

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

**CWP No.13000 of 2019
Date of Decision : 28.05.2019**

Suresh Kumar and anotherPetitioners
v/s

Presiding Officer, Labour Court-II, Gurugram
and othersRespondents

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

Present: Mr. Ravinder Malik (Ravi), Advocate for the petitioners.

B.S. Walia, J.,

[1] Challenge in the writ petition is to two separate awards dated 20.08.2007 (collectively attached along with as Annexure P/10 at page No. 65 & 66 of the paper book) passed by the learned Labour Court-II, Gurugram (hereinafter referred to as the Labour Court), rejecting the reference qua termination of the petitioners-workmen from service on 22.08.1997 and holding them not entitled to reinstatement in service.

[2] Learned counsel contended that the impugned awards Annexure P/10 dated 20.08.2007 are liable to be set aside and the matters remanded to the Labour Court for a decision in accordance with law after giving the petitioners fresh opportunity to lead evidence.

[3] Brief facts of the case, leading to the writ petition are that the petitioners were initially appointed as Class-IV employees on daily wage basis in the office of the Executive Engineer, PWD, Public Health, Division No. 1, Gurugram on 01.09.1995/December 1995 respectively. However, the petitioners service's were terminated by respondent No.3 vide separate orders dated 21.08.1997 (collectively attached along with as Annexure P/1), in

first go’ by requiring them to collect retrenchment compensation along with wages in lieu of notice in terms of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the ‘Act’) while making it clear that no junior of the petitioners had been retained in service on daily wage basis in Public Health, Division No.1, Gurgaon.

[4] Aggrieved, the petitioners approached the authorities under the ‘Act’ eventually leading to separate references being made to the Labour Court vide orders dated 07.12.1998, Vide separate awards, dated 20.08.2007, collectively attached along with as Annexure P/10 at page nos. 65 and 66 of the paper book, the Labour Court held that the services of the workmen had not been illegally terminated, therefore, they were not entitled to reinstatement.

[5] That in the meantime, on learning about fresh recruitment carried out by the respondent-department, petitioner No. 1 served legal notice dated 14.09.2008 on respondent Nos. 2 &3. On failure to get a response to the legal notice, petitioner No.1 filed CWP No.18398 of 2008 titled as ‘*Suresh Kumar versus State of Haryana and another*’. The same was disposed of vide order dated 23.10.2008, by directing the department to take a final decision regarding the legal notice dated 14.09.2008 by passing a speaking order within 04 months from the date of receipt of order.

[6] The department vide order Annexure P/7 dated 29.01.2009 rejected petitioner No.1’s claim for reinstatement whereupon petitioner No.1 filed CWP No.2757 of 2009 titled as ‘*Suresh Kumar versus State of Haryana and others*’ but the same was disposed of vide order dated 14.07.2009, by relegating petitioner No.1 to avail his remedy before the Labour Court.

Petitioner No.2, who all along had been sleeping woke up. Reference No. 71A

between the petitioner workmen and the department were answered by the Industrial Tribunal cum Labour Court-II, Gurugaon (hereinafter referred to as the Tribunal) vide separate awards dated 05.08.2014 (collectively attached along with as Annexure P/8 at page No. 51 to 55 of the paper book and page No. 56 to 60 of the paper book) by holding that the question of termination of services of the workmen could not be gone into in view of award's (collectively attached along with as Annexure P/10 dated 20.08.2007) already having been passed against the workmen. However, the petitioners were held entitled to benefits of the post of Pump Attendant w.e.f. 12.09.2006 against term appointment on consolidated salary of ₹3000/- per month along with consequential benefits as the act of the department in not appointing the petitioners on the said post in terms of section 25H of the Act was found to be illegal and unjustified.

[7] That in view of awards (collectively attached along with as Annexure P/8) dated 05.08.2014, the department issued, engagement letters (collectively attached along with as Annexure P/9) dated 25.05.2015 offering temporary engagement to the petitioners on monthly basis as Pump Attendant (Class-IV post) on consolidated remuneration of ₹3000/- per month, as decided by the State Government from time to time.

[8] Pursuant to awards (collectively attached along with as Annexure P/8) dated 05.08.2014, the petitioners vide instant writ petition dated 13.05.2019 invoked the jurisdiction of this Court praying for quashing of awards collectively attached along with as Annexure P/10 dated 20.08.2007 and for directing the Labour Court to pass a award after providing fresh opportunity to the petitioners to lead evidence in support of their claim.

[9] I have considered the submissions of learned counsel for the petitioners.

[10] Learned counsel for the petitioners has not been able to justify the institution of a common writ petition by the petitioners qua separate awards dated 20.08.2007 collectively attached along with as Annexure P/10. Be as it may, learned counsel has also not been able to justify challenge to the awards Annexure P/10 dated 20.08.2007 after a delay of 12 years. No doubt, jurisdiction of this Court was invoked by way of CWP No.18398 of 2008 and CWP No.2757 of 2009. However, the aforementioned writ petitions were filed by petitioner No.1 only. Secondly, while the first writ petition was disposed of by directing deciding of legal notice (claiming re-instatement on account of appointment of other persons in the year 2006.), the second writ petition seeking reinstatement on ground of availability of posts was disposed of by directing petitioner No. 1 to avail his remedy before the Tribunal. Petitioner No.2 neither served a legal notice, nor filed a writ petition and remained a *fence sitter*. However, on rejection of the legal notice of petitioner No.1 pursuant to directions of the High Court to decide the claim of petitioner No.1, petitioner No.2, who all along had been a *fence sitter* woke up eventually leading to separate references being made and passing of separate awards dated 05.08.2014 (Annexure P/8) holding the petitioners entitled only to the benefits of post of Pump Attendant w.e.f. 12.09.2006 against term appointment on consolidated salary of ₹3000/- per month along with consequential benefits on account of the management not appointing the petitioners in terms of Section 25H of the Act. Now, in May, 2019 i.e. 12 years after the references were answered against the petitioners by the Labour

after the subsequent references of the year 2011 were decided by the Tribunal vide separate awards Annexure P/8 dated 05.08.2014 , instant writ petition has been filed challenging awards collectively attached along with as Annexure P/10 dated 20.08.2007. Aforementioned sequence of events reveals delay and laches.

[11] A Co-ordinate Bench of this Court, dismissed the writ petition challenging award on account of 9 years delay in challenging the same. Relevant extract of the decision dated 17.10.2016 in Raj Kumar Sehgal vs Presiding Officer, Industrial Tribunal and Labour Court and another- CWP No. 21416/2016 is reproduced as under :-

“13. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, Hon'ble the Apex Court observed that it is well settled that 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 does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

14. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most

circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. At the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice as it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. Such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

15. The above view of the Apex Court was followed in a recent judgment rendered by this Court in [Suraj Mal vs. State of Haryana](#) reported as 2015 (1) SCT 31, wherein it has been held as under :-

"9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay."

18. In the present case also, the award passed by the Presiding Officer Industrial Tribunal and Labour Court, U.T. Chandigarh has been challenged after a delay of more than nine years and as such, the claim of the petitioner is hopelessly time barred as he has slept over the matter for years together. No explanation, whatsoever, has been given as to how the delay of years together can be condoned. Simply by saying that the petitioner is a poor person and he is having a good case on merit, is not sufficient to explain the delay. The unexplained delay of more than nine years in approaching this Court in itself

is sufficient to dismiss the petition. Moreover, on merits also, a specific finding has been given that the petitioner was given sufficient/adequate opportunity and departmental inquiry was also conducted. The impugned award is based on proper appreciation of evidence. Nothing has been mentioned in the petition as well as in the arguments as to how the interference is required after a delay of more than nine years and how the petitioner was not granted adequate opportunity of hearing as neither any mala fide has been alleged nor it has been shown that the findings recorded by the Presiding Officer Industrial Tribunal and Labour Court, U.T. Chandigarh, are contrary to the evidence.”

[12] Writ petition dated 13.05.2019, challenging award's Annexure P/10 dated 20.08.2007 is liable to be dismissed on the short ground of gross delay and lachess. No explanation has been given for challenging awards collectively attached along with as Annexure P/10 dated 20.08.2007 after delay of 12 years from the date of passing of the awards and 5 years after the passing of awards Annexure P/8 dated 05.08.2014. The writ petitions filed by petitioner No. 1 in the year 2008 and 2009 as also references made qua the petitioners in the year 2011 leading to awards collectively attached along with as Annexure P/8 dated 05.08.2014 are based on a fresh cause of action i.e. alleged violation of Section 25-H by the management in the year 2006 for which the petitioners were held entitled to the benefits of post of Pump Attendant w.e.f. 12.09.2006 against term appointment on consolidated salary of ₹3000/- per month along with consequential benefits for violation of Section 25H of the Act.

[13] Apart from delay and lachess, no evidence has been referred to show that the awards (collectively attached along with as Annexure P/10) rejecting claim for reinstatement qua termination w.e.f. 22.08.1997, are unsustainable or on what basis termination of the petitioner workmen w.e.f. 22.08.1997 is

available earlier was not led before the Labour Court at the relevant point of time and whether evidence which is now sought to be led was not available earlier and as to when and in what circumstances said evidence came to the knowledge of the petitioners and as to why, now the matter should be remanded to the Labour Court to allow fresh proceedings to be conducted after giving opportunity to lead evidence.

[14] In the light of the position noted above, the writ petition is hit by delay and laches. Besides, no circumstances have been spelt out warranting interference with the awards Annexure P/10 dated 20.08.2007. Accordingly, the writ petition is *dismissed in limine*.

(B.S. Walia)
Judge

May 28, 2019

'Rajneesh'

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No