

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

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LPA No.867 of 2021 (O&M)
Date of Decision: August 1st, 2022

Suresh Kumar and another

....Appellants

Versus

Presiding Officer, Labour Court-II, Gurugram and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Jaspal Singh Maanipur, Advocate
for the applicant/appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.2087-LPA of 2021

Prayer in this application is for condonation of delay of 30 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the Clerk of the counsel, the same is allowed.

Delay of 30 days in re-filing the appeal stands condoned.

CM No.2088-LPA of 2021

Prayer in this application is for condonation of delay of 17 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of applicant-appellant No.1, the same is allowed.

Delay of 17 days in filing the appeal stands condoned.

LPA No.867 of 2021 (O&M)

Challenge in this appeal is to the judgment dated 28.05.2019 passed by the learned Single Judge vide which a consolidated writ petition filed by the appellants challenging two separate awards of even date i.e. 20.08.2007

passed by the Labour Court-II, Gurugram, rejecting the reference qua termination of the appellants-workmen from service on 22.08.1997 and holding them non-entitled for reinstatement in service has been dismissed on the grounds of delay and laches as also the challenge to the two separate awards dated 05.08.2014 (Annexure P-8) which were based upon fresh cause of action alleging violation of Section 25H of The Industrial Disputes Act, 1947 (hereinafter referred to as the '1947 Act') by the management in the year 2006 for which appellants were held entitled for benefit for post of Pump Attendant with effect from 12.09.2006 against term appointment on consolidated salary of ₹3,000/- per month along with consequential benefits has been dismissed disentitling them for the said benefit from the date of initial termination on the ground that the earlier awards dated 20.08.2007 stood finalized against them.

2. Learned counsel for the appellants submits that the dismissal of the writ petition by the learned Single Judge on the ground of delay and laches as also the fact that the consolidated challenge to the awards where there were two separate references cannot be sustained as there is no period of limitation prescribed nor does it mandate that the Limitation Act would be applicable to the writ petition. In exercise of its powers under Article 226 of the Constitution of India, the High Court can exercise its jurisdiction where there is apparent illegality which needs to be rectified. He asserts that the learned Single Judge has failed to exercise its discretion in favour of the workmen when it is apparent that the provisions of Section 25H of the 1947 Act had been violated entitling them to reinstatement in service from the initial date of their termination. On merits also, it has been asserted that the appellants should have been given opportunity to lead evidence for which

the matter should have been remanded back to the Labour Court for fresh decision. There is patent illegality on the part of the Court which needs to be rectified in the present appeal. In support of these contentions, counsel for the appellants has placed reliance upon the judgment of this Court in *Mani Ram Versus The Presiding Officer, Labour Court, Ambala 1996 (2) RSJ 95* and two judgments of the Hon'ble Supreme Court in *Kuldeep Singh Versus G.M., Instrument Design Development and Facilities Centre and another 2010 (14) SCC 176*, *Vetindia Pharmaceuticals Limited Versus State of Uttar Pradesh and another 2021 (1) SCC 804*, which deal with the aspect of delay and laches while exercising the extraordinary writ jurisdiction by the High Court under Article 226 of the Constitution of India holding that the relief cannot be declined on the ground of delay alone depending upon the facts and circumstances of the case.

3. We have considered the submissions made by the counsel for the appellants and with his assistance, have gone through the judgments passed by the learned Single Judge as also the impugned awards including the pleadings.

4. Briefly the facts need to be referred to for the purposes of understanding the factual gamut. Both the appellants were initially appointed as Class-IV employees on daily wage basis in the office of the Executive Engineer, PWD, Public Health Division No.1, Gurugram, in September and December 1995 respectively. Their services were terminated by the Executive Engineer, Public Health Engineering Division, Gurugram-respondent No.3 vide separate orders dated 21.08.1997 in terms of instructions issued by the Superintending Engineer, PWD, Public Health Circle, Gurugram-respondent No.2 on the principle of 'last come first go' by

requiring them to collect retrenchment compensation along with wages in lieu of notice in terms of Section 25F of the 1947 Act. The instructions further required that no junior of the workmen to be retained in service whose services have to be dispensed with. Both the appellants namely Suresh Kumar-appellant No.1 and Gulab Singh-appellant No.2 put forth their grievance before the competent authority under the 1947 Act leading to two separate references being made to the Labour Court, Gurugram, vide orders dated 07.12.1998. On the basis of the pleadings and the evidence led by the parties, the Labour Court proceeded to pass two separate awards dated 20.08.2007 holding therein that the services of the workmen were legally terminated and, therefore, they were not entitled for reinstatement.

After the passing of the said awards, there was no challenge thereto, however, appellant No.1-Suresh Kumar came to know that fresh recruitment was carried out by the respondents in the year 2006 without giving any notice or opportunity to the appellants to join service. Persons, who were junior to the said appellant No.1, had been appointed. Suresh Kumar, therefore, served a notice dated 14.09.2008 through counsel upon respondents No.2 and 3. When no response was received, *CWP No.18398 of 2008* titled as *Suresh Kumar Versus State of Haryana and another* was preferred which was disposed of by this Court vide order dated 23.10.2008, directing the department to take a final decision upon the legal notice by passing a speaking order within a period of four months from the date of receipt of the order. The legal notice, through which the claim had been made by Suresh Kumar, was rejected vide order dated 29.01.2009 denying him the right to reinstatement. This order was challenged by Suresh Kumar by filing CWP No.2757 of 2009, which was disposed of vide order dated

14.07.2009 relegating him to avail of the remedy before the Labour Court. Suresh Kumar-appellant No.1 availed of the said remedy and put forth his grievance before the appropriate authority under the 1947 Act. Reference No.71-A of 2011 was made by the authority qua the industrial dispute as raised by appellant No.1-Suresh Kumar.

5. As regards appellant No.2, no steps had been taken by him after the passing of the award dated 20.08.2007. He, therefore, accepted the said award, however, after the disposal of the writ petition of Suresh Kumar, appellant No.2-Gulab Singh woke from his slumber and also raised the industrial dispute on the same ground of violation of Section 25H of the 1947 Act as persons, who were otherwise junior to him, had been appointed. He raised a dispute in which reference No.395 of 2011 was made to the Industrial Tribunal-cum-Labour Court-II, Gurugram.

6. In the references made in the matters of the appellants, Labour Court passed two separate awards dated 05.08.2014 on the basis of the pleadings and the evidence which was led by the parties, holding that the question of termination of the services of the workmen vide orders dated 21.08.1997 could not be gone into in view of the awards dated 20.08.2007 having been passed by the Industrial Tribunal-cum-Labour Court-II, Gurugram, upholding the order of termination, however, in the light of the fact that the persons, who were junior to them, had been taken in service in the year 2006 without giving any opportunity to the appellants resulting in violation of the provisions as contained in Section 25H of the 1947 Act, they were entitled to the benefit of the post of Pump Attendant with effect from 12.09.2006 against term appointment on consolidated salary of ₹3,000/- per month along with consequential benefits as the action of the

respondents/State was found to be illegal and unjustified.

These awards dated 05.08.2014 were accepted by the respondent-department and engagement letters dated 25.05.2015 offering temporary engagement to the appellants as per the terms mentioned in the award were issued. In pursuance whereof, the appellants had joined their service.

7. These awards dated 05.08.2014 were not assailed by the appellants and they slept over them until the filing of CWP No.13000 of 2019 by the appellants challenging the awards dated 05.08.2014 i.e. after a period of almost five years of passing of the said awards along with the earlier awards dated 20.08.2007 with a prayer to set them aside and for directing the Labour Court to pass an award afresh by providing fresh opportunity to the appellants to lead evidence in support of their claim. This writ petition as preferred by the appellants had been dismissed by the learned Single Judge on the grounds of delay and laches. As regards the challenge to the award dated 20.08.2007 is concerned, the same was after a delay of 12 years and with regard to the award dated 05.08.2014, the delay was almost five years. Apart from this aspect, it has been pointed out that at no stage had appellant No.2 challenged earlier the award dated 20.08.2007. Although as far as appellant No.1 is concerned, he did prefer a writ petition in the year 2008 praying for decision of the legal notice for violation of Section 25H of the 1947 Act and then challenging the rejection order in CWP No.2757 of 2009, which was disposed of by relegating him to avail of the remedy under the 1947 Act. On the question of delay and laches, reliance has been placed upon the judgment of this Court in *CWP No.21416 of 2016* titled as *Raj Kumar Sehgal Versus Presiding Officer, Industrial*

