



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

CWP No.9170 of 2024

Date of Decision: 09.12.2024

ASI Mukesh Kumar and others

....Petitioners

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Baljeet Singh Sidhu, Advocate
for the petitioners

Mr. Aman Dhir, DAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to respondents to grant seniority from the date their juniors were appointed as Constable.

2. The petitioners joined as Special Police Officers during 1992-1993. They came to be enrolled as Constables during 2001-2003. Through instant petition they are claiming that they should be treated as Constable from the date their juniors were enrolled as Constable. They were discriminated by enrolling as Constable in 2001-2002 whereas their juniors were enrolled as Constable prior to the said period.

3. Mr. B.S.Sidhu, Advocate, on being asked to clarify/explain reasons of inordinate delay, submits that Lakha Singh, a similarly situated Constable filed petition in 2012 though he was also enrolled much earlier. Similarly, another Constable Sukhmandar Singh filed petition in 2017, thus, this petition may be entertained.

4. The petitioners indubitably were enrolled as Constable during 2001-2002. Their colleagues from time to time filed petitions before this Court where their claims were settled. The question of enlisting of Special Police Officers as Constables for the first time, came up before this Court in 1996. Multiple orders were passed past 1996. On account of orders passed by this Court, many Special Police Officers were enlisted as Constables. Many Constables approached this Court from 2011 onwards. The litigation of seniority commenced in 2011 and order in the case of Lakha Singh was passed in 2018. This Court while passing said order specifically noted that it cannot be held that petitioners were sleeping over their right because they filed writ petition in 1996. Lakha Singh filed writ petition before this Court in 2012 and it was allowed in 2018. A period of more than two decades from the date of cause of action has passed away and even a period of six years from the date of passing of order by this Court in the case of Lakha Singh has passed away. It is a case of seniority. The seniority list cannot be disturbed as per convenience of an employee. There should be an end of litigation. The petitioners cannot be permitted to approach this Court as per their convenience.

5. A two Judge Bench of Supreme Court recently in *Mrinmoy Maity v. 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 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 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.”

6. In view of the above facts and findings, the present petition on account of delay and laches deserves to be dismissed and accordingly hereby dismissed.

09.12.2024
paramjit

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned:	Yes	
Whether reportable:		No