

2024:PHHC:040167

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

138

CWP-5955-2024
Date of decision: 20.03.2024

SUDESH

....PETITIONER

Vs.

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. B.S. Rathee, Advocate
 for the petitioner.

 Mr. Vijay Pal, Senior Panel Counsel
 for the respondents-Union of India.

JAGMOHAN BANSAL, J (ORAL)

1.

The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking directions to the respondents to release her compassionate allowance and family pension.
2.

The husband of the petitioner joined respondent-ITBP as constable on 04.04.1988. He was served charge-sheet dated 20.04.1995 which ultimately culminated in order of dismissal dated 27.08.1995. He preferred Civil Writ Petition before Delhi High Court seeking setting-aside of said dismissal order. During the pendency of said writ petition, he passed away on 07.07.1997. The petitioner being wife was released GPF vide letter dated 30.06.1998. The said writ petition came to be dismissed vide order dated 01.04.2011.
3.

Learned counsel for the petitioner *inter alia* submits that dismissal of above-said writ petition was not in the knowledge of the petitioner. In 2023 she came to know about the above-said writ petition. She moved representation followed by legal notice dated 24.01.2024 for release of family pension and

other retiral benefits. She in view of Rule 41 of CCS Rules, 1972 is entitled to compassionate allowance and Rule 54 of CCS Rules, 1972 family pension on account of death of her Husband.

4. I have heard the arguments of learned counsel for the petitioner and perused the record.

5. The conceded position emerging from the record is that husband of the petitioner was dismissed from service vide order dated 27.08.1995 and against the said dismissal order, he preferred Civil Writ Petition before Delhi High Court which stands dismissed. The respondent-Department in reply to the legal notice dated 24.01.2024 has categorically stated that her husband was awarded imprisonment of one year & six months' and also dismissed from services. She is not entitled to compassionate allowance.

6. No part of cause of action has arisen within the jurisdiction of this Court. None of the respondents is located within the jurisdiction of this Court. The petitioner has invoked jurisdiction of this Court on the sole ground that petitioner is resident of State of Haryana. Moreover, the husband of the petitioner died in year 1997 and petitioner has approached this Court in 2024.

7. On being asked, the reason of delay, counsel for the petitioner failed to advance any plausible reason for the delay of 26 years except to plead that pension is a recurring cause.

8. 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.

9. 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.

10. 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. In the case in hand, the petitioner opted to remain silent from 2012 to 2019 i.e. during his service as well as 2019 to 2023 i.e. post retirement. By his act and conduct, the petitioner acquiesced to action of the respondents and waived off his right, if any.

11. In ***Tilokchand Motichand v. H.B. Munshi (1969) 1 SCC 110*** and ***Rabindranath Bose v. Union of India (1970) 1 SCC 84***, Supreme Court has ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court and if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner.

12. In ***Chennai Metropolitan Water Supply & Sewerage Board V. T.T. Murali Babu (2014) 4 SCC 108***, Supreme Court has ruled:

‘16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.’

13. 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.”

14. A two Judge Bench of Hon'ble Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335* while dealing with question of territorial jurisdiction has held that "part of cause of action" must arise to constitute territorial jurisdiction. High Court cannot invoke writ jurisdiction if no part of cause of action has arisen within its jurisdiction. In the said case, this Court dismissed writ petition despite claim of petitioner that the petitioner company has its registered and corporate office at Chandigarh; the offer of the petitioner company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh; part-performance of the contract took place at Chandigarh inasmuch as Rs 4.50 crores had been deposited by the petitioner company in a fixed deposit at Chandigarh as per the request of the first respondent; the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the petitioner company; negotiations were held between the parties in the third week of March, 2005 at Chandigarh; and letter of revocation dated 23-2-2006 was received by the petitioner company at Chandigarh. The petitioner company filed SLP before Supreme Court which came to be dismissed. The relevant extracts of the judgment read as:-

"6. The High Court dismissed the writ petition only on the ground that it did not have territorial jurisdiction to entertain the writ petition as no cause of action had arisen within the territorial jurisdiction of the Court. The High Court did not enter into merits of the matter and granted liberty to the appellant Company to seek appropriate remedy before an appropriate court.

7. The said decision of the High Court is challenged by the appellant Company in this appeal. We have heard the learned counsel for the parties.

8. The appellant Company contended that a part of cause of action had arisen within the territorial jurisdiction of the

High Court of Punjab and Haryana. The appellant Company, for such submission, relied on the following facts:

- (i) the appellant Company has its registered and corporate office at Chandigarh;*
- (ii) the appellant Company carries on business at Chandigarh;*
- (iii) the offer of the appellant Company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh;*
- (iv) part-performance of the contract took place at Chandigarh inasmuch as Rs 4.50 crores had been deposited by the appellant Company in a fixed deposit at Chandigarh as per the request of the first respondent;*
- (v) the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the appellant Company;*
- (vi) negotiations were held between the parties in the third week of March, 2005 at Chandigarh;*
- (vii) letter of revocation dated 23-2-2006 was received by the appellant Company at Chandigarh. Consequences of the revocation ensued at Chandigarh by which the appellant Company is aggrieved.*

It was, therefore, submitted that at least a part of cause of action had certainly arisen within the territorial jurisdiction of the High Court of Punjab and Haryana and hence it had jurisdiction to entertain the petition. It was, therefore, submitted that the impugned order passed by the High Court deserves to be set aside by directing the Court to decide the writ petition on merits.

