

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

CWP-18999-2020

Date of Decision: 10.11.2020

GAJINDER SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present: Mr. J.S. Jaidka, Advocate for petitioner.

MAHABIR SINGH SINDHU, J.

Present Writ Petition has been filed under Articles 226/227 of the Constitution of India directing the respondents to grant annual increment to the petitioner on account of service rendered by him for the period 01.01.2007 to 31.12.2007 and to pay the arrears along with interest @ 18% from the date it became due.

Although learned counsel for the petitioner submitted that he would be satisfied in case his representation dated 22.06.2020 (P-1) is decided by passing a speaking order, but he was encountered regarding the maintainability of writ petition on the point of delay and laches.

Faced with the situation, learned counsel for the petitioner made the following submissions:-

That petitioner is claiming the benefit of annual increment for the service rendered by him from 01.01.2007 to 31.12.2007, regarding which he made a representation dated 22.06.2020 to respondent No.2, but till date no final decision has been taken in the matter. Further submitted that in such a scenario, two different coordinate Benches of this Court have already issued the directions for deciding similar representations and

reference in this regard is made to Annexures P-4 and P-6, thus claiming the similar treatment.

Heard learned counsel for petitioner and perused the paper book.

Concededly, after attaining the age of superannuation, petitioner retired from the post of Sub-Divisional Engineer, Provincial Division, P.W.D. (B&R Branch), Punjab, on 31.12.2007 and present writ petition is filed on 05.11.2020 i.e. approximately after a period of 13 years. Undisputedly during this long interregnum, except making one representation on 22.06.2020, he never raised any grievance regarding the increment which he is claiming now through present writ petition.

It is pertinent to mention here that petitioner is not a lay-man, rather he was working as a Class I officer, therefore, well aware about his legal right(s), if any, and ought to have been vigilant about the same. There is a very old legal maxim that '*vigilantibus non dormientibus jura subveniunt*' i.e. the law assists only those who are vigilant, and not those who sleep over their rights.

Although, there is no statutory period of limitation prescribed for availing the remedy of writ petition under Article 226, but at the same time one must not forget that this extraordinary jurisdiction is to be exercised in accordance with certain legal parameters laid down by the Constitutional Courts and not to be taken as a matter of course. Also necessary to mention here that there is a public policy behind all the statutes for limitation and Halsbury's Laws of England (Third Edition, Vol. 24), Article 330 at p. 181, says as under:-

"The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (1)

that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim and (3) that persons with good causes of action should pursue them with reasonable diligence.”

Reference in this regard can also be made to the Constitution Bench judgment of Hon’ble Supreme Court in **M/s Tilokchand and Motichand & Ors. Vs. H.B. Munshi and another** (1969) 1 SCC 110, and para 65 of the same reads as under:-

“65. The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights. A person complaining of infraction of any such rights has one of three courses open to him. He can either make an application under Article 226 of the Constitution to a High Court or he can make an application to this Court under Article 32 of the Constitution, or he can file a suit asking for appropriate reliefs. The decisions of various High Courts in India have firmly laid down that in the matter of the issue of a writ under Article 226 the courts have a discretion and may in suitable cases refuse to give relief to the person approaching it even though on the merits the applicant has a substantial complaint as regards violation of fundamental rights. Although the Limitation Act does not apply, the courts have refused to give relief in cases of long or unreasonable delay. As noted above in Bhailal Bhai case it was observed that 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”. On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under Article 32 from one applicable to applications under Article 226…….”

Even for filing a civil suit for declaration the limitation is 3 (three) years; thus, the claim of the petitioner is extremely stale and facts do not

warrant to condone this long delay. Still further, as per the case of the petitioner itself, the basis for claiming the benefit of one increment is the service rendered by him for the period 01.01.2007 to 31.12.2007 and thus, the cause of action, if any, had arisen way back on 01.01.2008, but present writ petition is filed after a period of more than 12 years. Even from the perusal of representation dated 22.06.2020, no explanation is coming forward for condonation of such an inordinate delay, rather the same is absolutely silent and relevant part of which reads as under:-

“I the undersigned on attaining the age of 58 years retired as Sub Divisional Engineer from Provincial Division, PWD (B&R Branch), 17 Bey Building, Sector 17, Chandigarh.

I used to get his annual increment on 1st January of each year, for the completion of service of the preceding year. The last annual increment was granted to me on 01.01.2007 for the service I had rendered for the year 01.01.2006 to 31.12.2006.

That for the completion of services rendered for the year 01.01.2007 to 31.12.2007, I deserve my annual increment. This increment has not been granted to me.”

In the writ petition also there is no factual foundation to justify the delay of more than 12 years in approaching this Court, rather the narration have been made similar to the contents of representation extracted hereinabove. Thus, the irresistible conclusion would be that petitioner was absolutely in deep slumber and did not care to show any diligence for agitating his claim, if any, at the relevant point of time.

Orders dated 29.01.2020 and 12.10.2020 (P-4 and P-6) respectively, relied upon by the petitioner, are also not helpful for the following reasons:-

- i) In CWP No. 2276 of 2020, petitioner Hardeep Singh retired as Canal Patwari on 31.03.2017 and he filed writ petition for

claiming the benefit of annual increment, which was disposed off by co-ordinate Bench on 29.01.2020 while relying upon a Division Bench judgment of Madras High Court titled as **P.Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others**, (W.P. No. 15732 of 2017), decided on 15.09.2017 (P-2), with a direction to the respondents to decide his representation dated 10.08.2018 within a period of 3 months from the receipt of certified copy of the order, thus, there was no point of delay involved in that case, rather petitioner acted promptly. Even in the case of **P. Ayyamperumal** (supra) also, there was no delay as petitioner therein retired after attaining the age of superannuation on 30.06.2013 and he was asking for the benefit of one increment on account of service rendered by him from 01.07.2012 to 30.06.2013, but his claim had been rejected on the ground that increment would be admissible to an incumbent on 01.07.2013, but since he had already retired on 30.06.2013, therefore, request was declined. Aggrieved against the rejection order, he filed an Original Application (OA) No.310/2015 before the Tribunal, which was dismissed on 21.03.2017 and this order was challenged by way of a Writ Petition No. 15725 of 2017, which was allowed on 15.09.2017 by Division Bench of Madras High Court.

- ii) CWP No. 16810 of 2020 filed by Ramjeet Singh, was also disposed off by a Coordinate Bench while relying upon the order dated 29.01.2020 passed in Hardeep Singh's case (supra) with a direction to decide his representation within a

period of 8 weeks from receipt of certified copy of order, but there was no point of delay under consideration in that case.

In view of the above, this Court is of the considered opinion that petitioner has miserably failed to explain the inordinate delay of more than 12 years while approaching this Court by way of present writ petition for claiming the benefit of increment and that is fatal for entertaining the petition. Consequently, no case is made out to issue any direction (s) to the respondents to decide the representation dated 20.06.2020, as the same would result into revival of the stale claim and that is not advisable until and unless, there is a failure of justice and that aspect of the matter is completely missing in this case. Resultantly, there is no option, except to dismiss the petition only on the ground of delay and laches.

Ordered accordingly.

10 November, 2020
rajender

(MAHABIR SINGH SINDHU)
JUDGE

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