

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

CWP No.26972 of 2019

Date of Decision : 26.11.2019.

Hawa Singh

...Petitioner

Versus

State of Haryana and others

.... Respondents

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

Present: Mr. J.P. Jangu, 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/4 dated 08.03.2010 and for issuing a writ of Mandamus for directing the respondents to grant all consequential benefits including pensionary benefits.

2. That as per case set up in the writ petition, the petitioner, joined as Patwari in the respondent department (No date of joining has been mentioned in the writ petition) and while serving as such, FIR No.17 dated 09.05.2007, was registered against him U/s 7 & 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) whereupon he was suspended w.e.f. the date of his arrest i.e. 09.05.2007 and was convicted vide judgment dated 30.04.2009 and was sentenced vide order dated 04.05.2009, by the learned Addl. Sessions Judge-I, Bhiwani, to undergo rigorous imprisonment for a period of one year U/s 7 of the

Act and further to undergo rigorous imprisonment for a period of two years under Section 13 (1(d)/13(2) of the Act. Thereafter, the petitioner was served show cause notice as to why he should not be dismissed from service and vide order Annexure P/2 dated 19.06.2009, he was dismissed from service by the Collector, Bhiwani without considering the reply filed by him. Thereafter, the petitioner filed an appeal Annexure P/3 against order Annexure P/2 dated 19.06.2009, but the same was also dismissed vide order Annexure P/4 dated 08.03.2010, by the Financial Commissioner, Hisar Division, Hisar. The petitioner submitted representation Annexure P/5 dated 27.07.2019 that although he had been convicted under the Prevention of Corruption Act which had been upheld upto Hon'ble the Supreme Court yet he was entitled to pensionary benefits along with GPF etc. but no action was taken on the same, therefore, the writ petition challenging order Annexure P/4 dated 08.03.2010 praying for the relief as referred to above. However, in the entire paper book, there is not a whisper w.r.t. the date of joining of service by the petitioner, the number of years of service rendered by him and the basis for claiming pension or other benefits.

3. Sole submission of counsel is that the impugned order was passed without appreciating that the order of termination was a non speaking order and without conducting a departmental enquiry.

4. I have considered the submission of learned counsel but am of the considered view that the writ petition is liable to be dismissed on the short ground of delay and laches since the petitioner has not given any explanation whatsoever for the delay of close to nine years 5 months in

challenging the impugned order Annexure P/4 dated 08.03.2010 passed by the Divisional Commissioner, Hisar dismissing appeal against termination of petitioners services vide order Annexure P/2 dated 19.06.2009.

5. 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. It has been made clear more than once that 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 is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

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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.

6. 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 989** 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.

7. As regards plea for issuance of a writ of Mandamus, apart from no basis for entitlement qua claim for pension having been set out in the writ petition, Rule 2.5 of the Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana, lays down that pension is not payable to a govt. employee dismissed or removed for misconduct, etc. Rule 2.5 reads as under :-

"No pension may be granted to a govt. employee dismissed or removed for misconduct, insolvency or inefficiency, but to government employee so dismissed or removed, compassionate allowance may be granted when they are deserving of special consideration. Provided that the allowances granted to any government employee shall not exceed two-third of the pension, which would have been admissible to him if he had retired on medical certificate."

8. That in the light of the position as noted above, in the absence of explanation for delay in challenging the impugned order, the writ petition is liable to be dismissed and is accordingly dismissed on account of delay and laches qua order Annexure P/4 dated 08.03.2010 upholding order Annexure P/2 dated 19.02.2009. However, while dismissing the writ petition as above, liberty is granted to the petitioner to submit a comprehensive representation for terminal benefits i.e. leave encashment, provident fund, if any, in terms of the decision in Dhir Chand vs State of Haryana (P&H) 2019(1) S.C.T. 134 as per which leave encashment is part of salary and salary, like credit in General Provident Fund account of an employee, cannot be withheld in the event of dismissal because it represents money saved / earned for unutilized leave as a matter of right for work performed and duties discharged while in service. Liberty is also granted to the petitioner to pursue claim for compassionate allowance with the respondents in accordance with Rule 2.5 of the Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana. In case any

representation is made qua leave encashment, provident fund as well as compassionate allowance, the same be considered and decided by the respondents in accordance with the rules applicable after taking into account all aspects of the matter preferably within four months of the date of receipt of representation.

(B.S.WALIA)
JUDGE

26.11.2019
rajesh.k.khurana

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