

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

LPA-717-2021 (O&M)
Date of Decision:-27.8.2021

Labh Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Vikas Chatrath, Advocate
for the appellant.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellant has preferred this appeal against the order of the
learned Single Judge dated 8.3.2021 whereby the writ petition No.305 of
2021 filed by the appellant (petitioner therein) was dismissed with the
following observations:-

XXXXX

“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.”

The appellant has also challenged order dated 6.7.2021 whereby his review application No.109 of 2021 was declined by the learned Single Judge.

The case of the appellant is that he retired as Sub-Divisional Engineer, Water Supply and Sanitation (RWS) Division, Khanna. While in service the appellant was asked to deposit a sum of ₹1,57,000/- which was outstanding against him on account of miscellaneous expenses, vide letter dated 2.11.1998. On this, the appellant deposited a sum of ₹1,42,600/-. Before he could deposit the balance amount, a charge-sheet was served upon him and regular departmental inquiry was conducted and penalty of stoppage of one increment with cumulative effect was imposed along with recovery of ₹41,537/- against the appellant vide order dated 25.7.2001 (Annexure P-13). The statutory appeal preferred by the appellant was dismissed vide order dated 16.4.2002. The appellant filed review application dated 3.12.2002 and the same was rejected vide order dated 8.5.2018 (Annexure P-18). The appellant served legal notice dated 17.2.2020 but the same was rejected vide order dated 12.3.2020 (Annexure P-20). Being aggrieved, the appellant filed writ petition challenging the aforesaid departmental actions.

The learned Single Judge after hearing the counsel for the appellant (petitioner therein) dismissed the writ petition solely on the ground of delay and laches.

The appellant being not satisfied has filed the present appeal.

We have heard the counsel for the appellant and gone through the record of this case.

There is no dispute regarding the fact that the appellant was charge-sheeted in 1999 for alleged embezzlement of Government funds amounting to ₹14,400/-. On completion of the departmental inquiry, his one annual increment was stopped with cumulative effect, besides recovery of ₹41,537/- from him was also ordered. The said punishments were imposed vide order dated 25.7.2001 (Annexure P-13). The statutory appeal filed by the appellant against the said order was dismissed on 16.4.2002 (Annexure P-15).

As per the appellant, he filed review application dated 3.12.2002 (Annexure P-16), which was dismissed by the competent authority on 18.5.2018 (Annexure P-18). The plea of the appellant is that fresh cause of action arose to the appellant to challenge the departmental actions, on the dismissal of the review petition and accordingly the appellant served legal notice dated 17.2.2020 (Annexure P-28) which was rejected vide written reply dated 12.3.2020. The counsel for the appellant while referring to **S.S. Rathore vs. State of Madhya Pradesh, 1989(4) SCC 582**, submitted that cause of action in the present case shall be taken to arise not from the date of the original adverse order but on the date when the order of

the higher authority where a statutory remedy is provided entertaining the appeal or representation, is made. The counsel for the appellant also placed reliance on **Mohd. Quaramuddin vs. State of Andhra Pradesh, 1994(5) SCC 118**, wherein it was held that the period of time consumed in disposal of statutory representation/review is liable to be excluded from the prescribed period of limitation to challenge the order of termination.

The counsel for the appellant further contended that the impugned order of stoppage of increment with cumulative effect was totally illegal as the punishing authority travelled beyond the charge-sheet. The counsel for the appellant further argued that there is no *mala-fide* intention on the part of the appellant to retain the public money and the appellant had spent the official funds for Government works and not for his personal use. It is further contended that the impugned order being void could be challenged at any time. In this context, the counsel for the appellant referred to **Malkiat Singh vs. State of Haryana, 2008(1) RSJ 141**, wherein this Court held that any order which is passed contrary to the mandatory provision of the Rules and the principles of natural justice is null-&-void. It is not necessary for a party to get it set-aside. The aggrieved person can claim the relief ignoring the void order.

