

113

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

CWP-26305-2023

Date of decision: 23.11.2023

Jitender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Malkit Kaur, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 04.07.2011 (Annexure P-2) passed by the Superintendent of Police, Rohtak, Haryana-respondent No.5, whereby the petitioner has been dismissed from service. Challenge has also been made to the order dated 14.05.2012 (Annexure P-4) passed by the Inspector General of Police, Rohtak Range, Rohtak-respondent No.4 whereby the punishment of dismissal has been reduced to stoppage of 10 increments with permanent effect. Further challenge has been made to the order dated 14.10.2016 (Annexure P-6) passed by the Director General of Police-respondent No.3 whereby the said punishment has been further reduced to stoppage of five increments with permanent effect.

2. Brief facts of the present case as emanating from the writ petition and documents annexed along with the present writ petition are that the petitioner had joined the Haryana Police in 2008 and was working as a Constable in the Haryana Police when, on account of his absence from duty for 316 days, 9 hours and 40 minutes, departmental proceedings were initiated against the petitioner and after the departmental proceedings were culminated, the Enquiry Officer had submitted a report holding that the petitioner was absent from duty for the said period without prior permission of the higher officials, without any proper reason and without any leave. On the basis of the said inquiry report, the Superintendent of Police, vide order dated 04.07.2011 (Annexure P-2) dismissed the petitioner from Government service with immediate effect. A perusal of the said order would show that it was observed by the Superintendent of Police that the petitioner being a member of the Disciplined Department, had without any oral or written permission of the higher officials, out of his free will, absented himself for a period of 316 days, 9 hours and 40 minutes which showed gross indiscipline and negligence on the part of the petitioner and that, earlier also, he was absent on many occasions and he was given an opportunity to improve but he did not pay any heed to the same. The petitioner filed an appeal against the said order and the Inspector General of Police, Rohtak Range, Rohtak, had observed that a regular inquiry had been conducted and the Enquiry Officer had found the petitioner guilty of the charges but taking a lenient view, he reinstated the petitioner in service and reduced the punishment from dismissal from service to stoppage of 10 increments with permanent effect. After a period of more than 4 years and 1 month, the petitioner had

filed revision petition dated 05.08.2016 before the Director General of Police, Haryana and the Director General of Police, Haryana, vide order dated 14.10.2016, after observing that the revision petition was highly belated and time barred and that the past record of the petitioner was not good and earlier also, he had absented himself from duty on 10 different occasion taking a further lenient view, reduced the punishment to the stoppage of 5 annual future increments with permanent effect. After a delay of more than 6 years and 11 months, the petitioner had filed writ petition bearing No.CWP-20669-2023 and when this Court was not inclined to interfere in the matter, learned counsel for the petitioner withdrew the said petition vide order dated 03.10.2023 (Annexure P-9). No liberty to file a fresh petition was either sought much less, granted. The petitioner, has, however filed the present petition on the same cause of action challenging the abovesaid orders passed by the authorities. No reason has been given in the present writ petition for filing a fresh petition on the same cause of action and only a reference in the present writ petition with respect to the filing of the previous writ petition has been mentioned in para 22 without there being any further reference as to how the present writ petition is maintainable once the previous writ petition was dismissed as withdrawn. Para 22 of the writ petition is reproduced hereinbelow:-

“22. That the petitioner has not filed such or similar writ petition in this Hon’ble Court or in the Hon’ble Supreme Court of India except CWP No.20669 of 2023, which was dismissed as withdrawn vide order dated 03.10.2023 and copy of the above order is being filed herewith as Annexure P-9.”

3. On a pointed query raised by this Court with respect to the

question as to why the present writ petition should not be dismissed solely in view of earlier order dated 03.10.2023 and also on the ground of delay and laches, learned counsel for the petitioner has submitted that the petitioner has made averments in para 17 of the petition to the effect that the petitioner had filed revision/appeal before the Home Secretary, which is pending. However, learned counsel for the petitioner could not either give the date of the said appeal/revision or the year of the filing of the same nor has referred to any Rule/Regulation which entitles the petitioner to file a revision/appeal after dismissal of a revision petition by the Director General of Police, before the Home Secretary, Haryana, Chandigarh.

4. This Court has heard learned counsel for the petitioner and has perused the paper book.

5. As has been noticed hereinabove, the previous writ petition filed by the petitioner i.e. CWP-20669-2023 challenging the same orders dated 04.07.2011, 14.05.2012, 14.10.2016, as are under challenge in the present writ petition, was dismissed as withdrawn vide order dated 03.10.2023 which is reproduced hereinbelow:-

“1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 04.07.2011 (Annexure P-6) passed by the Superintendent of Police-respondent no.5 as also the order dated 14.05.2012 (Annexure P-7) passed by the Inspector General of Police, Rohtak Range, Rohtak-respondent no.4 and order dated 14.10.2016 (Annexure P-8) passed by the Director General of Police-respondent no.3.

