

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

139

CWP-1597-2023

Date of decision: 27.01.2023

DARSHAN SINGH

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navjeet Singh Malmajra, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

The petitioner on attaining the age of superannuation retired on 30.11.2007. Pursuant to the directions of this Court in a previous writ petition, the petitioner's representation has been decided vide order dated 12.08.2022. Essentially, the petitioner seeks the quashing thereof while praying for directions to the respondents to promote him from the post of Clerk to the post of a Junior Assistant. It has been found that the petitioner was promoted as a Clerk on 05.05.1993 and as per the notification dated 19.05.1998, the post of Assistant was divided into the Junior Assistant and Senior Assistant in the ratio of 50:50.

It is evident that the writ petition suffers from the unexplained delay and laches. The petitioner retired in the year 2007. The filing of the previous writ petition and directions issued by this Court to decide the representation will not become sufficient ground to ignore the stale claim that suffers from colossal delay, put forth by the petitioner. This issue has been examined in detail by the Supreme Court in **C. Jacob Vs. Director of Geology & Min. Indus. Est. and another with I.A. No.1, 2009 AIR (SC)**

264. The relevant discussion is extracted as under:-

“The modus of `representation’

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation.

9. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed

to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgment of a jural relationship” to give rise to a fresh cause of action.”

Hence, no ground to exercise the extraordinary jurisdiction under Article 226 and 227 of the Constitution of India, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

January 27th, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*