

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:058756

(104+236)

CM-6993-CWP-2024 in/and
CWP-4073-2020
Date of Decision : April 30, 2024

Anita Rani

.. Petitioner

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bhupinder Ghai, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-6993-CWP-2024

As prayed for, the application is allowed.

Annexure P-10 is taken on record.

CWP-4073-2020

1. In the present writ petition, the grievance being raised by the petitioner is that the husband of the petitioner, who was working with the respondent-Department as a Clerk, was entitled for the grant of benefit of 2nd ACP on the account that he could not get promotion to the post of Assistant.

2. It may be noticed that the claim which is being raised in the present writ petition is stated to have accrued in the year 2007. The

husband of the petitioner unfortunately died in the year 2013. After a period of 7 years of death of the husband of the petitioner, the present writ petition has been filed.

3. It may be noticed that while the husband of the petitioner was alive, the claim as raised in the present petition has already been rejected by the Department vide order dated 20.09.2012 (Annexure P-5).

4. Upon notice of motion, the respondents have filed the reply wherein, they have stated that the benefit of 2nd ACP was declined by the Department concerned vide order dated 20.09.2012 (Annexure P-5) while the husband of the petitioner was alive, which order dated 20.09.2012 (Annexure P-5) was never challenged by him while he was in service.

5. Learned counsel for the respondents submits that the husband of the petitioner only died in the year 2013 and till then, the order rejecting the claim of husband of the petitioner for the grant of benefit of ACP was not challenged by him and even in the writ petition filed by the petitioner, there is no challenge to the said order dated 20.09.2012 hence, in the absence of any challenge to the order rejecting the claim for the grant of benefit of ACP, no relief can be granted. Learned counsel for the respondents further submits that there is a delay in filing the present writ petition as the present petition has been filed after 7 years of death of the husband of petitioner and that too for claiming the service benefit admissible to the husband and not relating to the release of any family pension, which family pension is already being extended to the petitioner.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The benefit of the grant of 2nd ACP was declined to the husband of the petitioner while he was in service vide order dated 20.09.2012

(Annexure P-5). It is a conceded position that the said order was never challenged till the life time by the husband of the petitioner. Even after the death of husband of the petitioner, the present writ petition has been filed after a period of seven years of his death and even in the said writ petition, there is no challenge to the said order rejecting the claim. Once, an order has been passed rejecting the claim for the grant of benefit of ACP, till there is any challenge to the said order, the entitlement of the petitioner with regard to the claim raised in the present petition cannot be adjudicated.

8. Even otherwise, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1852 of 1989 titled as State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991***, that every order passed in case causes prejudice has to be challenged within a period of three years. The relevant paragraphs of the said judgment are as under:-

“ 4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our [Limitation Act](#). The statute of limitation was intended to provide a time limit for all suits conceivable. [Section 3](#) of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of [Sections 4 to 24](#) be dismissed although limitation has not been set up as a defence, [Section-2\(J\)](#) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. [Section 2\(J\)](#) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of

limitation, it must fail within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the [Limitation Act](#). The residuary article is applicable to every variety of suits not otherwise provided for. [Article 113 \(corresponding to Article 120](#) of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under [Article 120](#) it was six years which has been reduced to three years under [Article 113](#). According to the third column in [Article 113](#), time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See: (i) *Mt. Bole v. Mt. Koklam and Ors.*, AIR 1930 PC 270 and (ii) *Gannon Dunkerley and Co. v. The Union of India*, AIR 1970 SC 1433).

8. It will be clear from these principles, 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.

11. The Allahabad High Court in [Jagdish Prasad Mathur and Ors. v. United Provinces Government](#), AIR 1956 All 114 has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by [Article 120](#) of the [Limitation Act](#). A similar view has been taken by Oudh Chief Court in *Abdul Vakil v. Secretary of State and Anr.*, AIR 1943 Oudh 368. That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against

the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act The decision to the contrary taken by the Punjab & Haryana High Court in. these and other cases ((i)State of Punjab v. Ajit Singh,. [1988] 1 SLR 96 and (ii) State of Punjab v. Ram Singh, [1986] 2 SLR 379 is not correct and stands overruled.”

9. In the present petition, the order dated 20.09.2012 rejecting the claim of the husband is not under challenge even in the present writ petition. Hence, no grievance can be raised by the petitioner for the non-grant of benefit of 2nd ACP, which already stood rejected as far back in 2012.

10. Even otherwise, the Court has to see delay in approaching this Court. The claim for the grant of benefit of 2nd ACP accrued in the year 2007. The husband of the petitioner was very much alive at that time and he died only in the year 2013 but no such grievance was raised by him by availing any appropriate remedy. Even after 7 years of death of husband of the petitioner, the present writ petition has been filed. The petitioner can only be stated to be stepping into shoes of her husband so as to claim the benefit of 2nd ACP which is the service benefit and not a retiral benefit.

11. Further, it may be noticed that as per the settled principle of law settled by the Hon’ble Supreme Court of India in **Civil Appeal No.5027 of 2024 titled as Mrinmoy Maity vs. Chhanda Koley and others, decided on 18.04.2024**, it has been held that in case, there is a delay in approaching the Court, the relief claimed can be denied on the ground of delay itself. The relevant paragraph of the said judgment is as under:-

“ 11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the

dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of Tridip 8 Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768 has held to the following effect:

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India

[(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying 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.”

12. Keeping in view the facts and circumstances of the present case, as the present writ petition has been filed after a delay of 13 years and that too in the absence of any challenge to the order by which the grant of relief as claimed in present petition was specifically rejected, no ground is made out for any interference by this Court for the grant of relief as claimed in the present petition.

13. Dismissed.

April 30, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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