

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

CWP-2161-2024

Date of decision: 20.02.2024

DEV RAJ

....PETITIONER

Vs.

**DIRECTOR GENERAL MANAGER, UNITED INDIA INSURANCE
COMPANY LIMITED AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sunil Agnihotri, 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 directions to respondents to revise his pension as per last drawn pay.

2. The petitioner joined United India Insurance Company Limited as Development Officer on 27.06.1988 and he was regularized on 12.12.1990. He retired on 31.03.2013 and at that point of time, his basic salary was revised from Rs.29,395/- to Rs.56,060/- per month. His pension was initially fixed at Rs. 11,135+DA per month.

3. As per petitioner, the correct amount of his pay was Rs.56,060/- and respondent has fixed his pension without considering correct amount of last drawn pay. The petitioner served upon respondent legal notice dated 25.02.2017 which was answered by respondent vide letter dated 30.08.2017. The petitioner again served legal notice upon respondent on 10.08.2023 which has been answered vide communication dated 24.08.2023.

4. The petitioner retired in 2013 and at that point of time, his pension was fixed. As per petitioner, the respondent had fixed incorrect amount of his

pension. He served notice upon respondent in July, 2017 which was answered in August' 2017. He was paid pension arrears. The petitioner remained silent from 2017 to 2023 and again served legal notice dated 10.08.2023.

5. On being pointed out that respondent decided legal notice in 2017 and thereafter petitioner remained silent till 2023, counsel for the petitioner submits that pension is a recurring cause, thus, he can approach Authorities as well Court for revision of pension at any point of time.

6. 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.

7. 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.

8. 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.

9. 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.”

10. In the case in hand, the petitioner opted to remain silent from 2017 to 2023 and has filed writ petition in 2024. By his act and conduct, the petitioner acquiesced to the action of the respondents and waived off his right, if any. It is further apposite to notice that as per communication dated 24.08.2023, the respondent has not considered last drawn salary of the petitioner whereas revised salary was considered. The last drawn salary of the petitioner was Rs. 29,395/- whereas respondent has considered last 10 months average Rs. 54,263/-.

11. 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.

12. This order would not inhibit respondent from recalculating pension of the petitioner, if at any stage, it is found that there was incorrect calculation.

20.02.2024
anju

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes