

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

CWP-14553-2001 (O&M)
Date of Decision: 20.11.2023

LABH SINGH

...Petitioner

Versus

THE PRESIDING OFFICER, LABOUR COURT, LUDHIANA
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. J.S. Maanipur, Advocate
and Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

Mr. Satinder Khanna, Advocate
for respondent No.6.

HARSH BUNGER, J.

Petitioner (Labh Singh) 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 order dated 15.02.2001 (Annexure P-6) passed by the learned Presiding Officer, Labour Court, Ludhiana; whereby, an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'), was dismissed.

2. Briefly, petitioner-Labh Singh filed an application under Section 33-C(2) of the Act, 1947 on the plea that he joined the services of the respondent-PWD Department as *Beldar* and joined with *Panchayati Raj* Sub Division in Zila Parishad on 01.01.1967. It is the case of the petitioner that he was transferred to construction Division No.2, Ludhiana from 01.06.1973 on the same terms and conditions and thereafter, transferred to Construction Division No.3, Ludhiana on 01.09.1988 from where, he was

transferred to C.I. Division, Ludhiana from 01.02.1989. Petitioner claimed that the respondent-department has not given him due benefits of his service for the purpose of fixation of pay and arrears of salary and allowances despite revision of grades of employees including the workman. It is the case of the petitioner that he has not been granted the benefit due to him for the period from 01.01.1968 upto 31.05.1973, which has prejudiced his interest. It was further claimed that the benefit of increase in pay has also not been extended to him. Petitioner also claims that the fixation of pay from 01.06.1973 to 31.12.1977 and 01.01.1978 to 31.12.1985 and again from 01.01.1986 to 31.10.1991 has been wrongly done due to non-grant of increments due on 01.01.1968 and subsequent years onwards till the year-1973. Accordingly, the petitioner prayed that he was entitled to receive a sum of Rs.99,224/- as per the calculation chart attached with the petition.

3. The aforesaid claim of the petitioner was contested by the respondent-department on the plea that the claim was time barred. It is the stand of the department that the petitioner joined the department in 1973 and he has been given all the benefits since 1975 and nothing is due against them. It was stated that no leave with wages for the period from 01.01.1967 to 01.06.1973 is payable and he had availed all leaves during the period. Accordingly, the prayer was made for dismissal of the application.

4. Zila Parishad, Ludhiana filed a separate written statement; wherein certain preliminary objections were taken with regard to non-joinder of necessary parties. It was stated that upon taking over and absorption of the petitioner in the service of Government of Punjab in 1973 and the acceptance of the same by the petitioner herein, the relationship of employer and employee between the Zila Parishad and the petitioner stood snapped. It

was also claimed that the claim of the petitioner was time barred as the same had been raised after 27 years of the date on which the claim if any fell due. It was stated that the petitioner was claiming arrears of increment w.e.f. 1963 and therefore, the claim was hopelessly belated. Accordingly, the prayer for dismissal of the petition was made.

5. On the basis of pleadings, the issues were framed and the parties led their respective evidence.

6. After considering the material/evidence available on the record, the Labour Court, Ludhiana vide impugned order dated 15.02.2001 (Annexure P-6) rejected the claim of the petitioner.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Labour Court below has erred in law and facts in dismissing the application under Section 33-C(2) of the 1947 Act. It is submitted that the right of the petitioner to get increment was pre-determined right under Rule 4.7 of the Punjab Civil Services Rule Volume-I; therefore, the petitioner was entitled to release of annual increments for the period from 01.01.1968 to 31.05.1973 and also for re-fixation of his pay in accordance with law. Learned counsel for the petitioner further contends that the Labour Court below has wrongly rejected the claim of the petitioner by holding that the same is time barred claim. It is submitted that the grant of annual increment and proper fixation of pay was a continuous cause of action and cannot be said to be time barred. It is further submitted that the respondent-department had withheld the official record in their possession and accordingly, adverse inference was required to be drawn against them. It is, thus, prayed that the writ petition be

allowed by quashing the impugned order dated 15.02.2001 (Annexure P-6) and a further direction be issued to the respondent-department to release increments from 01.01.1968 to 31.05.1973 and thereafter, re-fix the pay of the petitioner and also to pay the benefits of arrears in accordance with law.

9. Per contra, learned State counsel as well as learned counsel appearing for respondent No.6 has opposed the prayer of the petitioner on the ground that the application under Section 33-C(2) of the Act, 1947 was hopelessly time barred inasmuch as the petitioner had claimed release of increments for the period 01.01.1968 to 31.05.1973 and the application was filed in the year, 1992 i.e. after almost 19 years. It is submitted that if no period of limitation is prescribed, even then the action has to be taken within a reasonable time from the date when the cause of action had accrued. Learned counsel appearing for the respondents had supported the findings returned by the Labour Court below by submitting that the petition under Section 33-C(2) of the Act, 1947 is in the nature of execution proceedings and as regards the claim of the petitioner, no adjudication has taken place by any competent authority/Court. It is submitted that there is no pre-determined right in favour of the petitioner to claim the aforesaid relief. Accordingly, prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the petitioner, learned State counsel as well as learned counsel for respondent No.6 and perused the paper book with their able assistance.

11. Before considering the case of the petitioner, it would be appropriate to refer to the judgment rendered by the Hon'ble Supreme Court in *Municipal Corporation of Delhi vs Ganesh Razak 1995(1) SCC 235*,

wherein, it has been held as under :-

“12. The High court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen’s entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and, thereafter, for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation as incidental to the Labour Court’s power under Section 33(2) like that of the Executing Court’s power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen’s claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of ‘equal pay for equal work’ being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). The mere fact that some other workmen are alleged to have made a similar

claim by Ming writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement of the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33C(2) of the Act by these respondents."

12. In the instant case, concededly, the petitioner is claiming relief for grant of increment for the period 01.01.1968 to 31.05.1973 and he had instituted the petition in the year, 1992. The entitlement of the petitioner was disputed by the respondents herein. In view of the afore-said legal position, since there is no earlier adjudication of petitioner's entitlement or recognition of petitioner's claim by employer; therefore, the claim of the petitioner was clearly outside the scope of Section 33C(2) of the 1947 Act, therefore, no relief could have been granted to the petitioner on an application filed under Section 33-C(2) of the Act, 1947, in terms of the judgment rendered in **Ganesh Razak's** case (*supra*).

13. Still further, concededly, the application under Section 33-C(2) of the Act, 1947 was filed by the petitioner in the year, 1992 for claiming increments and re-fixation of pay for the period from 01.01.1968 to 31.05.1973 i.e. after almost 19 years from the date when the alleged cause of action had accrued in favour of the petitioner. Learned counsel for the

petitioner has placed reliance upon the judgment rendered in the case of ***M/s Bhartiya Cuttler Hammer Limited vs Presiding Officer, Labour Court-II, Faridabad and others; 2010(4) S.C.T. 349***, to contend that there is no limitation prescribed for an application under Section 33C(2) of the Industrial Disputes Act. However, I am of the considered view that even if, no period of limitation is prescribed, even then, a litigant has to approach the appropriate Forum within a reasonable time. In this regard, reference can be made to the judgment of Hon'ble the Apex Court in ***Chhedi Lal Yadav v. Hari Kishore Yadav (D) Thr. LRs., 2018(12) SCC 527***, wherein, it has been held as under:-

*"...The High Court was clearly right in the view it had taken. It is argued on behalf of the appellants that power of the Additional Collector for restoration of lands could have been exercised suo motu and since no limitation was prescribed for exercise of such power, the delay in this case may be overlooked. This submission presupposes that where the power can be exercised suo motu, such exercise may be undertaken at any time. The submission is directly contrary to a decision of this Court in the case of **Joint Collector Ranga Reddy District and Anr. v. D. Narsing Rao and Ors. (Civil Appeal Nos. 325-326 of 2015)** and connected matter reported in (2015) 3 SCC 695 where this Court affirmed the view of the Andhra Pradesh High Court. Paragraph '17' of the judgment reads as follows :*

"...that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."

Thus we have no hesitation in rejecting this contention.

11. In our view, where no period of limitation is prescribed, the action must be taken, whether suo motu or on the application of the parties, within a reasonable time. Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the Statute. In the case before us, we are clear that the action is grossly delayed and taken beyond reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the faith that it is not encumbered by any rights.

*12. We are of the view that merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay as observed by this Court in the case of **Situ Sahu and Ors. v. State of Jharkhand**, reported in (2004) 8 SCC 340.*

13. The appeal is, accordingly, dismissed...”

In *Prabhakar v. Joint Director Sericulture Department*, 2015(4) S.C.T.493, Hon'ble the Apex Court observed as under:-

“35. Let us examine the matter from another aspect, viz. laches and delays and acquiescence.

36. It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after

unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

37. This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act.

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

39. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has

waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.

14. Further, Hon'ble Supreme Court in the case of **“Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. MuraliBabu”**, 2014 A.I.R. (S.C.W.) 1142 has observed as under:-

“ - x - x -

16. Thus, the doctrine of delay and latches 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 scrutinise 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 scrutinise 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.

- x - x - ”

15. In view of the above discussion, I do not find any merit in the instant writ petition and the same is accordingly dismissed.
16. All pending application/s, if any, shall stand closed.

November 20, 2023

gurpreet

Whether speaking/reasoned:

Whether reportable:

(HARSH BUNGER)

JUDGE

Yes/No

Yes/No