

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-998-2019 (OM)

Date of decision: 20.10.2023

Karan Pelayi

..... Petitioner

Versus

Union Territory, Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. A.S. Salar, Advocate
for the petitioner.

Mr. Jagjot S. Lalli, Advocate
for respondent-UT. Chandigarh.

HARSH BUNGER, J.

1. Petitioner (Karan Pelayi) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the impugned order dated 09.07.2013 (Annexure P-5) whereby the petitioner was discharged from the rolls of Chandigarh Home Guards Organization, declaring that his services are no longer required.

A further prayer has been made for directing respondents to take back the petitioner on the rolls of Home Guards Organization as a Home Guard Volunteer.

2. Briefly, the petitioner was enrolled as a Home Guard Volunteer in the year 2009 and was attached with Police Station Sector 36-C, Chandigarh. A case FIR No. 290 dated 05.06.2013 under Sections 354-B, 452, 506 IPC came to be registered against the

petitioner at Police Station Sector 39, Chandigarh. As per the petitioner, he was falsely implicated in the said case FIR by the complainant. It appears that an order dated 09.07.2013 (Annexure P-5), was passed by Commandant General, Home Guards, UT Chandigarh, whereby the petitioner was discharged from the rolls of Home Guard Organization by stating that his services are no longer required.

3 The petitioner claims that in the aforesaid case FIR, he was released on bail and he kept on approaching the authorities to allow him to join duties, however, no heed was paid to his request. It appears that the aforesaid case FIR came to be quashed by this Court, vide order dated 20.12.2013 (Annexur P-6) passed in CRM-M-36835-2013 and thereafter the petitioner made a representation to the Commandant General, Home Guards, Chandigarh on 29.09.2016 (Annexure P-7) stating therein that no-one in the Home Guard Organization was paying any heed to his request and he sought indulgence of the Commandant General, Home Guards, Chandigarh into the matter. It is the case of the petitioner that subsequently, the name of the petitioner was again included in the enrollment process of Home Guards (completed on 22.07.2017), however, his name was not considered by observing that the petitioner had not appear in the enrollment process and he was marked absent by the Enrollment Committee/Board. The petitioner states that he received no intimation asking him to appear before any

authority.

4. In the aforementioned circumstances, the petitioner has filed instant writ petition before this Court.

5. In this case, written statement has been filed on behalf of respondents No. 1 and 2 through Commandant General Home Guards-cum-Director General of Police, U.T. Chandigarh, wherein the prayer made by the petitioner has been opposed, inter alia, on the ground that as far as challenge to the order dated 09.07.2013 (Annexure P-5) is concerned, the same is barred by delay and laches as the instant writ petition has been filed only in the year 2019 and vide order dated 09.07.2013 (Annexure P-5), the petitioner was discharged as his services were no longer required in terms of Rule 18 of the Punjab Home Guards Rules, 1963 (as applicable to U.T. Chandigarh). Further reliance has been made to Chapter XIV of Home Guards Compendium of Instructions, more specifically instruction contained in Clause/Para-14.4 of the said Compendium, which provides that the Commandant General or the Commandant, as the case may be, has the power to discharge any Home Guard at any time, if in his opinion his services are no longer required. Accordingly, prayer for dismissal of the writ petition has been made.

6. I have heard learned counsel for respective parties and perused the paperbook with their able assistance.

7. The petitioner was enrolled as a Home Guard Volunteer in the year 2009. The petitioner was named as an accused in case FIR

No. 290 dated 05.06.2013 (Annexure P-4). It is not disputed that the petitioner was discharged from the rolls of Home Guard Organization, vide order dated 09.07.2013 (Annexure P-5), which reads as under :-

“ With immediate effect, HGV Karan Pillai no. 150 is hereby discharged from the rolls of Chandigarh Home Guards organization as his services are no (not) longer required.”

8. A perusal of the paperbook would reveal that only one representation dated 29.09.2016 (Annexure P-7) has been attached with the paperbook to show that the petitioner had made his grievance before the Commandant General, Home Guards, U.T. Chandigarh. It appears that thereafter the petitioner had again applied for enrollment as a Home Guard Volunteer, wherein his claim was rejected as he did not appear in PE&MT and was marked absent by the Enrollment Committee/Board, as borne out from Annexure P-9 and Annexure P-10. Concededly, the petitioner has filed this writ petition in the year 2019. Respondents have opposed the prayer of the petitioner, inter alia, on the ground of delay and laches.

9. It is well settled that the period of limitation, as mandated for filing of the civil suit, is also attracted to the institution of writ petition before this Court.

10. In *Jai Bhagwan v. Deputy Director, Sheep Production*, 2003 (3) S.C.T. 851, this Court has held as under :-

“3. After hearing the learned State

counsel and perusing the record, I am of the considered view that this petition filed on 13.1.1988 cannot be entertained because it challenges the order dated 2.6.1982, Annexure P-8 after a period of over five years. Orders Annexures P-4, P-5, P-6 and P-7 have been passed even earlier to the passing of order Annexure P-8. It is well settled principle of law that the period of 3 years prescribed for filing a suit would also be applicable to the filing of the writ petition. In State of Madhya Pradesh and another v. Bhailal Bhai, AIR 1964 Supreme Court 1006 a Constitution Bench of the Supreme Court has taken the aforementioned view. In a later judgment in the case of S.S. Rathore v. State of Madhya Pradesh, AIR 1990 Supreme Court 10 a Constitution Bench of seven Judges has taken the view that in service matters concerning Civil servants and others, the period of limitation would be initially one year with power to condone the delay of six months. The maximum period, therefore, prescribed would be 1½ years. The aforementioned observations are based on the provisions of Section 21 of the Administrative Tribunals Act, 1985 (for brevity, 'the Act'). Referring to the aforementioned provisions, it has been observed that the suits which are outside the purview of the Act, would be governed

by Article 58 of the Schedule appended to the Limitation Act, 1963. In other words, in no case, the period of limitation would be over three years. The observations of their Lordships in S.S. Rathore's case (supra) read as under :-

“It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.”

For the reasons stated above, the present writ petition is hopelessly time barred and cannot be entertained. Even otherwise, no one has put in appearance to prosecute the petition. Therefore, the writ petition is dismissed ...”

11. Further, in the case of *Er. Darshan Singh Bhullar v. Punjab State Electricity Board*, 2011 (4) S.C.T. 157, a Division Bench of this Court has held as under :-

“... If any such benefit was available to the appellant then the cause of action had

arisen in 1986 or at any time subsequently when he was promoted as Assistant Engineer. The appellant should have approached the Court within a reasonable time not exceeding three years from the date cause of action had arisen. In writ proceedings, the period of limitation of three years has been read by a judgment of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964 Supreme Court 1006. The basic reason is that in writ proceedings the period of limitation cannot be more than the period prescribed for filing a civil suit. Accordingly, we are of the view that the appeal does not merit admission and is thus liable to be dismissed ...”

12. In *Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu (2014) 4 SCC 108*, this Court opined as under :-

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum C. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows :-

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary

and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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. ... A Court is not expected to give indulgence to such indolent persons-who complete 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 could have thrown the petition overboard at the very threshold.”

13. From a perusal of the entire writ petition, it is evident that the petitioner has not explained any circumstances or reason for delay in laying challenge to the order dated 09.07.2013 (Annexure P-5) whereby the petitioner was discharged. Thus, the challenge to order dated 09.07.2013 (Annexure P-5) suffers from delay and laches.

14. As regards the plea of the petitioner that his claim for enrollment as a Home Guard Volunteer (which is stated to be completed on 22.07.2017) has been wrongly rejected by stating that

the petitioner had not appeared in PE&MT whereas the petitioner was never intimated by the Enrollment Committee/Board for appearance; it is observed that respondent-Department has taken a categorical stand that the enrollment process being a public process; it was duty of the petitioner to make himself available for the same. Thus, once the petitioner has himself absented from the enrollment process of Home Guards (completed on 22.07.2017), accordingly, no relief can be granted to the petitioner on his mere plea that he was not intimated regarding presence.

15. In view of the above discussion, I do not find any merit in this writ petition and the same is accordingly dismissed.

16. Application(s) pending, if any, shall stand closed.

(HARSH BUNGER)
JUDGE

20.10.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No