

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

Sr. No.104

**CWP-305-2021 (O&M)
Date of decision : 08.03.2021**

Labh Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikas Chatrath, Advocate with
Ms. Mandeep Kaur, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner allegedly embezzled a sum of Rs.1,57,000/-. Upon demand being raised, he deposited a sum of Rs.1,42,600/- and sought time to deposit the remaining Rs.14,400/-. Before he could deposit the said amount, a charge-sheet was issued to him and after conduct of regular departmental enquiry, punishment of stoppage of one increment with cumulative effect was imposed alongwith recovery of Rs.41,537/-. The order of punishment is dated 25.7.2001 (Annexure P-13). The petitioner preferred a statutory appeal, which was rejected vide order dated 16.4.2002. Review of said order was sought vide application dated 3.12.2002 and the same was also rejected vide order dated 8.5.2018. Thereafter, legal notice dated 17.2.2020 was issued, but the same was rejected vide order dated 12.3.2020. Thus, the present writ petition has been filed.

On the previous date of hearing, it had been observed that prima facie, the writ petition was barred by delay and laches. However, on request of learned counsel for the petitioner, the same was adjourned to today.

Learned counsel for the petitioner has argued that wrongful imposition of punishment of stoppage of one annual increment with cumulative effect provides a continuing cause of action to the writ petitioner. Further, in case, the said order is set aside, it would not adversely affect any third party rights. Thus, cause of action continues till the same is not challenged and the principle of delay and laches would not be attracted. He relies upon Malkiat Singh Vs. State of Haryana, 2007 (4) SCT 801 that imposition of punishment of stoppage of increment with cumulative effect furnishes a continuing cause of action and upon Union of India and others Vs. Tarsem Singh 2008 (4) SCT 19 to argue that third party right not being adversely affected, the principle of delay and laches would not be attracted and that arrears could be restricted to 38 months. Further, it has been submitted that in Full Bench judgment of this Court passed in CWP-1522-1973 titled as Teja Singh Vs. The Union of Territory of Chandigarh and others decided on 20.9.1980 has held that Limitation Act, 1963, is not applicable to the writ petition proceedings. Reliance has been placed upon State of Punjab and others Vs. Gurdev Singh and Ashok Kumar 1991(3) SCT 91 to submit that in case of writ proceedings, even though, Limitation Act, 1963, is not applicable, the period for filing of a civil suit i.e. three years, may be considered to be appropriate time to approach the writ Court. In the instant case, the writ

Court has been approached within two years of rejection of the review and thus, it cannot be said that the writ petition is barred by delay and laches.

On principle, learned counsel for the petitioner is correct in submitting that an order imposing a punishment furnishes a continuing cause of action, if the said order is violative of the principle of natural justice and is void. It is also correct that no third party rights would be adversely affected, in case, the order of punishment is set aside. However, the writ petition is not being preferred against the original order of punishment. The said order is dated 25.7.2001 and was challenged vide appeal, which was dismissed vide order dated 16.4.2002. Review there-against was rejected vide order dated 8.5.2018 and thus, the principle of delay and laches is to be considered by keeping in view these facts. Thus, considered, it may be noted that the review application itself was barred by limitation. Rule 21 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 provides for filing of review within six months from the date of passing of the order. The same having not being done, the review application was barred by limitation. Yet, the petitioner waited for sixteen years for its decision and thereafter also, approached this Court on 4.1.2021 i.e. the date mentioned in the writ petition. This conclusively shows that the petitioner was not vigilant of his rights. He filed an application for review, which was barred by limitation and thereafter also, waited for sixteen years for its decision. There is nothing on record to show that in between any efforts were made to expedite a decision of the review application. Even thereafter, he

approached this Court after two years and seven months and thus, in my considered view, the principle of delay and laches is squarely applicable. There is no gain-saying that the Limitation Act, 1963, does not apply to writ proceedings nor there is any straight jacket formula barring the entertainment of a writ petition after three years of arising of cause of action. A period of three years has been taken as an indicator because, that is the limitation prescribed for filing of a civil suit. A writ petition may be entertained, even after three years in the peculiar facts and circumstances of a case and a writ petition could be termed as barred by delay and laches even before three years. In the instant case, keeping in view the fact that the petitioner waited for sixteen long years for a decision on a review application, which was barred by limitation and even thereafter, approached this Court after two years and seven months, the inescapable conclusion is that the petitioner is gambling with his rights in the fond hope that in case, a positive result is yielded, he would be benefited with a financial wind-fall. Had he been serious, he would have approached this Court soon after filing his review application.

For the aforementioned reasons, I hold that the writ petition is not entitled to be entertained, because, it is hit by delay and laches. Accordingly, it is dismissed.

(SUDHIR MITTAL)
JUDGE

08.03.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No