

CWP-2263-2023

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

CWP-2263-2023

Date of decision: 06.02.2023

Shambhu Dayal Sharma

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Nikhil Kaushik, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

The present petition has been filed for issuance of directions to the respondents to count the service (w.e.f. 02.08.1971 to 04.01.1976) rendered by the petitioner in a private college (prior to taking over by the Haryana Government), as a qualifying service for the purpose of pensionary benefits.

Learned counsel for the petitioner contends that on 02.08.1971, the petitioner joined on the post of Lecturer in Commerce, at Kamla Nehru College, Jatauli Haily Mandi; that on 02.04.1980, the said College was taken over by the Haryana Government; that on 31.03.2003, the petitioner retired from the service; that the Haryana Government through its Special Secretary, Higher Education, had counted the service of the petitioner w.e.f. 01.04.1976 to 02.04.1980, as a qualifying service towards pensionary benefits and that service condition of the petitioner was governed by the Haryana Affiliated College (Pension and

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Contributory Provident Fund) Rules, 1999.

Learned counsel for the petitioner further contends that vide instructions dated 28.11.2011 issued by the Government, opportunities were granted to all the employees whose colleges had been taken over by the Government, to deposit the employer's share so that earlier period could be taken into consideration as a qualifying service for the purpose of pension; that the petitioner had opted for the pensionary benefits scheme sanctioned by the Government for counting the past service rendered in the govt. aided colleges before these were taken over by the State Government. In support of his contentions, learned counsel relies upon the judgments rendered by the Division Benches of this Court in CWP-4466-2006, titled as 'Smt. Veena Shashi Vs. State of Haryana and others', decided on 01.12.2006 and CWP-2799-2007, titled as 'S.M.Acharya Vs. State of Haryana and another', decided on 23.01.2008.

I have heard the learned counsel for the petitioner.

Indisputably, the petitioner retired from the service on 31.03.2003. However by filing the present petition, the petitioner prays that the service rendered by him in the aforesaid College w.e.f. 02.08.1971 to 01.04.1976, be counted as a qualifying service for the purpose of pensionary benefits. The petitioner has approached this Court after approximately 20 years of his retirement.

In the present case, the delay and laches on the part of the petitioner is apparent. However, there is no period of limitation for the Courts to exercise their powers under Article 226 of the Constitution and

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there can never be a case where the Courts cannot interfere in a matter after the passage of certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. This Court is not expected to give indulgence to such indolent persons like the petitioner.

It is well settled that if a person has a legal or statutory right to be enforced against the respondents, he should ventilate his grievance before the competent authorities, within a time limit, if provided under the statutory rules or any instructions issued by the Government from time to time. If there is no such rule or instructions prescribing a time limit, then the person who alleges infringement of rights or denial of any benefit, arising under Government rules and instructions, ought to have approached the Court within a reasonable time. What is reasonable time has not been spelt out in any rule.

However, the Hon'ble Supreme Court in Veerayeeammal Vs. Seeniammal 2002 (1) SCC 134, has explained the words "reasonable time", and held as follows:

'13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual

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and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

'A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.'

In Chairman, U.P. Jal Nigam and another v. Jaswant Singh AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay held as follows:

"13. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

In Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T. T. Murali Babu, 2014(1) RSJ 542, the Hon'ble Supreme 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 Co. 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.”

14. In State of Maharashtra v. Digambar, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise

of such power, when he approaches it with unclean hands or blameworthy conduct.

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*

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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.” [Emphasis supplied]

In State of Uttaranchal and another Vs. Sri Shiv Charan

Singh Bhandari and others, (2013) 12 SCC 179, the Hon'ble Supreme

Court has held as under:

“22. We are absolutely conscious that in the case

at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

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In view of the above discussion, the present petition stands dismissed on account of delay and laches.

06.02.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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