

109.

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

CWP-17928-2022

Date of Decision: 17.08.2022

NAIB SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rupam K. Aggarwal, Advocate,
for the petitioner.

JAISHREE THAKUR.J

1. The petitioner herein is seeking a writ in the nature of certiorari for setting aside the order 27.10.1995 (Annexure P-5) whereby he was discharged from his duty as SPO. He has also prayed for reinstatement with all consequential benefits.

2. In brief, the facts of the case are that the petitioner was appointed as daily wage SPO in Government Railway Police, Patiala on 25.04.1995. However, he could not attend his duty w.e.f. 17.10.1995 to 24.10.1995 since he was unwell and he informed the office. On 25.10.1995, he joined his duty. However, he was discharged from his duty on 27.10.1995 by respondent No.2. He immediately approached the senior officials at Patiala and moved representation for his reinstatement. Since no reply was received by him, he filed a civil suit against the order dated 27.10.1995, which suit was dismissed vide order dated 23.10.1997 on the ground that he was a daily wager and it was already mentioned in the appointment letter that

he could be discharged any time without show cause notice. Against that order, he filed an appeal while placing reliance on orders that other employees, similarly placed as the petitioner, were ordered to be reinstated on the ground of not granting opportunity of hearing. However, his appeal was also dismissed vide order dated 12.11.1999. Since the department was reinstating the employees similarly placed as the petitioner, he again requested the department to look into his case. One such employee was Bantu Singh, who was ordered to be reinstated vide order dated 22.11.2002, Annexure P-7. However, his request was not paid any heed. He thereafter served a legal notice dated 15.12.2008, Annexure P-8, but no response was received from the official respondents. Against the inaction of the authorities, he filed second suit, but it was also dismissed on 28.09.2013 on the technical ground of *res judicata* and delay and laches. The appeal filed along with the application for condonation of delay too was dismissed vide order dated 19.01.2017. He once again served a legal notice dated 11.11.2019, Annexure P-12, upon the official respondents, which was replied by stating that since his suit and appeal were dismissed, the petitioner, being a daily wager, has no right to hold the post and cannot be reinstated in service at this stage. Hence, the present petition.

3. Learned counsel for the petitioner has argued that without affording any opportunity of hearing or issuing any show cause notice, he was discharged from service vide order dated 27.10.1995. There are plethora of judgments to the effect that even to a daily wager, opportunity of hearing/show cause notice is to be given. He remained absent w.e.f. 17.10.1995 to 24.10.1995 due to his ill-health and in this respect, he

produced medical certificate as well. He has argued that in the year 2008, State had taken a policy decision to take all SPOs back in service who were discharged from service being involved in criminal cases and now stood acquitted from criminal cases. Many SPOs were taken in service pursuant to above said policy, but the petitioner, who merely remained absent for 7 days, has not been given any opportunity.

4. I have heard counsel for the petitioner and have gone through the paper book.

5. The grievance of the petitioner is that he was discharged from his duties as SPO, vide order dated 27.10.1995, without affording an opportunity of hearing or any show cause notice. Against the order of discharge, he filed suit, which suit was dismissed vide order dated 23.10.1997 and the appeal too was dismissed vide order 12.11.1999. Thereafter, he sat over the matter for almost 10 years and served a legal notice in the year 2008. One must be vigilant enough to his rights and cannot sleep over the matter for such a long time. When said legal notice was not responded, he again filed suit and then appeal, which were dismissed on the ground of *res judicata* and delay and laches. The argument raised by the counsel for the petitioner that in 2008, similarly situated persons were being reinstated, at that relevant time, and therefore he is entitled to the same benefits would pale into insignificance since he has already challenged the order of discharge dated 27.10.1995 unsuccessfully twice and the civil suits stand dismissed as well as the appeals filed. The appeal filed against the dismissal of the second suit was also dismissed vide order dated 19.01.2017, which order was accepted and not challenged further in second appeal. Now

a writ has been filed in 2022 seeking parity with persons who had been taken back in service in 2008. The plea of the petitioner cannot be acceded to on the ground that the matter has attained finality and the petitioner cannot be permitted to re-agitate afresh.

6. In view of above, no ground for interference is made out and the present petition is, accordingly, dismissed.

(JAISHREE THAKUR)
JUDGE

17.08.2022

sanjeev

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No