2. Learned counsel for the petitioner seeks to withdraw the

present petition.

3. *In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn.”*

6. No law has been cited by learned counsel for the petitioner to show that the present Civil Writ Petition challenging the same impugned orders is maintainable once the earlier writ petition has been withdrawn, more so, when neither any liberty was sought for filing a fresh petition nor any such liberty was granted. The present writ petition being completely misconceived, deserves to be dismissed on the said ground alone.

7. The present Civil Writ Petition also deserves to be dismissed on the ground of delay and laches. It is not in dispute that the petitioner was dismissed from service vide order dated 04.07.2011 passed by the Superintendent of Police and the appeal filed by the petitioner was disposed of by the Inspector General of Police, Rohtak Range, Rohtak vide order dated 14.05.2012 and the Inspector General of Police had taken a lenient view and had reduced the punishment of the petitioner from dismissal of service to stoppage of 10 annual increments with permanent effect. The petitioner slept over the matter and had filed a revision petition before the Director General of Police after a period of more than 4 years and 1 month i.e., on 05.08.2016 and yet, the Director General of Police, vide order dated 14.10.2016 even after observing that the matter is time-barred and that the past record of the petitioner was not good as he had absented himself on 10 different occasions, earlier in addition to the absence of 316 days and that too without any leave or permission from the competent authority for which he has been found guilty in the disciplinary proceedings, further took a

lenient view and reduced the punishment to stoppage of 5 annual increments with permanent effect. The present writ petition has been filed after a period of more than 7 years from the passing of the order by the Director General of Police dated 14.10.2016.

8. The Hon'ble Supreme Court has repeatedly held that a petition filed after an unexplained lapse of time should not be entertained and mere filing of repeated representations or even directions to decide said representations would not give rise to a fresh cause of action. Reference in this respect may be made to the judgment passed by Hon'ble Supreme Court of India in "**Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu**" reported as **2014(4) SCC 108** in which one of the grounds for setting aside the judgment of the High Court was the fact that the petitioner therein had approached the High Court after a delay of 4 years and it was observed by the Hon'ble Supreme Court that it was the duty of the Court to scrutinize whether such an enormous delay is to be ignored without any justification and the Hon'ble Supreme Court came to the conclusion that interference by the High Court after a lapse of 4 years was unjustified and that the writ petition should not have been entertained. The Hon'ble Supreme Court of India in the case "**State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others**" reported as **2013(12) SCC 179** had observed that repeated representations or reply to such representations cannot furnish a fresh cause of action or revive a stale or dead claim and that the issue of limitation or delay should be considered with reference to the original cause of action and not with reference to the date on which an order was passed in compliance of the Court's directions

and 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. In “**Chairman, U.P. Jal Nigam and Anr. v. Jaswant Singh & Anr.**” reported as **2006(11) SCC 464**, the Hon'ble Supreme Court had rejected the claim of the persons who were guilty of delay and had approached the Courts after some years and had sought to raise the plea that similarly situated persons, who had filed the writ petitions earlier, had been granted the relief.

9. The judgment of the Hon'ble Supreme Court in “***State of Uttaranchal's case (supra)***” has further been referred to in the latest judgment of the Hon'ble Supreme Court passed in **State of West Bengal Vs. Debabrata Tiwari and Others** reported as **2023-SCC-Online-SC-219**. The relevant portion of the same is reproduced hereinbelow:-

“37. Whether the above doctrine of laches which dis-entitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that dis-entitled a party for grant of relief from a High Court in the exercise of its discretionary power under A Article 226Â of the Constitution.

38. In State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

"9. ... the High Court in 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 and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

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40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005- 2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in **State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179**, wherein the following observations were made:

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time."

10. The argument raised by the learned counsel for the petitioner to explain the delay of more than 7 years to the effect that the petitioner had

filed a revision/appeal before the Home Secretary, Haryana, Chandigarh (Annexure P-7), is completely misconceived. Neither the date of the said revision/appeal is mentioned in Annexure P-7 nor any such date, year has been mentioned in the petition. On a pointed query raised by this Court, learned counsel for the petitioner has neither been able to state the year in which the said appeal/revision was filed nor has been able to show any provision of law under which such revision/appeal would be maintainable after the decision of the revision petition by the Director General of Police, Haryana dated 14.10.2016. Thus, the filing of the said appeal/revision (Annexure P-7) would not further the case of the petitioner.

11. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition, being completely misconceived and devoid of merits, deserves to be dismissed and is accordingly, dismissed.

23.11.2023
Pawan

(VIKAS BAHL)
JUDGE

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