

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

LPA-597-2020

Decided on: 15.12.2022

Tirath Singh Phougat

.....Appellant(s)

Versus

State of Haryana & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Sukhdeep Singh, Advocate, for
Mr.Parminder Singh, Advocate, for the appellant.

Mr.Hitesh Pandit, Addl.A.G., Haryana.

G.S. Sandhawalia, J. (Oral)

The present Letters Patent Appeal is directed against the order of the learned Single Judge dated 19.03.2020 passed in CWP-7167-2020 titled *Tirath Singh Phougat Vs. State of Haryana & others*, whereby the writ petition was dismissed on the ground of delay and laches.

The learned Single Judge noticed that the writ petitioner/appellant had retired on 31.12.2009 and was claiming grant of 1st ACP Pay Scale on completion of 5 years of service due on 01.01.2020. The challenge was thus to the order dated 17.01.2020 (Annexure P-6). The said order which was subject matter of challenge was passed by the authorities on account of the writ petitioner approaching this Court in CWP-21159-2019. The learned Single Judge though while noticing that the writ petition had been filed after a period of 10 years, directed that the representation dated 15.10.2018 moved after 9 years of superannuation be decided and the arrears be paid if he is found entitled for the said claim.

In our considered opinion the learned Single Judge at the initial stage had fallen into an error in directing consideration of the representation as there was inordinate delay and no such claim had been made for the said benefit at any time within reasonable period from the

date of retirement i.e. 31.12.2009. Apparently, on the strength of the judgment of the Division Bench of the Madras High Court dated 15.09.2017, the retired employee got emboldened and filed representation dated 15.10.2018, i.e., 9 years after his retirement for a relief which he had never claimed on his own. The learned Single Judge, while issuing directions to decide, thus, passed an order which has not been appreciated by the Apex Court in **Govt. of India & another Vs. P.Venkatesh, 2019 (2) SCT 173** wherein it has been held that the 'dispose of the representation' mantra has permeated the judicial process in the High Courts and the Tribunals. The litigant is back again before the Court and the cause of action which has long lapsed has been revived. The Apex Court in the case of **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others 2015 (1) SCC 347**, has also held to the same effect that the persons who were fence-sitters cannot be permitted to litigate at the asking. Relevant part of the said judgment reads as under:-

“23 ----- 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.”

The Coordinate Bench in **Nathu Ram Sharma & another Vs. State of Punjab & others 2015 (2) SCT 631** while dealing with the relief of service benefits and arrears which were claimed after delay of 6 years and after similarly situated persons had been granted relief, keeping in mind the judgments of the Apex Court in **State of M.P. & others Vs.**

others Vs. S.M. Kotrayya & others (1996) 6 SCC 267, Jagdish Lal & others Vs. State of Haryana & others (1997) 6 SCC 538, Government of W.B. Vs. Tarun K. Roy & others (2004) 1 SCC 347, Chairman, U.P. Jal Nigam & another Vs. Jaswant Singh & another 2006 (11) SCC 464, Chennai Metropolitan Water Supply and Sewerage Board & others Vs. T.T. Murali Babu 2014 (2) SCT 193 & Suraj Mal Vs. State of Haryana 2015 (1) SCT 31 dismissed the petition. Thus, keeping in view the fact that the attitude of the Government employee was that of a Rip Van Winkle and there was acquiescence, delay would come in the way of equity and the Writ Court would choose not to address the same on merits, in view of the above settled position of law.

The present case is a classic example of revival of a stale claim for getting an order of this Court for decision on representation on an issue which had never been agitated at the time of retirement or immediately thereafter. In such circumstances, we are of the considered opinion that the order of the learned Single Judge which is now subject matter of challenge is well justified that the writ petition was not liable to be entertained on the ground of delay and laches and we do not find any reason to take a different view.

Accordingly, in view of the above discussion, the present appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

15.12.2022
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

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