The counsel for the appellant further submitted that the claim of the appellant cannot be thrown out just on the ground of limitation. The learned counsel further contended that if the Court feels that there was delay in filing the writ petition, in that case the arrears of consequential benefits be limited to 38 months as has been laid down by the Hon'ble Apex Court in

Union of India and Others vs. Tarsem Singh, 2008(8) SCC 648. The counsel for the appellant while summing up his arguments submitted that the appeal deserves to be allowed in the light of the aforementioned judicial pronouncements.

We have considered the contentions raised by counsel for the appellant.

Undisputedly, the appellant failed to clear the miscellaneous advance which was taken by him, on this the department issued letter dated 26.11.1998 (Annexure P-3) to the appellant, in reply to the said letter, the appellant vide Annexure P-4 informed the Department that he had already deposited ₹1,42,600/- in Government Treasury and sought time to deposit the balance amount of ₹14,400/-. Thus the appellant himself admitted in writing that he committed embezzlement of ₹14,400/-. Despite the fact that the appellant admitted his mistake, the department initiated regular inquiry to take action against him. On completion of the said proceedings, the punishing authority passed impugned order dated 25.7.2001 (Annexure P-13). The statutory appeal filed by the appellant against the said order was dismissed on 16.4.2002. Thereafter appellant filed review application on 3.12.2002 but the same was declined vide order dated 8.5.2018 (Annexure P-18). The appellant has taken plea that the cause of action to challenge the impugned order (Annexure P-13) had arisen only after the rejection of the review application. The counsel for the appellant has relied upon different judicial enunciation as has been discussed above, in support of his contention.

We are of the view that there need not be any doubt on the proposition of law laid down in the judgments cited by the counsel for the appellant. But we are unable to see how the said judgments apply to the facts of the instant case. As has been rightly observed by the learned Single Judge, the review application of the appellant was time barred. Rule 21 of the Punjab Civil Services (Punishment and Appeal Rules) 1970 provides that in such a case review application is to be filed within 6 months from the date of passing of the order, which is not so in the present case. In the review application, the appellant did not give any cause or explanation regarding delay in filing the same. Appellant filed review application after more than 6 months of the passing of the order by the appellate authority whereby the statutory appeal was dismissed. Further, the appellant kept on waiting for 16 years for decision in review application which was filed on 3.12.2002. At present appellant is aged about 73 years, it means he retired from the Government service in the year 2005 approximately on attaining the age of 58 years. Even after his retirement, the appellant kept on sleeping. Admittedly, his prayer for review was declined in 2018. Even thereafter he remained silent and finally issued legal notice dated 17.2.2020 (Annexure P-19). The same was rejected by the authorities on 12.3.2020 (Annexure P-20). Finally in December, 2020 the appellant invoked writ jurisdiction of this Court. The Constitutional Bench of the Hon'ble Supreme Court in S.S. Rathore's case (supra) has clearly laid down that in every such case, if the appeal or representation provided by law is not disposed of by the concerned authorities, cause of action shall first accrue, on the expiry of 6 months from

the date when the appeal was filed or representation was made. This being the factual and legal position the learned Single Judge rightly pointed out that the appellant (petitioner therein) was not vigilant of his rights. We also concur with the observation made by the learned Single Judge to the effect that had the appellant being serious he would have approached this Court soon after filing his review application.

As has been discussed, above, the appellant himself admitted in writing that he kept with him amount of ₹14,400/- belonging to the Government. So in this case the appellant admitted his guilt. Thus at this stage, he cannot say that the impugned order (Annexure P-13) is illegal. Even otherwise, the Court in exercise of its power of judicial review cannot act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings, on evidence recorded in departmental inquiry. The Court can interfere only where proceedings have been held in a manner inconsistent with the Rules of Natural Justice or the Statutory Rules, which is not so in the present case.

In the light of the above, we find no reason to differ with the conclusion arrived at by the learned Single Judge in the impugned orders dated 8.3.2021 and 6.7.2021. Consequently, the present appeal is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

27.08.2021

Gaurav Sorot

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No