

2024:PHHC:048568

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 04.04.2024

1. CWP No.2003 of 2019 (O&M)

Hira Lal Karkara
.....Petitioner
Versus
State of Punjab and others
.....Respondents

2. CWP No.19338 of 2018 (O&M)

Kulwinder Singh
.....Petitioner
Versus
State of Punjab and others
.....Respondents

3. CWP No.19839 of 2018 (O&M)

Gauri Shankar
.....Petitioner
Versus
State of Punjab and others
.....Respondents

4. CWP No.20396 of 2018 (O&M)

Raj Kumar Verma
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Priyanshu Kamra, Advocate
for the petitioner (s) (in all the cases).

Mr. Teevar Sharma, AAG, Punjab.

Ms. Roja Agnihotri, Advocate
for respondent No.4 (in CWP No.2003 of 2019)

Mr. Bhupinder Banga, Advocate
for respondent No.4 (in CWP Nos.19338, 19839

and 20396 of 2018)

NAMIT KUMAR J. (Oral)

1. This judgment shall dispose of CWP No.2003 of 2019 and CWP Nos.19338, 19839 and 20396 of 2018, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP No.2003 of 2019.

2. The petitioner has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, for quashing the order dated 24.03.2004 (Annexure P-2) passed by Municipal Council, Abohar, vide which major punishment of stoppage of 02 annual increments with cumulative effect was inflicted. Further a writ of mandamus has been sought for directing the respondents to allow the annual increments along with interest.

3. Notice of motion in the present case was issued on 20.08.2019, while recording the following contention of the petitioner:-

“Challenge in the instant petition is to the order dated 24.03.2004 (Annexure P-2) passed by the Municipal Council, Abohar, whereby a major penalty of stoppage of two annual increments with cumulative effect was imposed upon the petitioner.

It is the contention raised by counsel that imposition of penalties would be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter to be referred to as 'the 1970 Rules'). It has been argued that prior to issuance of the impugned order, no notice/inquiry had been conducted and as such, the major penalty has been imposed in violation of the procedure

2024:PHHC:048568

envisaged under Rule 8 of the 1970 Rules governing the imposition of a major penalty.

Upon being confronted with the aspect of delay in having filed the instant writ petition in the year 2019 assailing an order passed in the year 2004, counsel submits that since the petitioner is still in service, by virtue of an operation of the impugned order a recurring loss is taking place.

Notice of motion, returnable for 04.12.2019.”

4. On the question of delay, learned counsel for the petitioner has placed reliance upon the judgment of Hon’ble Supreme Court in **“Sukh Dutt Ratra and another vs State of Himachal Pradesh and others”, 2022(2) R.C.R.(Civil) 774** and **“Tukaram Kana Joshi and others through Power of Attorney Holder vs M.I.D.C. and others”, 2013(1) SCC 353.**

5. On the other hand, learned counsel for the respondents submits that since there is an inordinate delay of 15 years in impugning the punishment order, therefore, the present writ petition is liable to be dismissed on account of delay and laches without going into the merits of the case.

6. I have heard learned counsel for the parties and perused the record.

7. In a recent judgment by the Division Bench of this Court in **“Ram Kumar vs State of Haryana and others”, 2022 (3) SCT 346**, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition

2024:PHHC:048568

filed by him suffered from gross, inordinate and unexplained delay in approaching the High Court. In the said judgment, it has been held as under:-

*“10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in **New Delhi Municipal Council v. Pan Singh & Ors., 2007(9) SCC 278**, observed:*

“15. 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

2024:PHHC:048568

time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347], Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347] and Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]”

11. Similarly, in *Jagdish Lal & Ors. v. State of Haryana & Ors.*, (1997) 6 SCC 538, it was held by the Supreme Court:

“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios..... Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”

12. In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed.”

8. The Co-ordinate Bench of this Court in *“Prem Nath and others vs State of Punjab and others”*, 2018(2) SCT 687, while rejecting the claim of additional increments of acquisition of higher

2024:PHHC:048568

qualifications has held as under:-

*“3. It is the case set up on behalf of the petitioners that they had all been appointed before 19.02.1979 and had even improved/acquired higher qualifications before 19.02.1979 and as such there would be no difference between the employees working with the Punjab Government, holding corresponding post and the employees like the petitioners who have worked for Punjab Privately Managed Recognised Aided Schools. It is also the assertion made by counsel representing the petitioners that their claim would be covered in terms of decision dated 02.07.2013 rendered by this Court in a bunch of writ petitions including **CWP No.8083 of 1989 titled as Radha Krishan Narang and others vs. State of Punjab and others.***

4. Having heard counsel for the petitioners at length, this Court is of the considered view that the claim of the petitioners would not require any consideration on merits and the writ petition deserves to be dismissed on the sole ground of delay and laches.

5. Placed on record and appended at Annexure P-1 are the particulars of the petitioners. The tabulation at Annexure P-1 would show that all the petitioners stand retired on various dates between the years 1995 to 2012. Out of 32 petitioners in all, 22 petitioners superannuated more than 10 years back.

6. There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. There is also no explanation put forth by the petitioners as to why the claim raised in the instant petition was not agitated by the petitioners while they were in service. The entire thrust of the submissions advanced by counsel is that similarly situated employees had approached this Court

2024:PHHC:048568

and have been granted relief.

7. The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464**. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356**; **"Jagdish Lal v. State of Haryana, (1997)6 SCC 538** and **Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347**, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-

“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this

2024:PHHC:048568

court in ***Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300.***

Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam

2024:PHHC:048568

and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.” [Emphasis supplied]

8. The issue of delay was also dealt with by this Court in **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3)SLR 314**. In the case of Tarsem Pal(supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in

2024:PHHC:048568

the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”

*9. At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in Saroj Kumar's case(supra), matters of pay fixation involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred.*

2024:PHHC:048568

10. *The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ 502**. In M.R. Gupta's case(supra), it had been categorically held that so long as an employee "is in service" a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation "is a right which subsists during the entire tenure of service".*

11. In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.

12. Considering the dictum of law as laid down in Chariman, U.P. Jal Nigam's case (supra), the petitioners herein are not entitled to any relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.

13. Ordered accordingly."

9. The Hon'ble Supreme Court in **State of Uttarakhand and another v. Sri Shiv Charan Singh Bhandari and others, 2013(6) SLR 629**, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be revived even if such a representation has either

2024:PHHC:048568

been decided by the authority or by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took

2024:PHHC:048568

*place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In **C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115**, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-*

“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.”

10. In **Union of India and others v. M. K. Sarkar, (2010) 2 SCC 59**, the Hon’ble Supreme Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a

2024:PHHC:048568

direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. 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.

11. 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. In ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another***, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

12. In ***State of Orissa v. Pyarimohan Samantaray***, (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. To the same effect is the judgment in ***State of Orissa v. Arun Kumar Patnaik***, (1976) 3 SCC 579.

2024:PHHC:048568

13. In ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others***, (2011) 4 SCC 374, a three-Judge Bench of the Hon'ble Supreme Court reiterated the principle stated in ***Jagdish Lal v. State of Haryana***, (1997) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

14. In ***State of T. N. v. Seshachalam***, (2007) 10 SCC 137, the Hon'ble Supreme Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

“... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

15. In ***New Delhi Municipal Council v. Pan Singh and others***, (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary

2024:PHHC:048568

jurisdiction.

16. In **“Union of India & Anr vs Manpreet Singh Poonam Etc.”**, 2022(4) SCT 550, the Hon’ble Supreme Court, has held as under:-

“16. It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a "golden handshake" between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, sans the prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time. The High Court has committed an error in relying upon a circular, which has got no application at all, particularly in the light of our finding that we are dealing with a case of promotion simpliciter as against upgradation of any nature.”

17. The Division Bench of this Court in **“Amar Singh vs State of Punjab”**, 2006(3) SCT 524, while considering the similar issue, has held as under:-

*“8. In our opinion, the controversy raised in this R.S.A. is no longer res integra. The matter is squarely covered by a Division Bench judgment of this Court in the case of **Randhir Singh v. State of Haryana, 1994(3) SCT 468 : (1994-3)108 P.L.R. 386** in which it has been categorically held that suit for declaration has to be filed within the period prescribed under Article 113 of the Limitation Act, 1963. In coming to the aforesaid conclusion, the Division Bench relied on the observations of the Supreme Court in Gurdev Singh's case (supra) which were as follows :*

"The party aggrieved by the invalidity of the

2024:PHHC:048568

order has to approach the Court for relief of the declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation."

9. *In the present case, 12 orders have been passed, all stopping the increments of the appellant with or without cumulative effect. The first order is passed on 5.3.1976 and the 12th order is passed on 23.7.1984. The appellant instituted the civil suit on 12.4.1990. The suit of the plaintiff is, therefore, clearly barred by limitation and had been rightly ordered to be dismissed by the Lower Appellate Court.*

10. *At this stage, we may notice that Ms. Neelofer A. Parveen, learned Assistant Advocate General, Punjab cites judgments in support of the submission that the Lower Appellate Court has rightly allowed the appeal and dismissed the suit. Learned counsel relied on judgments of the Supreme Court in the cases of **Punjab State and another v. Darshan Kumar, 1996(2) SCT 208 : 1995 Suppl. (4) S.C.C. 220** and **State of Punjab and others v. Rajinder Singh, Conductor, 1999 S.C.C. (L & S) 664**. In both the cases, it has been held that the suit having been filed after a period of three years would be barred by virtue of the provisions contained in Article 113 of the Limitation Act.*

11. *In Rajinder Singh's case (supra), the Supreme Court reiterated the proposition of law laid down in Gurdev Singh's case (supra) in the following words:*

"After conducting department enquiry by proceedings dated 10-12-1981, two increments with cumulative effect were stopped, The suit was filed on 15.1.1988. Article 58 of the Schedule to the Limitation Act 21 of 1963 prescribes three years' limitation from the date of the order, to seek a declaration that the impugned order was illegal and did not bind him. The residuary provision is Article

2024:PHHC:048568

*113 also equally prescribes the limitation of three years. The limitation starts running from the date of passing of the order withholding increments. On expiry of three years from that date, the limitation expires by efflux of time. Consequently, the suit gets barred by limitation. Section 3 of the Limitation Act directs the court to take notice of the bar of limitation before proceeding further. This legal position was set at rest by the judgment of this Court in **State of Punjab v. Gurdev Singh**. The suit of the respondent is barred by limitation."*

12. In view of the aforesaid enunciation of law and taking into consideration the facts and circumstances, we are of the opinion that there is no merit in this R.S.A. The suit has been rightly dismissed by the Lower Appellate Court.

13. R.S.A. is dismissed. The judgment of the Lower Appellate Court is affirmed. The suit of the plaintiff is ordered to be dismissed with no order as to costs."

18. Learned Single Judge of this Court in "**Gurbax Singh vs Pepsu Board Transport Corporation and others**", 2014 SCC Online (P&H) 8063, has held that punishment of stoppage of increments is not a recurring cause of action and the punishment order of stoppage of increments has to be challenged before the Civil Court within 03 years and the suit filed after 03 years is barred by limitation. The operative part of the said judgment, reads as under:-

*"Learned counsel for the appellant has argued that the stoppage of increments with cumulative effect has a recurring cause of action affecting pay and allowance payable to him and therefore, the suit cannot be said to be barred by limitation. Reliance is placed upon judgment of this Court in **Malkiat Singh v. State of Haryana, 2008 (2) SLR 192** and **Yog Raj Mittal, since deceased through his legal representatives v. State of Punjab, 2008 (4) SLR***

