

CWP-357-2024

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2024:PHHC:002452

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-357-2024

Date of decision : 10.01.2024

Indervesh

... Petitioner

Versus

Punjab and Haryana High Court, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Raj Mohan Singh, Advocate and
Mr.Pardeep Balyan, Advocate
for the petitioner.

Mr.Kshitij Sharma, Advocate
for the respondents.

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, order or direction especially in the nature of certiorari for quashing the order dated 22.09.2016 (Annexure P-3) passed by respondent no.2 whereby the service of the petitioner, who was working at the post of Peon/ Chowkidar on probation, was dispensed with during his probation period. Challenge is also to the order dated 28.07.2017 (Annexure P-5) vide which the appeal filed by the petitioner has been dismissed.

2. Brief facts of the present case are that the petitioner was offered appointment to the post of Peon in Kurukshetra Sessions Division vide office memorandum no.11691 dated 03.10.2013 and in response thereto, the petitioner joined duties on 17.10.2013. The service of the petitioner was governed by the Haryana Subordinate Courts Establishment (Recruitment

and General Conditions of Services) Rules 1997 (hereinafter referred to as “1997 Rules”) which provides that the employee would remain on probation for a period of 2 years and further provides that if in the opinion of the appointing authority, the work and conduct of a member of the service during the period of probation is not satisfactory, and in case the member is recruited by direct recruitment, then their services can be dispensed with. The maximum period of probation including extension is 3 years. Vide order dated 14.06.2016 passed by the District and Sessions Judge, Kurukshetra, the probation period of the petitioner was extended for another year in view of Rule 8 of the 1997 Rules and also in view of the recommendations made by the Committee vide its report dated 02.06.2016. A perusal of the order dated 22.09.2016 (Annexure P-3) would further show that vide order dated 07.12.2015, the District and Sessions Judge, Kurukshetra, had sought a report from the Judicial Officers under whom the petitioner had worked during the period from 17.10.2013 to 16.10.2015. The Judicial Officers, under whom the petitioner had worked, had submitted their reports, the details of which have been given at pages 22 and 23 and each of the Judicial Officer had submitted that the work of the petitioner was not satisfactory or was unsatisfactory. The overall grade recorded in Annual Confidential Report of the petitioner was “average” for the year 2014 and “below average” for the year 2015. After taking into consideration all the said factors, the District and Sessions Judge, Kurukshetra vide impugned order dated 22.09.2016, while exercising the powers under Rule 8(2) of the 1997 Rules, dispensed with the services of the petitioner during the probation period with immediate effect and a copy of the said order was ordered to be delivered to the petitioner through the Presiding Officer.

order dated 28.07.2017 (Annexure P-5). A perusal of the said order would show that there was a delay in filing the appeal but however the same was condoned. In the said order it was observed that the petitioner had completed his 2 years probation period on 16.10.2015 and after examining his conduct, the District and Sessions Judge, Kurukshetra, had extended the period of probation for another 1 year, thus, making it to a total period of 3 years which was the maximum period provided under the Rules and it was observed that the petitioner was thus aware of his work and conduct not being satisfactory. It was also observed that even a perusal of the ACRs of the petitioner showed that he had been graded “average” and “below average” and thus, the present petitioner was aware that he was not working upto the mark. Further reference was made to the effect that the District and Sessions Judge had taken into account the report submitted by the four Judicial Officers under whom the present petitioner had worked and all the said Judicial Officers had found the work and conduct of the petitioner unsatisfactory and accordingly, his services were dispensed with. While dismissing the appeal, the judgment of the Hon’ble Supreme Court in ***Krishnadevaraya Education Trust vs. L.A. Balakrishna*** reported as **(2001) 9 SCC 319** was taken into consideration in which it was observed that a probationer is on test and if the services of the said probationer are found not to be satisfactory, then the employer has, in terms of the letter of appointment the right to terminate the services and it was further observed that even if in the order passed, it has been concluded by the competent authority that the job proficiency of the employee was not up to the mark, then also the same would be a valid reason for dispensing with the services of the employee and the said reason cannot be cited and relied upon by contending that the termination was by way of punishment. On the basis of

said judgment, the argument raised by the petitioner in the appeal on the aspect that the order was stigmatic, was rejected. The petitioner has filed the present writ petition challenging the said orders after a delay of more than 6 years and 5 months.

