

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

**LPA No.347 of 2023 (O&M)
Date of Decision: 08.05.2023**

Nachhattar Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. C.L.Sharma, Advocate for the appellant.

ARUN PALLI, J.

This is an *intra Court* appeal, under Clause X of the Letters Patent, against an order and judgment dated 20.01.2023, vide which the writ petition preferred by the appellant was dismissed on account of **delay and laches**.

Learned counsel for the appellant submits that the appellant joined as Motor Mate on 16.03.1971 in the Department of PWD B&R. He was promoted as Work Inspector on 28.03.2001 in the pay scale of 3120-5160. Vide office order dated 30.01.2008, he was assigned the additional charge of a higher post Junior Engineer (Civil). Which carried a higher pay scale of 5910-20200. He submits that appellant continued to perform the duties of the higher post, till he retired from service. But yet he was not granted the higher scale/salary of the said post. Subsequently, when he learnt that a few others employees, who were similarly placed, were granted the scale/salary of higher post, he also moved the authorities, vide representation dated 12.03.2018. But to no avail. Therefore, he was

constrained to approach this Court, vide **CWP No.33716 of 2019 (Nachhtar Singh Vs. State of Punjab and another)**, and vide order dated 20.11.2019, this Court required the respondents to decide his representation. However, vide order dated 11.08.2021, the authorities rejected his claim. And, he submits that the said order was assailed, vide a writ petition, filed by the appellant, which as indicated earlier, has since been dismissed on the ground of **delay and laches**. He asserts that the learned Single Judge apparently erred, for the order dated 11.08.2021, whereby the claim of the appellant rejected, was assailed by the appellant, vide a petition, instituted on 17.01.2023. Thus, the petition did not suffer from any **delay and laches**. Accordingly, it is urged that the decision of the Supreme Court in **C. Jacob Vs. Director of Geology & Min. Indus. Est. and another with I.A. No.1, 2009 AIR (SC) 264**, relied upon by learned Single Judge, has no application to the facts and circumstances of the present case.

We have heard learned counsel for the appellant and perused the records.

Ex facie, the appellant, vide order dated 30.01.2008, was assigned the additional charge of the post of Junior Engineer (Civil). A bare analysis of the said order shows that it was specifically recited therein that apart from the additional charge the appellant would not be granted the seniority/financial benefits: **“Apart from the above Additional Charge they will not be granted any seniority/financial benefit and the said Additional Charge can be withdrawn at any time without any notice.”**

Thus, the cause of action, if any, to claim scale/salary of the higher post accrued in the year 2008 itself. The appellant, upon attaining the age of superannuation, retired from service on 31.12.2009. Concededly, for a period of 9 years, thereafter, he did not rake up any such dispute. And, moved a representation on 12.03.2018. The order dated 20.11.2019, passed by this Court, requiring the respondents to consider and decided his representation dated 12.03.2018, would not have enured to his advantage either. For, as indicated earlier, the cause of action, if any, had accrued to the appellant on 30.01.2008. Therefore, neither the order dated 20.11.2019, passed by this Court, nor the order dated 11.08.2021, passed by the authorities, pursuant thereto would provide him a fresh cause of action. The delay that had occurred since the time a cause of action had accrued would not be wiped out or presumed to have been condoned by a judicial order. Likewise, an order passed by the authorities, pursuant to the direction issued by the Court, would not provide a fresh cause of action.

Thus the argument that the decision of the Supreme Court in **C. Jacob (supra)**, would not apply to the present case, is wholly misconceived and lacks merit. It would be apposite, at this stage, to refer to the said decision, wherein, while dealing with a similar issue, it was emphasized that Courts should desist from directing the respondents/authorities to consider the representations that are apparently stale. And, even when an order is passed, pursuant to a direction issued by the Court, such an order would not revive the stale/dead claim or furnish a fresh cause of action:-

“6. 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. 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.

7. 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.

8. 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.

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10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

Likewise, the Supreme Court in **Union of India and others**

Vs. M.K. Sarkar (2010) 2 Supreme Court Cases 59, observed:-

"15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot

be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

Thus, apparently, the petition filed by the appellant was speculative in nature and lacked *bona fide*. And, at any rate, for, it suffered from gross, inordinate and unexplained delay, the only and the inevitable conclusion that could be reached by the learned Single Judge was: the petition filed by the appellant deserved dismissal.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

08.05.2023
Manoj Bhutani

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