Tribunal-cum-Labour Court and another decided on 17.10.2016. In the said judgment, reference has been made to the judgment of the Hon'ble Supreme Court in *State of M.P. and others Versus Nandlal Jaiswal and others AIR 1987 SC 251*, wherein the Hon'ble Supreme Court has held delay and laches to be a good ground to decline intervention and grant of relief in exercise of writ jurisdiction where there is no explanation or unsatisfactory explanation for such delay in approaching the Court. Another aspect which was taken into consideration was that interference at a belated stage is likely to cause public inconvenience and bring in injustice. The casual and leisurely approach on the part of the litigant was frowned upon. Similarly reference was made to the judgment of Hon'ble Supreme Court in *Suraj Mal Versus State of Haryana 2015 (1) SCT 31*, where again in the absence of any sufficient explanation for the delay, the writ petition was dismissed.

8. The judgments on which reliance has been placed upon by learned counsel for the appellants i.e. the judgment of this Court in *Mani Ram's case (supra)* and two judgments of the Hon'ble Supreme Court in *Kuldeep Singh's case* and *Vetindia Pharmaceuticals Limited's case (supra)* and the principles laid down therein need not be gone into as none of the judgments passed by the Hon'ble Supreme Court, which have been brought to the notice of the Court, totally bar the jurisdiction of the High Court to entertain a writ petition on the ground of delay and laches, however, the word of caution which has been time and again, in every judgment, mentioned and referred by the Hon'ble Supreme Court is that a person cannot just sleep over his rights as in the meanwhile others would have stepped into his shoes, which may lead to that person being faulted with in case of interference at a belated stage. Courts have also emphasized upon

the aspect of giving a just and reasonable explanation for the delay in approaching the Court entitling them to the discretionary relief as is available under Article 226 of the Constitution of India. A person cannot just go in hibernation and all of a sudden, after years together, wake up and approach the Court putting forth his claim at a belated stage at his own leisure and pleasure putting all others in peril at its discretion. Such a lethargic and irresponsible behaviour on the part of a litigant cannot be brushed aside, rather it needs to be disapproved and frowned upon so that the discretionary relief, as has been conferred upon this Court in exercise of Article 226 of the Constitution, is not misused nor can it be permitted to be a remedy for a lazy and non-serious litigant. All persons, who want to exercise their right unless restrained and refrained because for the reasons which could be just and sufficient to satisfy the Court that despite its best efforts, the remedy could not be availed of, it is then and then only that the writ jurisdiction can be invoked. It would be not only in public interest but as a matter of public policy also sane and consistent approach expected and required of the Writ Court. The principles as have been laid down by the Hon'ble Supreme Court in Nandlal Jaiswal's case (supra) and the other judgments of the Hon'ble Supreme Court are that the dismissal of the writ petition on the grounds of delay and laches cannot be faulted with as it is belated and without any reasons or justification for non-approach to the Court within a reasonable time.

9. Another aspect which needs to be pointed out here is that the Labour Court while passing its award dated 05.08.2014 has rightly observed that the award dated 20.08.2007 having sealed the fate of the appellants qua their termination being in accordance with law did not entitle them to

reinstatement in service from the initial date of their termination i.e. 22.08.1997. Violation, if any, of Section 25H of the 1947 Act by the management came into effect in the year 2006 when fresh appointments were made from amongst persons, who were not earlier a part of the organization or were junior to the appellants. They have thus been held entitled to the same benefits as were available to the persons, who have been appointed on the post of Pump Attendant with effect from 12.09.2006. Same terms and conditions of appointment have been given to them as were for the persons, who were either junior to them or were freshly appointed. On merits also, the awards as have been impugned cannot be faulted with.

10. Finding no merit in the present appeal, the same stands dismissed.

11. In the light of the dismissal of the appeal, pending applications, if any, also stand disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 1st, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes