

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

CWP-30084-2022 (O&M)
Date of decision: 18.01.2023

Bikram Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.K.Dogra, Advocate for the petitioner

Mr. Gupreet Singh, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

The petitioner, on attaining the age of superannuation, retired on 30.04.2011. He claims that though he is entitled to the pay scale of 5480-8925 w.e.f 01.03.1996, however, he was placed in the pay scale of 5000-8100. No doubt, the previous writ petition i.e CWP-11956-2016 was disposed of while directing the respondents to pass a speaking order, however, the petitioner's original claim for grant of relief suffers from unexplained delay and laches. It is well settled that mere representation shall not be a reason to cover the delay of the claims that are inherently stale. It is important to note that the Supreme Court in **C.Jacob vs. Director of Geology and Mining and Another (2008) 10 SCC 115** has noticed the ill effects of the directions issued by the Courts to decide representation without examining the case on merits. It has been held by the Apex Court that the Court in such circumstances will examine the original cause of action to file the previous writ petition and will not place its decision on the basis of the rejection, if any, pursuant to the order of the Court to decide representation. The relevant discussion

in the aforesaid judgment 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 to 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.

9. 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 realise 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 so 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 “acknowledgement of a jural relationship” to give rise to a fresh cause of action”.

If the petitioner was to file a suit for the desired relief, the same may be dismissed as time barred as the limitation period has expired. Hence, no ground to issue the writ, as prayed for, is made out.

Hence, dismissed.

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

18.01.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE