

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

2023:PHHC:166868

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CWP-22311-2018 (O&M)
DECIDED ON: 05.12.2023

NARESH KUMAR

... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shvetanshu Goel, Advocate for Mr. Shrey Goel, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus* directing the respondent authorities to reinstate the services of the petitioner along-with all consequential benefits thereof together with interest @ 18% per annum.

2. The factual matrix of the present case is that the employees of Municipal Committee/Corporation went on mass strike w.e.f. 16.12.1996 to 04.03.1997, in order to meet exigencies of work, the state of Haryana recruited new staff during the strike period, the petitioner was appointed on daily wages and worked as Octroi-Clerk at different octroi posts from 01.01.1997 to 31.01.1997. The respondents terminated the services of the petitioner on 31.01.1997 despite the fact that the service of the petitioner was to be continued on the said post.

3. It is submitted on behalf of the petitioner that that the respondents allowed the similarly situated employee namely Rajinder Kumar S/o Sh. Mol Raj R/o Narwana, Shamsher Singh S/ Chanda Singh and Rajesh S/o Puran Chand Sharmato continue in service. All the aforesaid persons appointed during the strike period and the authorities later on allowed them to continue in service and thereafter in the year 2005 absorbed them in Municipal Committee, Narwana. Thus the respondents have neither reinstated him in the service nor absorbed him in Municipal Committee, Narwana without any reasons and as such the action of the authorities is highly illegal, discriminatory and arbitrary, therefore, cannot be sustained in the eyes of law. It is further submitted that the petitioner met the respondents persistently and requested the respondents to reinstate into service with all consequential benefits but every time the matter was put off for one reasons or the other by the respondents. Finding no response the petitioner served a legal notice dated 25.04.2018 upon with a request to reinstate him into services like other similarly situated employee. The respondent authorities neither decided the legal notice nor has taken any action till date. Hence, the present petition.

3. A perusal of the afore facts vividly reveal that the petitioner claims to have worked for a period from 01.01.1997 to 31.01.1997 i.e. 31 days only, thereafter, he had left the job and the present petition has been filed after about 21 years. There is no explanation offered by the petitioner for such delay is found in the petition. Thus, the delay of nearly 21 years in the filing of the present petition is inordinate and the explanation offered by the petitioner is not found to be satisfactory.

4. In **State of M.P. and others vs. Nandlal Jaiswal and others,** (1986) 4 SCC 566, the Apex Court has held that the power of the High Court to

issue an appropriate writ under Article 226 of the Constitution of India is discretionary and that the High Court in the exercise of its discretionary power would not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there was inordinate delay on the part of the petitioner in filing of the writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and to grant relief in the exercise of its writ jurisdiction. The relevant extract of the judgment reads as under:-

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ 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. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We

may only mention in the passing two decisions of this Court one in Ramanna Dayaram Shetty v. International Airport Authority of India, (1979)3 SCR 1014 and the other in Ashok Kumar v. Collector, Raipur, (1980)1 SCR491 . We may point out that in R.D. Shetty's case (supra),even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.”

5. In **Ex. Capt. Harish Uppal vs. Union of India and others,(1994)** **Supp 2 SCC 195**, the Supreme Court went on to hold that even if no third party rights had intervened the High Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India at the instance of persons who do not pursue their rights and remedies properly and sleep over them. Paragraph 8 of the judgment reads as under:-

“8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea

ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”

6. In **New Delhi Municipal Council vs. Pan Singh and others**, (2007)

9 SCC 278, the Supreme Court held that though there is no period of limitation provided for filing of a writ petition under Article 226 of the Constitution of India but ordinarily a writ petition should be filed within a reasonable time and that discretionary relief may not be exercised in favour of those who approach the Court after a long time especially when there is no explanation offered for such delay. Paragraphs 16 and 17 of **Pan Singh's case (supra)** are reproduced below:-

“16. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach

the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.

17. Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time.”

7. To the same effect is the law laid down by the Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu**, 2014(4) SCC 108, wherein it has been held that the doctrine of delay and laches should not be lightly brushed aside and that in belated claims the writ Court should intervene only after weighing the explanation offered for having approached the Court after undue delay. Paragraphs 16 and 17 of the judgment in ***T.T. Murali Babu's case (supra)*** read as under:-

“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 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.

17. 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 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 Kumbhakarnaor 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.”

8. In the light of the afore discussed law laid down by the Supreme Court the inordinate delay of about 21 years in the filing of the instant petition cannot be brushed aside especially when for the same petitioner does not offer any reasonable explanation.

9. In view of the afore-said discussion, in the facts of the present case, this Court is disinclined to exercise its discretionary jurisdiction.

10. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

05.12.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No