9. *The respondents, on the other hand, submitted that neither of the above facts nor circumstances can be said to be a part of cause of action investing jurisdiction in the High*

Court of Punjab and Haryana. According to the respondents, all substantial, material and integral facts constituting a cause of action were within the territory of the State of Sikkim and, hence, the High Court of Punjab and Haryana was fully justified in holding that it had no territorial jurisdiction to entertain, deal with and decide the lis between the parties.

10. *The respondents, in this connection, relied upon the following facts:*

- (i) registered and corporate office of the first respondent Bank is at Gangtok i.e. Sikkim;*
- (ii) secretariat of the second respondent State is situated at Gangtok i.e. Sikkim;*
- (iii) offers were called for from various parties at Gangtok;*
- (iv) all offers were scrutinised and a decision to accept offer of the appellant Company was taken by the first respondent Bank at Gangtok;*
- (v) the State Government's decision not to approve the proposal of the appellant Bank was taken at Gangtok;*
- (vi) the meeting of the Board of Directors of the first respondent Bank was convened at Gangtok and a resolution was passed to withdraw the letter dated 20-2-2004 at Gangtok;*
- (vii) a communication was dispatched by the first respondent Bank to the appellant Company on 23-2-2004 from Gangtok.*

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12. *Before entering into the controversy in the present appeal, let the legal position be examined:*

Article 226 of the Constitution as it originally enacted had twofold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court

“throughout the territories in relation to which it exercises jurisdiction” i.e. the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be “within those territories”, which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

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26. *In Union of India v. Oswal Woollen Mills Ltd. [(1984) 2 SCC 646 : 1984 SCC (Cri) 348 : AIR 1984 SC 1264 : (1984) 3 SCR 342] the registered office of the Company was situated at Ludhiana, but a petition was filed in the High Court of Calcutta on the ground that the Company had its branch office there. The order was challenged by the Union of India. And this Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom primary relief was sought were at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab and Haryana or the High Court of Delhi. The forum chosen by the writ petitioners could not be said to be in accordance with law and the High Court of Calcutta could not have entertained the writ petition.*

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37. *From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the*

suit/petition. Nevertheless it must be a “part of cause of action”, nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of “cause of action” within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.

39. For the foregoing reasons, we see no infirmity in the order passed by the High Court dismissing the petition on the ground of want of territorial jurisdiction. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, we leave the parties to bear their own costs.

15. A Full Bench of Kerala High Court in **The Registrar, Indian Maritime University Versus K.G. Viswanathan and Another; 2014 SCC OnLine Ker 21221** has considered similar issue involved in the present case. The petitioner therein approached Kerala High Court challenging the orders passed by disciplinary authorities at Tamil Nadu on the ground that the orders were communicated to the petitioner at Kerala, thereby integral part of cause of action arose within the jurisdiction of Kerala High Court. The petitions came to be dismissed on the ground that no part of the cause of action has arisen, much less any integral part of cause of action, in the jurisdiction of Kerala High Court. The relevant paragraphs read as:-

“5. In Selvin Abraham (supra), the correctness of which is doubted, while working as Assistant Manager in the Punjab & Sind Bank at Coimbatore, the appellant was proceeded against for certain misconducts. Enquiry was conducted at Coimbatore and the charges were proved. The Disciplinary Authority dismissed him from service. This order was served on him at his native place in Kerala. His appeal and review

were also dismissed. He filed a writ petition before the Kerala High Court challenging the order of suspension, dismissal and the orders passed by the appellate and review authorities. Objection was raised by the bank that this Court lacked territorial jurisdiction to entertain the writ petition as the entire cause of action arose outside the State. This contention was accepted by the learned single Judge, relying on the judgment of the Full Bench in Nakul Deo singh (supra) and the writ petition was accordingly dismissed.

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52. Since Nawal Kishore Sharma (supra) was decided “in the peculiar facts and circumstances” of the case, in view of the principles laid down in Rafiq Masih (supra), we should accept the contention that relief was granted in Nawal Kishore Sharma, in exercise of the powers of the Apex Court under Article 142 of the Constitution of India.

53. Thus, the conclusion is irresistible, that the principles laid down in Selvin Abraham are contrary, not only to the Full Bench judgment in Nakul Deo Singh but also to the Apex Court judgments we have referred to. As a result, Selvin Abraham does not laid down good law and therefore, is overruled. The question referred to the Full Bench is answered as aforesaid.

