

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

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**LPA No.73 of 2021
Decided on : 30.11.2021**

Jagjit Singh

... Appellant

Versus

State of Punjab & another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE ALKA SARIN**

Present: Mr.S.L. Chander Shekhar, Advocate, for the appellant.

G.S. Sandhawalia, J. (Oral)

Present Letters Patent Appeal arises out of the judgment passed by the Learned Single Judge in CWP-20502-2020 on 01.12.2020.

The appellant-writ petitioner is aggrieved against the dismissal of his writ petition whereby the Learned Single Judge noticed that the order dated 27.07.2020 had been passed by the Commandant General, Punjab Home Guards, Civil Defence, Punjab that Homeguards are not employees of the State and are enrolled to perform duties whenever required. The appellant-petitioner having absented from duty from 12.04.1994 and therefore, had no right to claim recall on duties. It was also noticed that the departmental appeal had also been filed. Resultantly, it was noticed that the appellant was flogging a dead horse and being a member of the voluntary citizens post, he remained absent for a period of 26 years and the writ petition was dismissed in limine.

A perusal of the order dated 27.07.2020 would go on to show that the cause of action was revived on the directions given on 17.03.2020 in CWP-984-2020 whereby the legal notice dated 06.11.2019 was to be decided within a period of 3 months. The competent authority noticed that the petitioner was enrolled as Homeguard, voluntarily on 31.09.1991 and had absented after less than 3 years of service from 03.04.1994. It was then noticed that now he had no right to claim recall on duty. It was also noticed that such claims were coming up on account of increase in the duty allowance of the Homeguards and large number of writ petitions had also been dismissed by this Court. Reliance was placed upon the observations made in CWP-19229-2018 titled *Joginder Singh & others Vs. State of Punjab & others*, decided on 06.06.2019, which has now been placed on record as Annexure A-1.

It is settled principle that delay and laches would debar the appellant to claim any remedy on account of his own conduct. The cause of action had long died was sought to be revived after serving of a legal notice dated 06.11.2019 on account of the directions issued by this Court. The Apex Court in **C.Jacob Vs. Director of Geology & Min. Indus. Est. and another 2008 (10) SCC 115** has held that by issuing directions, cause of action does not get revived. Relevant portion of the judgment read as under:

“6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any

such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the

employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.”

The appellant had, since 1994 till serving of the legal notice dated 06.11.2019, made no effort to join service. For a paltry service of less than 3 years, he now claims legal right to be recalled on duty. The said period of delay is not explained in any manner apart from the bald argument which has been raised that the appellant's father had been shot dead by the terrorists. A perusal of the paperbook would go on to show that the order dated 27.07.2020 was firstly assailed in CWP-13651-2020, which writ was dismissed as withdrawn on 04.09.2020, to approach the higher authorities. Same reads as under:

“After arguing for some time, learned counsel for the petitioner prays that he be allowed to withdraw the present writ petition with liberty to approach the higher authorities against the impugned order.

Dismissed as withdrawn with liberty as prayed for.”

Once the earlier writ petition had also been dismissed as withdrawn, to approach the higher authorities, the second writ petition, on the same cause of action is clearly not maintainable. Accordingly,

keeping in view the above cumulative facts, this Court is of the considered opinion that the judgment passed by the Learned Single Judge does not suffer from any infirmity, in the peculiar facts and circumstances of the case.

Resultantly, finding no ground for interference in the well reasoned order of the Learned Single Judge, the present appeal is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

November 30, 2021
Sailesh

(ALKA SARIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No