2024:PHHC:048568

*169. The question of law as to whether, the punishment of stoppage of increments has the recurring cause of action or that suit is to be instituted within three years of the passing of the order was considered by the Division Bench in RSA No. 1927 of 1994 titled ‘Amar Singh v. State of Punjab’ decided on 03.05.2006. In the aforesaid case, the challenge was to 12 orders in respect of stoppage of increments with or without cumulative effect. Such suit was filed after three years of passing of the last of such order as well. The learned Division Bench relied upon an earlier judgment of the Division Bench in **Randhir Singh v. State of Haryana 1994 (3) RSJ 110** to hold that the suit instituted on 12.04.1990 against the 12 order passed on 23.07.1984 is clearly barred by limitation and had been rightly dismissed by the lower Appellate Court. While dismissing the appeals filed by the plaintiff, the Bench also placed reliance on two judgments of the Supreme Court in **Punjab State v. Darshan Kumar 1995 Supp (4) SCC 220** and **State of Punjab v. Rajinder Singh, Conductor 1999 SCC (L&S) 664**. It has been held that the suit for declaration challenging the order of punishment of the stoppage of increments has to be disputed before the civil court within three years. The suit filed after three years is barred by limitation.”*

19. To the same effect is the judgment passed in **“Guru Dutt vs Pepsu Road Transport Corporation”, 2001(3) SCT 1066**, wherein it has been held as under:-

“2. The plaintiff has been non-suited by the first appellate Court for the following reasons given in para Nos. 8 to 11 of the impugned judgment :-

"In the instant appeal, the only point for determination is whether the suit filed by the

2024:PHHC:048568

*appellant was within limitation. On this point Shri S.K. Sharma, ld. counsel for appellant has mainly argued that the suit filed by the appellant was within limitation because right of increment is recurring right. He has cited ruling **State of Punjab v. Gurdev Singh, Ashok Kumar, 1991(3) SCT 93 (SC) : AIR 1991 Supreme Court 2219**, that the limitation for challenging the impugned orders is three years. If the party approaches the Court after the expiry of statutory period, the Court cannot give the declaration sought for. In the supra ruling it has been held as under:-*

"A suit for declaration that an order of dismissal or termination from service passed against the plaintiff dismissed employee is wrongful, illegal or ultra vires is governed by Article 113. It cannot be said that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article it is to provide for cases which would not be covered by any other provision in the Limitation Act. The party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for".

*Similar view was held by our own Hon'ble High Court in **State of Punjab v. Balbir Kaur, 1996(3) Punjab Law Reporter 795** in which the penalty of withholding one increment with*

2024:PHHC:048568

cumulative effect was imposed and it was held that the period of limitation to challenge the said order was three years as provided under Article 113 of the Limitation Act (36 of 1963). In para No. 9, it was held that :

".....The order of penalty, may be illegal or otherwise, can only be set aside within a period of three years from the date of cause of action accrued to the Government employee. In the present case cause of action accrued to the plaintiff, when the order of penalty was initially passed on 30.8.1993 and later on 8.5.1986 when the order of penalty was modified. Therefore, the suit to get these orders declared as illegal and void ought to have been filed within a period of three years from the latter dated viz 8.5.1986 as by virtue of this order right to revise salary by the employee on expiry of the month was put to an end. The order of penalty still stands, it having not been set aside within the period of limitation. Once that is so, it was not open to the Courts below to grant relief as has been granted in the present case."

*To the similar effect are rulings **Punjab State v. Hardev Singh, 1997(2) SCT 101 (P&H) : 1997(1) PLR 669, State of Punjab v. Babu Singh, 1996(2) SCT 91 (P&H) : 1996 PLR 482 and the Punjab State v. Kulwinder Singh, 1995(2) PLR 718.***

9. On the other hand, ruling 1996(2) AIJ 652 (supra) cited by the learned counsel for the appellant do not apply to the facts of the present case and is quite distinguishable. In the said ruling the delinquent official has claimed arrears of increment and it was held by their Lordships that no doubt the right to increment is a recurring right and the petitioner is entitled to the same, but in view of the laches on the part of the (petitioner) payment of

2024:PHHC:048568

*any arrears of the increments prior to 1990 was declined. Similarly, the other rulings **State of Punjab v. Sandhu Singh, 1993(2) Recent Services Judgments 766, Punjab State v. Paramjit Singh, 1992(1) Punjab Law Reporter 417 and State of Punjab v. Parkash Singh, 1993(3) SCT 394 (P&H) : 1992(8) SLR 689** are also quite distinguishable and do not apply to the facts of the present case.*

*10. As far as the ruling **State of Madhya Pradesh v. Syed Qamarali, 1967 Services Law Reporter 228** cited by the learned counsel for the appellant is concerned, the same is also not applicable to the facts of the present case in view of ruling AIR 1991 Supreme Court 2219 (supra) cited by the learned counsel for the respondents.*

11. Thus, relying upon the supra authorities, I hold that the period of limitation for challenging the impugned orders was within three years. The appellant has failed to file the suit within three years and as such his suit has been rightly dismissed by the learned trial Court being time barred. The learned trial Court has, therefore, rightly appreciated the evidence while dismissing the suit being time barred and thus, I affirm the same".

