

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

LPA No.299 of 2019(O&M)
Date of decision: 15.02.2019

Rishi Raj and another

... Appellants

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Kuldeep Khandelwal, Advocate for the appellants.
Mr. Deepak Balyan, Additional Advocate General, Haryana.

ARUN PALLI, J.

This is an intra-court appeal under Clause X of the Letters Patent, against an order and judgment dated 14.08.2018, vide which the writ petition preferred by the petitioners/appellants was dismissed, for it suffered from delay and laches, as also the order dated 04.12.2018, vide which even the application moved seeking review of the order dated 14.08.2018 was also dismissed.

Facts that are required to be noticed are limited.

The appellants, in a writ petition filed by them, prayed for certiorari to quash the orders dated 07.12.2011 (Annexure P3 Colly.), whereby their services were regularized w.e.f. 07.12.2011 itself instead of 07.08.1990 and 12.12.1989, respectively, i.e. from the date of initial joining of the institution. Further, to quash the order dated 22.09.2017 passed by

respondent No.3, vide which their claim for counting their previous services for the purpose of pensionary benefits etc. had since been rejected.

Upon a consideration of the matter, the learned Single Judge reached a conclusion that appellant No.1 had retired from service on 29.02.2016 and late husband of appellant No.2 superannuated on 31.12.2013, and for the appellants never chose to approach either the concerned authorities or the Court to assail the orders dated 07.12.2011 (Annexure P3 Colly.) except by filing CWP No.153 of 2018 on 18.12.2017, the petition suffered from delay and laches. Resultantly, the writ petition was dismissed. Thus, this appeal.

We have heard learned counsel for the parties and perused the record.

In context of the short issue that arises for determination by us, particularly in the wake of the observations that form basis of the impugned order, it indeed would be expedient to refer to the operative part thereof:

“2. Undisputably, petitioner no.1 stood retired on 29.02.2016 and husband of petitioner no.2 stood retired on 31.12.2013. Thereafter, till date petitioners did not opt to approach either concerned authorities or Court to challenge the orders dated 07.12.2011 (P-3 colly) but except only on 18.12.2017 by way of filing of instant petition. Thus, there is a considerable delay on the part of the petitioners in approaching the Court. There is no explanation what to talk of any plausible explanation for not taking up the matter and filing of such petition earlier. Thus, petitioners are guilty of long delay and laches which is suggestive of the fact that they are deemed to have acquiesced or waived off their claim or right. Such a relief cannot be claimed ignoring the

long and unexplained delay simply because, it is a continuing cause.

3. In an identical matters i.e. CWP No. 16860 of 2017, titled *Bimal Pradhan vs. State of Haryana & others*; decided on 01.08.2017, CWP No. 17699 of 2017, titled *M.R. Batra vs. Uttar Haryana Bijli Vitran Nigam Ltd*; decided on 10.08.2017 and CWP No. 18004 of 2017, titled *Sadhu Singh vs. State of Punjab*, decided on 16.08.2017, this Court while relying upon the judgments delivered by the Hon'ble Apex Court in captioned as *Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC) : (1997) 6 SCC 538, Brijesh Kumar and others vs. State of Haryana and others, 2014 (11) SCC 351 and Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785*, has 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.

4. It is also equally settled that the law of limitation has legally to be construed especially in the circumstances that a right is accrued to the party opposite on account of delay which is attributed to the other party and said right cannot be scuttled down by taking a lenient view. Otherwise also, a party who approaches the Court is under a bounden duty to explain the delay in approaching the Court for a particular relief or to lay challenge to a specific order, to which, he/she is aggrieved.

5. Adverting to the facts of the case in hand, cause of action, if any, would have accrued to the petitioner no.1 and husband of petitioner no.2 either on the date of their retirement i.e.29.02.2016 & 31.12.2013 or at the time of passing of impugned orders dated 07.12.2011 (P-3 colly), whereas they approached this Court in the month of December 2017, i.e. approximately after more than six years of the passing of impugned order (P-3 colly), that too, without any explanation.

6. Thus, in view of the facts and circumstances narrated above and the legal proposition, it can be safely observed that instant petition suffers from delay and laches especially in the circumstances that the petitioners slept over the matter for a considerable number of years from the date of accrual of cause of action without any reasonable cause.”

Ex facie, what appears to have escaped notice of the learned Single Judge is: that prior to the institution of CWP No.153 of 2018, appellant No.1 and late husband of appellant No.2, namely, Ram Kumar, had approached this Court vide CWP No.26183 of 2013, based upon the same cause of action, and claiming the same relief. The said petition remained pending before this Court for four years and in the interregnum appellant No.1 retired from service on 29.02.2016 and late husband of appellant No.2 not only superannuated from service on 31.12.2013, but unfortunately passed away on 28.05.2015. This Court, eventually, vide order dated 22.05.2017, disposed of the said petition with a direction to the petitioners therein to make a representation to the respondent-authorities, who in turn were required to pass a speaking order on receipt of the said representation within a period of three months. The appellants submitted a representation dated 02.07.2017 in sync with the observations made by this Court and the authorities on a consideration thereof rejected the same, vide order dated 22.09.2017. Which is why, as indicated above, the appellants in the subsequent writ petition i.e. CWP No.153 of 2018, even assailed the said order dated 22.09.2017. Thus, the observations recorded by the learned Single Judge ***“Undisputably, petitioner no.1 stood retired on 29.02.2016 and husband of petitioner no.2 stood retired on 31.12.2013. Thereafter, till date petitioners did not opt to approach either concerned authorities or***

Court to challenge the orders dated 07.12.2011 (P-3 colly) but except only on 18.12.2017 by way of filing of instant petition. Thus, there is a considerable delay on the part of the petitioners in approaching the Court.” are not only contrary to the record but incongruous. Apparently, the institution of the earlier petition i.e. CWP No.26183 of 2013, intervening facts and the order dated 22.05.2017 vide which it was disposed off, were lost sight off. Further, as indicated above, the earlier writ petition was disposed of by this Court with a direction to the respondent-authorities to consider their claim and pass orders and since their claim was rejected vide order dated 22.09.2017, the appellants re-approached this Court soon thereafter vide CWP No.153 of 2018 in December, 2017. Thus, under no conceivable situation, the writ petition preferred by the appellants could be dismissed on the ground that it suffered from delay and laches. We are reminded to point out that subsequently the appellants had even moved an application setting out the entire factual position, as narrated above, seeking review of the order dated 14.08.2018, but that too was dismissed:

“No factual error has been pointed out by learned counsel for the petitioners while arguing the review petition. In fact, learned counsel for the review petitioners wants this Court to re-appreciate facts against the settled proposition of law, which is impermissible and beyond the scope of review.

Dismissed.”

Thus, in the given situation, the only and the inevitable conclusion that could be reached: the impugned order and judgment dated 14.08.2018 as also the order dated 04.12.2018 are unsustainable and are accordingly set aside.

For, the writ petition was never examined on merits and was dismissed only on the ground of delay and laches, the matter is remitted to the writ Court for consideration afresh and its decision on merits.

The appeal is disposed of in the above terms.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

15.02.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO