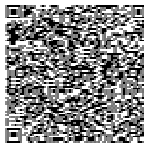


CWP-6878-2000 and other
Connected matter 1

2024:PHHC:106391



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

205 (02 cases)

CWP-6878-2000
Date of Decision : 20.08.2024

PUNJAB ROADWYS WORKERS UNION (REGD.)

.... PETITIONER

V/S

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PUNJAB,
CHANDIGARH & ORS.

.... RESPONDENTS

2.

CWP-8711-2000

PUNJAB ROADWYS EMPLOYEES UNION, BRANCH LUDHIANA
(REGISTERED UNION)

.... PETITIONER

V/S

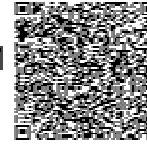
THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PUNJAB,
CHANDIGARH & ORS.

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Dinesh Nagar, Advocate and
 Mr. Gourav Nagar, Advocate
 for the petitioner.

Mr. Gurpartap Singh Bhullar, AAG, Punjab.



JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CWP-6878-2000 and CWP-8711-2000 and are disposed of as issues involved and prayer sought in both the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-6878-2000.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 23.07.1998 (Annexure P-2) whereby Tribunal has answered the reference against the workman.

3. The petitioner was working with respondent as Conductor. During 21.04.1972 to 02.05.1988, he was subjected to punishment by 15 different orders. He did not challenge said orders, however, Workers' Union served demand notice dated 06.08.1992 upon the management. The matter came to be referred to Labour Court which dismissed reference on the ground of delay and laches. The Labour Court found that first punishment order was passed on 21.04.1970 whereas demand notice was served on 06.08.1992 i.e. after 22 years. Even the last punishment order was passed on 02.05.2008 i.e. 04 years prior to demand notice. The relevant extracts of the impugned order are reproduced as below:

“The dispute was raised by the union with regard to the legality of the orders of punishment vide its demand notice dated 6.8.1992 which means a delay of more then (sic. than) 22 years in respect of first order of punishment dated 21.4.70 and nearly 4 years in respect of last order dated 2.5.88. The remaining 13

2024:PHHC:106391



orders have been passed on the different dates during dates during the intervening period.

No explanation for this inordinate delay in raising the dispute with regard to these orders is forth-coming despite the opportunity given to the union and the workman concerned in this behalf. This in-ordinate delay is rather suggestive that the workman had accepted the same as correct. It is not disputed that each of the orders had become effective immediately after the date of its being passed on the workman was well aware of the same.”

4. The impugned order has further noted that workman was subjected to punishment after following due procedure prescribed in the service rules. There are only four orders where procedure was not properly followed. The Labour Court did not set aside even those four orders on account of inordinate delay.

5. On being confronted with findings of Labour Court, Mr.Dinesh Nagar, Advocate could not advance any plausible reason for delay.

6. The applicant is not required to explain delay of each and everyday. The length of delay is not material if there is sufficient cause. The workman was subjected to punishment on 15 different occasions and orders were passed during 1972-1988. He was a government employee and a member of Workers' Union, thus, he was well aware of his act and conduct as well as rights. Passing of 15 punishment orders indicate that workman was habitual of misconduct which compelled the authorities to pass such exorbitant number of orders. There were four cases of major



penalty.

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 two Judge Bench of Supreme Court recently in '***Mrinmoy Maity Vs. Chhanda Koley and others***' 2024 SCC OnLine SC 551 has held that High Court ought to dismiss petition on the ground of delay and laches where there is no explanation of delay. An applicant who approaches the Court belatedly or in the other words sleeps over his rights for a considerable period ought not to be granted the extraordinary relief by writ Courts. Delay defeats equity. High Court may refuse to invoke its writ jurisdiction if laxity on the part of applicant has allowed the cause of action to drift away and attempts are made to rekindle the lapsed cause of action. Multiple communications cannot create cause of action. The relevant extracts of the judgment are reproduced as below:

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay

2024:PHHC:106391

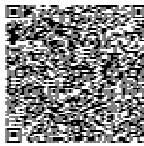


and latches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or latches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

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

2024:PHHC:106391



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.”

9. This Court finds no explanation for delay in the instant case. The dispute was raised before the Labour Court after delay of 22 years. By way of present petition, the petitioner is attempting to revive lapsed cause of action. The present petition deserves to be dismissed on the ground of delay and laches and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

20.08.2024
anju

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No