand and others vs. H.B. Munshi and another AIR 1970, Supreme Court 898** as also by Eleven-Judges Bench of Hon'ble the Supreme Court in **Mafatlal Industries Ltd. Etc. Vs. Union of India etc. JT 1996 (1) SC 283**, wherein it was held that the High Court should not entertain belated petitions. Likewise the Division Bench of this Court also relied upon the decision of Hon'ble the Supreme Court in **Kamini Kumar Das Choudhary vs. State of West Bengal and others, AIR 1972 SC 2060**, to hold that a petition for quashing order of termination after lapse of two years deserved to be dismissed on the ground of delay.

5. In the present case, although the case is not one of termination but the same is against order directing treating of period the petitioner remained out of service as extra ordinary leave pursuant to his termination and till his reinstatement on 01.07.1998. However, no explanation whatsoever has been given justifying the delay in challenging the impugned order after a period of close to 19-20 years.

6. Cause of action accrued in favour of the petitioner on passing of order Annexure P/3 dated 16.12.1998. However, appeal against the same was filed sometimes in the year 2016 or 2017 and the same was dismissed

by respondent No.1 vide order Annexure P/4 dated 23.05.2017, on the ground of the same being time barred. Not only was the appeal before respondent No. 1 highly belated and rightly dismissed as being time barred, even the writ petition filed in the year 2019 is belated. In the circumstances, no circumstances exist warranting interference with order Annexure P/4 dated 23.05.2017 dismissing the appeal against order Annexure P/3 dated 16.12.1998 filed sometimes in the year 2016 or 2017 on grounds of delay and laches. Accordingly, the writ petition is dismissed in limine.

B.S.Walia.
Judge

27.11.2018
rajesh.k.khurana

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