

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

LPA-294-2022

Date of Decision: 17.10.2022

Surender Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

**Present : Mr. Deepak Sonak, Advocate,
for the appellant.**

ARUN PALLI, J.

This is an intra court appeal, under Clause X of the Letters Patent, against an order and judgment dated 10.09.2021, vide which the writ petition preferred by the appellant, assailing the enquiry report dated 03.02.2014 and the order dated 16.04.2015, whereby the Punishing Authority ordered stoppage of his two annual increments with cumulative effect, was dismissed only on the ground of delay.

Learned counsel for the appellant has merely reiterated the submissions that were advanced before the learned Single Judge: based upon the same allegations, disciplinary proceedings were initiated against the appellant, and simultaneously, he was prosecuted in FIR No.455 dated 22.11.2007, under Sections 22/61/85 of the NDPS Act, registered at Police Station Sohna, Gurgaon. But, since vide judgment dated 07.05.2014, he was acquitted by the Chief Judicial Magistrate, Gurgaon, the disciplinary proceedings, as also the punishment awarded to the appellant, could not be

sustained, and were, thus, liable to be set aside.

We have heard learned counsel for the appellant and perused the records.

The appellant was posted as Warder (Prison) in District Jail Gurgaon. He was to guard barrack No.19 from 10:00 PM to 2:00 PM in the night of 25/26.10.2007. The jail staff coming for duty at 10:00 PM was searched, upon which, 170 tablets of Nitrazepam-10 (sedative, hypnotic drug) were recovered from the appellant, which he had hidden in his socks. For he denied the charges, disciplinary proceedings were initiated against him. And as per the report dated 03.02.2014, submitted by the Enquiry Officer, the appellant was found guilty of the charges leveled against him. Upon due consideration of the matter and affording opportunity of personal hearing, the Punishing Authority concluded that the misconduct alleged against the appellant was fully proved/established. Accordingly, vide order dated 16.04.2015, he was awarded punishment of stoppage of two annual increments with cumulative effect. The first and the second appeals preferred by the appellant against the order of punishment (*ibid*) were dismissed by the respective authorities on 28.01.2016 and 20.09.2016. Concededly, the appellant filed the writ petition, assailing the departmental proceedings, in August, 2021, i.e. nearly after five years of the dismissal of his second appeal on 20.09.2016. And thus, as observed by the learned Single Judge, the appellant having acquiesced in the decision made by the Punishing Authority could not be permitted to re-open the matter that had since attained finality. In **Chairman, U.P. Jal Nigam and another Vs. Jaswant Singh and another, 2006 (11) SCC 464**, the Supreme Court had observed that the litigant, who is guilty of long delay and latches, is deemed

to have acquiesced or waived off his claim or right.

Similarly, in **the State of M.P. and others Vs. Nandlal Jaiswal and others, 1986 (4) SCC 566**, as regards Rule of delay and laches, in context of the discretionary, equitable and extra-ordinary jurisdiction exercised by the Court under Article 226 of the Constitution, the Supreme Court observed:

“24 Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and brings in its train new injustices.....”

It would be apposite to even refer to the decision rendered by the Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu, 2014 (4)SCC 108:**

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court

would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

Thus, in the given circumstances, the only and the inevitable

conclusion that could be reached by the learned Single Judge was to dismiss

the petition on the ground of delay and laches alone. Upon being pointedly asked, if the appellant had tendered any explanation, least a plausible explanation, to justify the institution of the petition that suffered from gross, inordinate and unexplained delay, nothing was referred to, in this regard. Rather, it appears that institution of the petition by the appellant was nothing, but an attempt to resurrect a dead and stale claim. Not just that, in the given circumstances, even a suit under General Common Law would have been barred by limitation.

Albeit, having said that, we are not required to examine the merits of the claim of the appellant, but as learned counsel for the appellant stressed upon the acquittal of the appellant to contend that it would vitiate the order of punishment passed against him, we consider it expedient to address this issue. The position of law is settled that acquittal in a criminal case, by itself, cannot be a ground to set aside the order of punishment passed by the disciplinary authority. It does not automatically result in vitiating the disciplinary proceedings and reinstatement of the delinquent employee. Needless to assert that standard of proof required to establish the charges against the accused in a criminal trial and the misconduct against the delinquent employee in the disciplinary proceedings are altogether different. In the first, the guilt has to be established beyond reasonable doubt, whereas in the other the charges can be proved on preponderance of probability. We may, at this stage, even refer to the decision of the Supreme Court in **The State of Rajasthan and others Vs. Heem Singh, 2020 SCC OnLine SC 886.**

Upon being pointedly asked, learned counsel for the appellant failed to cite any decision to the contrary or to substantiate his argument.

Thus, the order of punishment, whereby two annual increments of the

appellant were stopped with cumulative effect, could not be interfered with.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

17.10.2022
AK Sharma/Rajan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No