54. Coming to the cases that are referred to the Full Bench, in W.A. 743/14, by Ext.P2 notification issued by the appellant from Chennai where its head office is situated, applications were invited to various posts, including the post of Professor (Management). In response to the notification, the respondent, who is presently working as a Professor in the NSS College of Engineering, Palakkad applied and he was invited for an interview at Chennai. He appeared for the interview and was issued Ext.P4 communication from Chennai, whereby, he was offered the post and was asked to report at Chennai. He accepted the offer by Ext.P5 and requested for a posting at the Cochin campus of the appellant. By Ext.P7 e-mail, he was informed that his request

was accepted and was requested to report at the head quarters of the appellant. However, by Ext.P6 e-mail, he was informed that the offer is kept in abeyance and was thereafter issued Ext.P1 communication from Chennai, informing that the offer of appointment was withdrawn. It was in these circumstances, he filed W.P. (C) 22184/13 with the following main prayers:

“(a) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to the issue of Ext.P-1 and quash the same;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to allow the petitioner to join duty as Professor (Management) as originally ordered in terms of Exhibit P4 read with Exhibit P7 with all consequential benefits emanating therefrom;”

55. In so far as W.P. (C) 8678/14 is concerned, since 30.3.2009, the petitioner herein was working as Branch Manager of Indian Bank at Microsate at Puducherry. He continued there till 29.4.2010 when he was transferred and posted to Perinthalmanna, where, he joined on 1.5.2010. He was later transferred to Kunnamkulam on 11.7.2011 and while working at Kunnamkulam, by Ext.P2 order, he was placed under suspension pending disciplinary action. He was thereafter issued with Ext.P3 memo of charges containing various misconducts, all relating to his tenure at Puducherry and the disciplinary authority was the Assistant General Manager, Zonal office, Puducherry, the 4th respondent. Preliminary enquiry was conducted at the Zonal office, Puducherry on 30.12.2011 and the petitioner participated in the enquiry. 56. Thereafter, enquiry was also conducted at the Zonal office, Puducherry in which also, the petitioner participated. Ext.P4 is the report of the enquiry that was submitted to the disciplinary authority. The disciplinary authority, thereafter, forwarded the enquiry report along with his letter dated 20.7.2012, which was served on the petitioner

while he was at Palakkad. The petitioner submitted his objection against the findings of the enquiry officer. This was considered by the disciplinary authority, who, thereafter, issued Ext.P5 order dated 26.9.2012, removing the petitioner from service. This order was issued from Puducherry and was served on the petitioner while he was at Palakkad. He filed an appeal to the General manager, Indian Bank, Chennai which was rejected and this order was also communicated to the petitioner at Palakkad. He filed a review application to the first respondent, the Chairman and Managing Director of the Bank at Chennai. That was also rejected by Ext.P9 order which also was served on the petitioner at Palakkad. It was in these circumstances, the writ petition was filed with the following main prayers:

- 1) To issue Writ in the (nature of) certiorari to quash Ext.P3, Ext.P4, Ext.P5, Ext.P6 & Ext.P9 as legally unsustainable and violative of Article 14 & 16 of the Constitution of India.*
- 2) To issue Writ in the nature of mandamus commanding the 4th respondent to reinstate the petitioner in service with retrospective effect from the date of dismissal and grant all other consequential benefits including arrears of pay, pay and allowance etc.*
- 3) To issue writ in the nature of mandamus commanding the 4th respondent to treat the period of absence from the date of suspension to date of reinstatement as duty for all purposes and grant such other service benefits which were otherwise entitled to the petitioner untrammelled by the suspension and subsequent dismissal from service.*

57. Having gone through the pleadings, we do not see any averment in the writ petitions where the petitioners have raised any plea as to how the Kerala High Court has territorial jurisdiction over the cause of action which led them to file the writ petitions. Instead, counsel wanted us to

infer from the above pleading that an integral part the cause of action arose within the jurisdiction of this Court. However, if the facts which we have noticed above are evaluated in the light of the law laid down in Nakul Deo Singh and the Apex Court judgments, according to us, the only conclusion that is possible is that no part of the cause of action, much less any integral part of the cause of action, has arisen within the territorial jurisdiction of this Court justifying the entertainment of these writ petitions.”

16. A similar question came up for consideration before Division Bench of this Court in **M/s Vijay K. Jairath And Co. Versus Union of India and Another; CWP No.12420 of 2008 (decided on 01.05.2012)**. There was a difference of opinion among the Judges of the Division Bench, thus, matter was referred to third Judge of this Court. On the basis of opinion of majority, it was concluded that this Court, on the basis of mere communication, has no jurisdiction to entertain writ petition.

17. In the case in hand, no part of cause of action has arisen within jurisdiction of this Court. The petitioner has invoked jurisdiction of this Court on the sole ground that at present she is resident of Haryana.

18. In view of afore-stated facts and findings, this Court is of the considered opinion that neither cause of action has arisen within jurisdiction of this Court nor there is plausible explanation for delay of 26 years, thus, present petition is not maintainable. Accordingly, dismissed.

19.03.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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