

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

129

CWP-2117-2024
Date of Decision: 01.02.2024

Anirudh Dhanda ...Petitioner

Versus

State Bank of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.B.S.Rana, Sr. Advocate with
Mr. Nayandeep Rana, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate assisted by
Mr. Akit Sharma, Law Officer
Mr. Rajesh, Law Officer and
Mr. Arun Azad, Law Officer
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant is seeking setting aside of memo dated 18.07.2005 (Annexure P-5) whereby he was required to appear in written test as per promotion policy dated 15.09.2003 for promotion MMGS-III w.e.f. 01.11.1993.
2. The petitioner on 03.12.1984 joined respondent-bank as Probationary Officer. He was granted grade of Middle Management Grade Scale-II (for short 'MGS-II') w.e.f. 01.08.1990. As per policy in vogue, the petitioner was entitled to grade of MMGS-III w.e.f. 01.11.1993. The petitioner in 1991 was posted at Sonitpur (Assam). An FIR under Section 326 and 376 of IPC came to be registered against the petitioner and he was

arrested. The respondent suspended the petitioner w.e.f. 23.08.1991. During the pendency of criminal proceedings, the respondent re-instated the petitioner w.e.f. 30.08.1994. The petitioner vide order dated 20.04.1995 was allowed benefit of continuance of service as well as other benefits as admissible to him from the date of suspension to the date of his reinstatement. The criminal proceedings came to be set aside vide order dated 09.05.2001 passed by Guwahati High Court. The respondent-bank granted the petitioner grade of MMGS-III w.e.f. 01.11.2002. The petitioner represented the respondent with a request to grant him aforesaid grade w.e.f. 01.11.1993. The respondent rejected representation of the petitioner who thereafter preferred CWP No.17051 of 2002 before this Court. Single Judge of this Court vide order dated 12.10.2004 disposed of said petition with following directions :

- i) *That as the respondent had been suspended in a criminal case which was purely a personal matter, the period of suspension could in no way come in his way in making him ineligible for promotion from MMGS II to MMGS III;*
- ii) *that on re-instatement, he was entitled to have his entire case re-considered on merits the moreso as he had received Commendation Certificate for his excellent work after his re-instatement;*
- iii) *that no employee could be prejudiced on account of the fact that he had been under suspension but ultimately re-instated and criminal proceedings against him had subsequently been quashed. The ultimate direction of the learned Single Judge was as follows:-*

Consequently, I allow the writ petition and set aside the impugned orders dated 4.5.2001 and 6.3.2002 (Annexures P-12 and P-14). It is ordered that the respondent authorities shall consider the petitioner for promotion within three months from the date of this order as MMGS III with effect from the date when the petitioner became due and eligible for promotion as such or from the date his juniors/batchmates were promoted. It is further ordered that the petitioner shall be given all consequential benefits of his consequent promotions. No costs."

3. The respondent-bank preferred intra court appeal by way of LPA No.437 of 2004 before this Court. During the pendency of LPA, the respondent-bank re-considered case of the petitioner. The respondent formed an opinion that case of the petitioner should be considered a special case. The respondent considered ACR(s) of the petitioner for 1990-91, 1991-92, 1992-93 and 1993-94. The respondent found annual reports of the petitioner for the years ending 31.03.1992, 31.03.1993, 31.03.1994 with 'zero mark'. Nevertheless, the respondent with intent to grant grade of MMGS-III, asked the petitioner to qualify written test, in terms of promotion policy of 2003 which the petitioner denied on the ground that he has been promoted w.e.f. 01.11.2002 and promotion policy of 2003 cannot be made applicable to him. It is apt to notice that there was no written test prior to 2003. The petitioner did not agree to qualify written test and respondent-bank vide order dated 18.07.2005 decided not to promote the petitioner w.e.f. 01.11.1993. The copy of order dated 18.07.2005 was placed before Division Bench which was adjudicating LPA No.437 of 2004. The Division

Bench vide order dated 04.01.2006 dismissed aforesaid LPA. The Court noticed order dated 18.07.2005 of respondent as well as findings of Single Judge. The Court dismissed appeal of the respondent-bank with specific observations which are reproduced as below :

“A bare reading of these paras would show that this is a suo-motu decision taken by the bank itself and there is no direction to this effect by the learned Single Judge. As this decision is clearly independent of the judgment of the learned Single Judge which has been impugned in the present appeal, we are of the opinion that the appeal has infact been rendered infructuous. It has, however, been pointed out by Mr. Doabia and Mr. Patwalia that under paragraph 6 of Annexure R3, the bank had taken a decision that the appraisal of the respondent for the purpose of promotion would be under the Promotion Policy of 2003. We are of the opinion that if the respondent is aggrieved by any portion of Annexure R3, he would be at liberty to challenge the aforesaid rider either in departmental or court proceedings. But insofar as the appellant bank is concerned, it has, as has been noticed above, as a special case, granted some special benefits to the respondent. We are therefore of the opinion that the bank itself has taken a fair decision in order to do justice to the respondent who has been gravely wronged. We accordingly dismiss the appeal with the abovesaid observations.

4. The petitioner despite liberty granted by Division Bench did not approach this Court by way of writ petition instead he continued to pursue COCP No.1062 of 2005 which he had filed on the ground that respondent has not complied with order of Single Judge of this Court. The said COCP has been disposed of vide order dated 16.01.2024 passed by a Co-ordinate

Bench of this Court. The Court has observed that Division Bench had granted liberty to the petitioner to challenge order dated 18.07.2005 and the matter has remained pending in the contempt petition for a period of 18 years, therefore, the petitioner is granted liberty to challenge order dated 18.07.2005. The relevant extracts of the order dated 16.01.2024 read as :

“However, since the Division Bench had granted liberty to the petitioner to challenge the order dated 18.07.2005 passed by respondents (Annexure R-3) while considering his case for promotion to the post of MMGS III with effect from 1993, and thereafter, the matter remained pending in the instant contempt petition for a long period of 18 years, therefore, the petitioner is granted liberty to still challenge that order dated 18.07.2005 or any consequences thereof.”

5. Notice of motion.

6. Mr. Akshay Jain, Advocate, accepts notice on behalf of the respondents-bank and waives service.

7. With the consent of both sides, the petition is taken up for final disposal.

8. Learned counsel for the petitioner submits that the petitioner was entitled to higher grade w.e.f. 01.11.1993 and he was wrongly granted w.e.f. 01.11.2002. A false FIR was registered against him and the said FIR had no concern with his employment. had no concern with his employment. The FIR was quashed by Guwahati High Court. The petitioner was reinstated even prior to setting aside of aforesaid FIR and he was granted benefit of continuity of service still respondent did not grant higher grade

w.e.f. 01.11.1993. The petitioner has retired and his pensionary benefits are adversely effected on account of extension of higher grade w.e.f. 01.11.2002. The petitioner was diligently pursuing contempt petition, thus, he did not challenge impugned order. The period spent before contempt Court needs to be excluded while considering the question of delay and laches.

9. Learned counsel for the respondent-bank submits that Division Bench while disposing of LPA had granted liberty to petitioner to challenge impugned order dated 18.07.2005. The petitioner had filed contempt petition before disposing of said appeal. The contempt petition was filed for non-compliance of order of Single Judge and impugned order was passed subsequent to order passed by Single Judge. The case of the petitioner is hopelessly barred by doctrine of delay and laches.

10. I have heard the arguments of learned counsel for the parties and perused the record.

11. The conceded position emerging from the record is that the petitioner was entitled for higher grade w.e.f. 01.11.1993, however, prior to the said date, he was implicated in an FIR under Section 376 of IPC. The said FIR was set aside by Guwahati High Court and the petitioner was re-instated prior to order passed by High Court. The petitioner was extended higher grade w.e.f. 01.11.2002. The petitioner claimed higher grade w.e.f. 01.11.1993 which was declined by respondent-bank. The petitioner preferred writ petition before this Court which was disposed of by setting aside orders dated 04.05.2001 and 06.03.2002. The respondent-bank was

directed to re-consider claim of the petitioner for higher grade within three months from the date of order. The petitioner was not extended higher grade and he filed contempt petition before this Court. The contempt petition was filed in 2005 which was disposed of on 16.01.2024. The respondent-bank preferred LPA before Division Bench of this Court against judgment of Single Judge. A Division Bench of this Court disposed of aforesaid LPA vide order dated 04.01.2006.

12. From the perusal of order dated 04.01.2006 passed by Division Bench, it is quite evident that the Division Bench noticed that order dated 18.07.2005 was passed by respondent suo motu and it was not as per directions of the Court. It was also noticed that said order was passed in view of promotion policy of 2003. The petitioner was granted liberty to challenge said order either in departmental or Court proceedings. It is apposite to notice that the Court had further observed that the bank has considered case of the petitioner as a special case and granted him special benefits, thus, the bank has taken a fair decision in order to do justice to the petitioner who has been gravely wronged.

13. The petitioner was categorically granted liberty to challenge impugned order by way of departmental or Court proceedings. It is not case of the petitioner that he filed contempt petition after disposing of LPA by Division Bench of this Court. The contempt petition was filed before passing order by Division Bench. The petitioner as per its wisdom decided not to assail impugned order. The act of petitioner amounts to acquiescence of said order. A Co-ordinate Bench of this Court while disposing of contempt petition has granted liberty to the petitioner to challenge order

dated 18.07.2005, however, the Court has not formed an opinion that writ petition after the expiry of 18 years against the said order would be entertained. The Division Bench has formed an opinion that decision of bank was a fair decision. The Court has also noticed that case of petitioner was considered in the light of promotion policy, 2003. The Division Bench had granted liberty to challenge order dated 18.07.2005 yet had approved action of the bank. The petitioner neither assailed order dated 18.07.2005 within reasonable period nor findings of the Division Bench.

14. 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, 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.

15. 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.

16. 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.

17. In *Union of India v. N. Murugesan, (2022) 2 SCC 25*, 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. 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.”

18. In the case in hand, the petitioner refrained to assail impugned order from 2006 to 2023 though Court had granted liberty to challenge. The Court had observed that order dated 18.07.2005 is independent from order of Single Judge. The petitioner opted to pursue COCP which was filed prior to disposal of LPA by Division Bench and he cannot be permitted to lay challenge at this belated stage. By his act and conduct, the petitioner acquiesced to the action of the respondents and waived off his right, if any.

19. In the wake of judgments of this Court and considering inordinate delay on the part of petitioner, this Court does not find it appropriate to invoke its extra-ordinary writ jurisdiction. The present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

01.02.2024
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>