

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CWP-1195-2024
Date of Decision: 19.01.2024

Uttam Chand Rana ...Petitioner

Versus

L.I.C of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Parminder Singh Kanwar, Advocate with
Mr. Padamkant Dwivedi, Advocate for the petitioner

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of inquiry report dated 29.08.2016 (Annexure P-3) and order dated 18.01.2017 (Annexure P-6) whereby penalty of reduction by two stages in the time scale of pay has been imposed.
2. Learned counsel for the petitioner contends that on the same set of allegations, the petitioner was subjected to departmental as well as criminal proceedings. The petitioner on the one hand was subjected to punishment of reduction of pay by order dated 18.01.2017 (Annexure P-6) passed by the disciplinary authority and on the other hand, he was made to face criminal trial. The Trial Court vide judgment dated 24.05.2019 (Annexure P-2) acquitted the petitioner on the ground that prosecution has not led evidence in terms of Section 65B of Indian Evidence Act, 1872. The penalty awarded by

the disciplinary authority deserves to be set aside in view of judgment of acquittal passed by Trial Court.

3. On being asked, Mr. Dwivedi, learned counsel for the petitioner submits that the petitioner was pursuing trial pending against him, thus, he could not assail order dated 18.01.2017 passed by the disciplinary authority. The petitioner was mentally depressed and he sought voluntary retirement in 2019. In these circumstances, the petitioner could not avail remedy against the impugned order. With respect to withdrawal of civil suit, he submits that suit was withdrawn at the initial stage, thus, it cannot come in the way of present writ petition.

4. The conceded position emerging from record is that the petitioner was departmentally punished vide order dated 18.01.2017. The petitioner did not file appeal against the said order. On the same set of allegations, the petitioner was subjected to departmental proceedings as well as criminal trial. The petitioner came to be acquitted by the Trial Court vide judgment dated 24.05.2019. The petitioner even after acquittal neither opted to file appeal against the order of disciplinary authority nor filed petition before this Court. The petitioner filed civil suit which was withdrawn without liberty.

5. The Apex Court in *State of Orissa and Another v. Laxmi Narayan Das (Dead) thr. LRs & Ors, 2023 LiveLaw (SC) 527*, has held that writ petition is not maintainable where civil suit for the same relief has been withdrawn without liberty.

6. In the case in hand, the petitioner admittedly filed civil suit for the same relief as is claimed in the present petition. The civil suit was

withdrawn. The case of the petitioner is squarely covered by recent judgment of Apex Court in ***Laxmi Narayan Das (supra)***.

7. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. Where illegality is manifest, it cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. State cannot deprive vested right because of a non-deliberate delay.

8. A Division Bench of this Court vide judgment dated 04.04.2018 in ***Kartar Singh v. Managing Director, HVPNL and others, CWP No.26962 of 2015***, after noticing various judgments of Apex Court has dismissed similar petition on the ground that writ petition has been filed after a long time from the date of retirement.

9. A Coordinate Bench of this Court vide order dated 03.05.2015 in ***Sandeep Kharab v. State of Haryana and others, CWP No.5965 of 2011***; order dated 04.09.2012 in ***Bal Krishan v. State of Punjab and others, CWP No.18498 of 2011*** and order 29.11.2012 in ***Tarsem Pal v. Punjab State Power Corporation Limited and others, CWP No.13965 of 2010*** has dismissed petitions on the ground that writ jurisdiction cannot be invoked at the will and convenience of the litigant. Anyone who claims rights must be vigilant and he must enforce his rights within reasonable time.

10. In *Union of India v. N. Murugesan, (2022) 2 SCC 25*, the Court has observed that a neglect on the part of a party to do an act which law requires must stand in his way for getting the relief or remedy. The Court laid down two essential factors i.e. first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. The relevant extracts of the judgment read as:

“20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

11. In the light of above cited judgments, this Court is of the considered opinion that present petition deserves to be dismissed on the ground of delay as well as maintainability. Accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

19.01.2024
Mohit Kumar

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