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

Date of Decision : 10.05.2022

CWP No.18899 of 2021 (O&M)

Union of India and others ...Petitioners

Versus

Baldev Singh and others ...Respondents

CWP No.2550 of 2020

Union of India and others ...Petitioners

Versus

Balwinder Singh and othersRespondents

CWP No.2568 of 2020

Union of India and othersPetitioners

Versus

Rachhpal Singh and anotherRespondents

CWP No.2604 of 2020

Union of India and others ...Petitioners

Versus

Narinder Singh and others ...Respondents

CWP No.11720 of 2020 (O&M)

Union of India and others ...Petitioners

Versus

Ranjit Singh and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Praveen Chander Goyal, Advocate
for the petitioners
in CWP Nos.2550, 2568 & 2604 of 2020.

Mr. Ashish Rawal, Advocate
for the petitioners
in CWP No.11720 of 2020 and CWP No.18899 of 2021.

Mr. Rishav Sharma, Advocate for
Mr. D.R. Sharma, Advocate
for the respondents.

G. S. SANDHAWALIA, J. (ORAL)

CM-13846-CWP-2021 in CWP-18899-2021

Application is allowed as prayed for. Annexure P-9 is taken on
record, subject to all just exceptions.

CM-7564-CWP-2020 in CWP-11720-2021

Application is allowed as prayed for. Annexure P-4 is taken on
record, subject to all just exceptions.

Main Writ Petitions

The present set of writ petitions CWP Nos.2550, 2568, 2604
and 11720 of 2020 filed by the Union of India are directed against the
orders of the Tribunal dated 8th April, 2019, wherein while following the
dictum of an earlier order in **OA No.060/01047/2014** titled as '**Baldev
Singh and others vs. Union of India and others**' which was allowed on
26th of May 2015 the benefit of Old Pension Scheme has been granted. It is

not disputed that the OAs were preferred in the year 2018 and were on the strength of the earlier decision passed in Baldev Singh's case (supra). Perusal of the paper-book would go to show that vide order dated 27th of July, 2011, the services of the applicants/private respondents as such were regularized on post of Motor Vehicle Driver with effect from 11th of December, 2006. Specific condition was put that they would be governed under the New Pension Scheme of the year 2003 which was notified by the Ministry of Finance Government of India. The relevant Clause reads as under :-

“He will be governed under the new pension scheme vide Notification No.5.7.2003 TSB & PR dated 22.12.2003 notified by the Ministry of Finance, Government of India.”

Inspite of being aware and having taken advantage of the regularization benefit by which they were governed under the New Pension Scheme, the claim was made on the strength of being similarly situated with Baldev Singh. No challenge was raised to the order dated 27th of July, 2011. The Tribunal without going into these facts solely on the basis of the earlier decision has allowed the original application.

We are of the considered opinion that the same was not justified once the private respondents were bound by the terms of regularization and which they chosen not to challenge and a period of more than 7 years had elapsed thereafter. Merely on account of the fact that in

Baldev Singh's case the relief had been granted would not be a ground as such for the Tribunal to have blindly followed the said decision without examining this conduct of the applicants/private respondents. The law has been settled by the Apex Court regarding issue of fence-sitters in the case of **State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and other, 2015(1) SCC (L&S) 191**. The relevant paragraphs read as under :-

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who

had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C. Sharma & Ors. v. Union of India** (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.*

24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The

respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

25. *For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs.”*

Thus, it would be apparent that a person who does not agitate for his grievances within a prescribed period cannot take advantage of the fact that some other person similarly situated has got some relief. In such circumstances, we are of the considered opinion that being bound by the conditions of the regularization of 2011, the applicants/private respondents could not have espoused for the same relief which had been granted to Baldev Singh. It is another matter that in the case of Baldev Singh we are

dismissing the writ petition on the ground of limitation since the Union of India, after a period of 7 years, has challenged the order dated 26th of May, 2015 in Civil Writ Petition No.18899 of 2021. The writ Petition was only filed on 4th of February, 2021. Perusal of the subsequent orders would also go to show that in the case of Baldev Singh (supra) the order already stands implemented in his case and, in such circumstances, we do not wish to reopen the issue and the Civil Writ petition No.18899 is liable to be dismissed on the ground of delay and laches.

In 'Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai', (2012) 5 SCC 157, the order condoning the delay of 7 years and 108 days in filing the appeal was set aside by the Apex Court, on account of the fact that successful litigant has acquired certain rights on the basis of the judgment under challenge. If the applicant was found to be negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In 'B. Madhuri Goud Vs. B. Damodar Reddy', (2012) 12 SCC 693, it was held that the law of limitation affects a particular party with rigour and the rules of limitation were for fixing a lifespan for redressal of the legal injuries.

In 'Esha Bhattacharjee Vs. managing Committee of Raghunathpur Nafar Academy and others', (2013) 12 SCC 649, the following principles were laid down:

15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario.

They are : -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

Resultantly, the present Civil Writ petitions bearing Nos.2550, 2568, 2604 and 11720 of 2020 are allowed.

The impugned order(s) of the Tribunal are hereby set aside.

The original applications are dismissed with costs.

CWP No.18899 of 2021 titled as **Union of India and others vs. Baldev Singh and another** is dismissed on account of delay and laches.

(G. S. SANDHAWALIA)
JUDGE

May 10, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No