4. Learned counsel for the petitioner on merits has submitted that in the present case, the petitioner has been dismissed from service without issuance of any show cause notice and without any opportunity of hearing and the same is in violation of the principles of natural justice. On the aspect of delay, the learned counsel for the petitioner has referred to paragraph 16 of the writ petition.

5. The argument raised by learned counsel for the petitioner on merit with respect to no show cause notice having been issued, is meritless and deserves to be rejected. It is not in dispute that in the present case the probation period of the petitioner was extended and the said period had not lapsed. Rule 8(2) of the 1997 Rules specifically provides that if in the opinion of the appointing authority, the work and conduct of a member of service during the probation period is not found satisfactory then in case of direct recruitment, the services of the member can be dispensed with. Rule 8 of 1997 Rules is reproduced hereinbelow:-

“Rule 8 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules 1997, provides as under:-

(1) "Persons appointed to any post in the service shall remain on probation for a period of two years, if recruited by direct appointment and one year in the case of promotion, provided that:

(a) Period spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) In the case of an appointment by transfer any period of work on an equivalent or higher rank period to appointment to the service may in the discretion of the appointing authority be allowed to count towards the period of probation;

(c) Any period of officiating appointment to the service shall be reckoned as period spent on probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a member of service during the period of probation is not satisfactory, it may

If such person is recruited by direct recruitment, dispense with his service or revert him to the post, on which he held lien prior to his appointment.

If appointed otherwise:

(i) revert him to his former post; or deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may,-

(a) if his work and conduct has, in its opinion been satisfactory;

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy;

(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy;

OR

declare that he has completed his probation satisfactorily if there is no permanent vacancy.

Provided that the total period of probation including extension if any, shall not exceed three years.”

A perusal of the order dated 22.09.2016 would show that the services of the petitioner, who was working on probation, have been dispensed with during the probation period and the same cannot be termed

as a “dismissal”. Moreover, a perusal of Clause 1 and 3 of the Appointment

Letter dated 03.10.2013 (Annexure P-1) would show that it had been specifically stipulated that the petitioner was appointed purely on temporary basis and his services were liable to be terminated at any time without any notice and without assigning any reason and in case the work of the petitioner during the probation period was found to be not satisfactory, the services of the petitioner were liable to be terminated. Clause 1 and Clause 3 of the said appointment letter (Annexure P-1) are reproduced hereinbelow:-

“1. That your appointment is purely on temporarily basis and yours services are liable to be terminated at any time without any notice assigning any reason.

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3. That you shall remain on probation for a period of two years. If your work during this probation period is found not satisfactory, your services shall be liable to be terminated.”

No challenge has been made by the petitioner to the said clauses nor any law has been cited in support of the plea raised by the petitioner.

6. 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 the 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 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.

7. 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.

8. 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 Article 226A 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. It would also be relevant to take note of the judgment of the Hon'ble Division Bench dated 07.07.2022 passed in ***LPA-1088-2018*** titled as ***"State of Punjab and others vs. Shingara Singh and others"*** and other connected matters. The said case was with respect to the Home Guard Volunteers who had worked in the State of Punjab and in the said case two primary issues were framed. The first issue was with respect to the maintainability of the writ petitions filed at a belated stage after several years on account of legal notices having been served and the directions having been issued by the Court to consider the same and whether the claim would stand barred by delay and laches or not. The Hon'ble Division Bench after considering the law laid down by the Hon'ble Supreme Court in various judgments including that of ***C.Jacob vs. Director of Geology & Min. Indus. Est. and another*** reported as ***2008 (10) SCC 115*** as well as in the ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava*** reported as ***(2015) 1 SCC 347*** observed that the litigation had been initiated at a belated stage and after considering the said aspect set aside the judgment of the learned Single Judge who had entertained and allowed the writ petitions inspite of delay. The relevant portion of the said judgment is reproduced hereinbelow:-

"12. Keeping in view the above, the following two issues would arise for consideration:

(i) As to whether the writ petitions were maintainable at the belated stage after 15 years, only on account of legal notices having been served and directions issued by this Court to consider the same and whether the claim stood barred by delay and laches?

(ii) That on account of certain persons being taken back or recalled would entitle the persons employed earlier as Home Guards to have any indefeasible right as such to be recalled for duty?

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15. A co-ordinate Bench, of which one of us was a member, G.S. Sandhawalia, J., had dismissed **LPA No. 73 of 2021, Jagjit Singh vs. State of Punjab and another on 30.11.2021** wherein also, there was absence from 1994 after a service of less than 3 years. It had been noticed that the order under challenge passed by the Commandant General, Punjab Home Guard was dated 27.07.2020 whereby, the legal notice dated 06.11.2019 was being rejected in view of the orders passed by the writ Court in CWP No. 984 of 2020 on 17.03.2020. The same was dismissed on 30.11.2021 while also taking into account the judgment of the Apex Court in **C. Jacob vs. Director of Geology & Min. Indus. Est. and another, 2008 (10) SCC 115** that the cause of action does not get revived. The relevant portion of the judgment reads thus:-

*“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 exemployee 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.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct

reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.”

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17. The said principles, thus, would squarely apply to the present litigation which has been initiated at a belated stage and both the learned Single Judges have failed to advert to this fact. It is also settled principle that Article 14 of the Constitution of India does not apply in the negative context and there is no negative equality and a wrong benefit cannot be allowed to multiply. Reliance can be placed upon judgment of the Apex Court in R. Muthukumar and others vs. The Chairman and Managing Director, Tangedco and others, 2022 LiveLaw (SC) 140 wherein, it was noticed that certain set of persons were already in Court and a compromise was effected on the basis of which, claiming parity, other petitions had been filed. Therefore, while rejecting the said claim of parity, the SLP was dismissed where the benefit had not been granted and allowed where the benefit had been granted by setting aside the judgments of the Madras High Court.”

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22. In such circumstances, we are of the considered opinion, by answering the questions above that the writ petitions were reviving a dead cause which was burdened with delay and laches and were not liable to be entertained by the learned Single Judges.....

23. In such circumstances, we are of the considered opinion that the reasons given as such are well justified and, therefore, the writ petitions filed for similar relief are also not liable to be allowed.

24. Accordingly, LPA Nos.1088, 1089, 1885, 1886 and 1887 of 2018 of the State are allowed and LPA Nos. 1567, 1571, 1573, 1599, 1624, 1656, 1814, 1815, 1818, 1673, 1754 and 1855 of 2019 of the writ petitioners stand dismissed and CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020 stand dismissed.”

11. A revision petition was filed against the said judgment i.e., RA-LP-15-2022 which was dismissed vide order dated 11.11.2022. The Special Leave Petition (Civil) Diary no.4592/2023 filed against the said judgment dated 07.07.2022 and 11.11.2022 was also dismissed by the Hon’ble Supreme Court vide order dated 13.03.2023.

12. In the present case, the writ petition has been filed after a delay of more than 6 years and 5 months and the only explanation sought to be furnished by the learned counsel for the petitioner is by making a reference to paragraph 16 of the writ petition. Paragraph 16 of the writ petition is reproduced hereinbelow:-

“16. That the petitioner has engaged Sh. S.K. Sharma Advocate after the dismissal of the appeal, he challenged the above said order by way of filing the writ petition but unfortunately, the said advocate Sh. S.K. Sharma had expired and the file of the petitioner was not traceable in the office of said advocate and now the petitioner has obtained the copies of the order and the case file from this Hon’ble Court and the delay in filing the writ petition has occurred not intentional.”

A perusal of the above paragraph would show that neither the date / year of engaging the Advocate has been mentioned, nor any date of death of the said counsel has been mentioned. It has been averred that a writ petition was filed however, no number of the said writ petition or any order passed in the same has either been annexed or mentioned. Even the date/

year in which the search was made or the date/ year on which the copies of the order and case file were sought / obtained from this Court, have not been mentioned. It is highly unbelievable that a person who engaged a counsel, would for a period of more than 6 years and 5 months, not enquire about the fate of his case and also of the fact as to what happened on the first date when the case came up for preliminary hearing. The explanation given in the said paragraph is unacceptable and is apparently an afterthought, and is thus, rejected.

13. Keeping in view the above said facts and circumstances and the law laid down in the above said judgments, the present writ petition deserves to be dismissed on the ground of delay and laches as well as on merits. Moreover, this Court has found no illegality in the impugned orders passed and thus, the same are upheld and accordingly, the present writ petition is dismissed.

(VIKAS BAHL)
JUDGE

January 10, 2024.
Davinder Kumar

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