*3. Faced with this difficulty, the learned counsel for the appellant submitted that both the Courts below fell in error by holding that the suit of the plaintiff was beyond limitation. He submitted that the case pertains to the arrears of salary of the plaintiff and in these circumstances there will be no limitation. In support of his contention, the learned counsel for the appellant has relied upon **1996(1) SCT 8, M.R. Gupta v. Union of India and others**. I do not*

2024:PHHC:048568

subscribe to the argument of the learned counsel for the appellant. The cited judgment is distinguishable on facts. In fact the plaintiff was challenging the order dated 18.11.1971 and other orders dated 7.4.1972, 18.7.1975 and 17.2.1977 vide which his two annual increments with cumulative effect were stopped and the period with effect from 9.1.1977 to 21.1.1977 was treated as leave without pay. The cause of action arose to the plaintiff on the date of the passing of these orders. Resultantly, the suit ought to have been filed by the plaintiff within three years. The present suit was filed in the year 1991 which was hopelessly barred by limitation. There is no error of law on the part of the Courts below.

No merit. Dismissed.

Appeal dismissed.”

20. So far as the judgments cited by learned counsel for the petitioner is concerned, it is noticed that the said judgments are not applicable to the facts of the present case as in ***Sukh Dutt Ratra’s case (supra)***, the dispute was with regard to land acquisition and in the said judgment, it was held as under:-

*“14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the **King's Bench in Entick v. Carrington [1765] EWHC (KB) 198** and by this court in **Wazir Chand v. The State of Himachal Pradesh 1955 (1) SCR 408**. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.*

2024:PHHC:048568

15. When it comes to the subject of private property, this court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In **Bishandas v. State of Punjab 1962 (2) SCR 69** this court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This court, in another case - **State of Uttar Pradesh and Ors. v. Dharmander Prasad Singh and Ors. 1989 (1) SCR 176**, held:-

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'".

16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains - can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances,

2024:PHHC:048568

we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

*18. There is a welter of precedents on delay and laches which conclude either way - as contended by both sides in the present dispute - however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service 1969 (1) SCR 808**, held:*

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct,

2024:PHHC:048568

done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

21. The judgment passed by the Hon'ble Supreme Court in ***Tukaram Kana Joshi's case (supra)***, is also not applicable to the facts of the present case as it was held in the said judgment that the appellants therein were deprived of their immovable property in the year 1964 when Article 31 of the Constitution was still intact and right to property was a part of fundamental rights under Article 19 of the Constitution of India. In the said judgment, it has been held as under:-

"10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the

2024:PHHC:048568

judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

*11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: **P.S. Sadasivaswamy v. State of T.N., AIR 1974 Supreme Court 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 Supreme Court 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., 2009(1) S.C.T. 440 : (2009)1 SCC 768**).*

12. 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. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, 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, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide:

2024:PHHC:048568

Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 Supreme Court 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 Supreme Court 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 Supreme Court 802; Dayal Singh & Ors. v. Union of India & Ors., 2003(1) RCR (Civil) 787 ; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 Supreme Court 2161).”

22. In view of the above authoritative enunciation of law by Hon’ble the Supreme Court and this Court, the aforesaid issue as raised in the present writ petition filed by the petitioner after more than 15 years, cannot be allowed to be agitated, at this stage and consequently, the present petition is liable to be dismissed on the ground of delay and latches.

23. For the reasons stated hereinabove, the present writ petition is dismissed.

(NAMIT KUMAR)
JUDGE

04.04.2024

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