

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5671 of 2024 (O&M)
Date of decision: 12.03.2024

Kamlesh Tuteja
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Varlin Garg, Advocate
for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR J. (Oral)

1. The instant petition has been filed by the petitioner seeking a writ of mandamus for directing the respondents to release the amount of Rs.75,720/-, which was deducted in the year 2011 from the service benefits of the petitioner, alongwith interest with a further prayer to direct respondents No.2 and 3 to decide the legal notice-cum-representation dated 25.01.2024 sent by the petitioner.
2. Learned counsel for the petitioner submits that besides the recovery of Rs.75,720/-, out of total Rs.6,50,000/- as gratuity amount in terms of 5th Pay Commission implemented w.e.f. 01.01.2006, the respondent has filed a suit for recovery of remaining amount of Rs.5,74,280/- as principal and Rs.1,61,239/- as interest and the said suit was dismissed on 29.09.2015 by the Court of learned Civil Judge (Jr. Division), Chandigarh, against which an appeal was preferred by the respondent/plaintiff, which was dismissed by the learned Additional

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District Judge, Chandigarh, vide order dated 15.05.2017 and thereafter, he has submitted representation dated 11.05.2023 (Annexure P-6) for the refund of amount of Rs.75,720/- along with interest. He further submits that thereafter, a legal notice dated 25.01.2024 (Annexure P-8) has also been issued, however, neither reply has been given by the respondents to the said legal notice nor the said amount has been released, therefore, the present writ petition has been filed.

3. I have heard learned counsel for the petitioner and perused the record.

4. The petitioner is claiming the service benefit to the tune of Rs.75,720/-, which was deducted way-back in the year 2011. The petitioner retired on attaining the age of superannuation on 30.04.2010 and the present writ petition has been filed after a period of more than 13 years from the date of his retirement.

5. Once the relationship of master and servant has come to an end on retirement of an employee, the petitioner cannot agitate the stale issues after 13 years. If the claim of the petitioner for revised pay scale was genuine, he could have agitated the same when he was in service. The Division Bench of this Court in **“H.S. Gill vs Union of India and others”**, 2016(2) SCT 477, has held that an employee cannot claim the revised pay scale after retirement once he has been receiving the pay scale granted by the employer for the last 09 years. The relevant portion from the said judgment, reads as under:-

“14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs.6500-10500 right

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from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale.”

6. 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 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

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*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 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

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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.”*

7. 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 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

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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 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*

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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 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

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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 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*

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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 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

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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.

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.”

8. 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 got revived even if such a representation has either been decided by the authority or got decided 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 permitting 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

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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 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

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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.”

9. 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 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.

10. 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

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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.

11. 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.

12. 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*, (1977) 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.

13. 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.”

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14. 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 jurisdiction.

15. 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.”

16. To the same effect is the judgment of this Court in ***“Suraj Mal vs The State of Haryana and others”***, 2015(1) SCT 31, wherein the petitioner was claiming the benefit of ACP scale, after completion of

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10 years of regular service, revised pension and other retiral benefits, after nearly 05 years, after his retirement and the said claims were rejected on the ground of delay and latches.

17. 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 13 years of his retirement, 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.

18. For the reasons stated hereinabove, the present writ petition is dismissed in limine.

(NAMIT KUMAR)
JUDGE

12.03.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No