

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

(121)

CWP-8857-2024

Date of Decision : 22.04.2024

Jagmahender Singh

...Petitioner

versus

The State of Haryana and others

....Respondents

Coram : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present : Mr. Shubhkaraman Singh Gill, Advocate for
Mr. Kshitij Sharma, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the order dated 02.09.2013 (Annexure P-6) as well as to the order (Annexure P-9) dated 15.03.2024 (Annexure P-9) and to the order dated 21.03.2024 (Annexure P-10), whereby the petitioner has been dismissed from service and the pensionary benefits have been withheld.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The petitioner joined the respondent-State as a Clerk on 25.03.1985. Thereafter, he was promoted as Assistant on 18.01.1996. In the year 2008, FIR No.9 dated 19.09.2008 was registered against the petitioner under Prevention of Corruption Act, 1988. Immediately, the

petitioner was placed under suspension and he attained the age of superannuation on 30.06.2011. At the time of retirement, the trial in respect of FIR No.9 was still pending. On 05.03.2013, the petitioner was convicted in the said FIR and he was sentenced for imprisonment for a period of 01 year along with a fine of Rs.5000/-.

4. Keeping in view the said conviction, an order dated 02.09.2013 was passed by the respondents, dismissing the petitioner from service. In the year 2023, i.e. after a period of 10 years of being dismissed from service, the petitioner filed CWP No.11664 of 2023, claiming the benefit of pension, which petition was withdrawn by the petitioner. Thereafter, a legal notice was served by the petitioner, seeking the release of arrears of pension as well as leave encashment along with interest, which legal notice was rejected vide impugned order dated 15.03.2024 (Annexure P-9) and thereafter, vide order (Annexure P-10) dated 21.03.2024, his representations filed for seeking the pensionary benefits were also rejected.

5. The present petition has been filed, challenging the order, dismissing the petitioner from service dated 02.09.2013 as well as the orders declining the release of pensionary benefits.

6. Learned counsel for the petitioner argues that the present petition is maintainable despite the fact that the earlier petition was withdrawn without any liberty as, in the present petition challenge is to the order of termination, which was passed in the year 2013, hence, in

case the said dismissal order is set-aside, the petitioner will become entitled for the grant of pensionary benefits.

7. Keeping in view the advance copy given, the respondent-State has appeared and submits that the order dated 02.09.2013 cannot be challenged after a period of more than ten and half years, especially keeping in view the fact that the petitioner never even filed an appeal against the said dismissal order. Learned counsel for the respondents submits that as of now, even the civil suit cannot be filed challenging the said dismissal order, hence, now in order to get the pensionary benefits and to come out of the order dated 21.11.2023 (Annexure P-7) passed in CWP No. 11664 of 2023, the challenge to the order dated 02.09.2013 has been raised, hence, on the ground of delay and laches, the present petition may kindly be dismissed.

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

9. It is clear that keeping in view the conviction of the petitioner under the Prevention of Corruption Act, 1988, which reflects upon the moral of the petitioner, the petitioner was dismissed from service by the respondents on 02.09.2013. That being so, if the petitioner was aggrieved against the said dismissal order in any manner, he should have raised the grievance within the limitation period provided. Though, limitation provided for filing of the writ petition is not there but, the civil suit cannot be filed challenging the

said dismissal order even as of now. Further, as per the judgment of 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, even a void order needs to be challenged within a period of limitation i.e. three years. The relevant portion of the judgment in ***Gurdev Singh (supra)*** is 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 residu-

any 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.”

10. The petitioner is challenging the dismissal order dated 02.09.2013 after a period of ten and half years and that too without explaining as to why the petitioner did not chose to challenge the said order earlier or even in the writ petition i.e. CWP No. 11664 of 2023, which was filed for release of the pensionary benefits. In the absence of any valid justification, the claim of the petitioner qua the challenge to the dismissal order dated 02.09.2013 cannot be allowed to be raised at this stage.

11. Even otherwise, Hon’ble Supreme Court of India in a recent judgment passed in Civil Appeal No. 5027 of 2024 titled as ***Mrinmoy Maity Vs. Chhanda Koley and others***, decided on 18.04.2024, has held that the delay in seeking the remedy needs to be taken into account while considering the claim qua the orders, which were passed long ago. The Hon’ble Supreme Court of India held that where there is an inordinate delay in filing the writ petition, the High Court should not interfere and dismiss the petition on the ground of delay itself. 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 latches 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 latches, 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 latches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal v. State of W.B., (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. In the present case, the petitioner did not chose to agitate any of his claim after the passing of the order dated 02.09.2013 by which he was dismissed from service and even in the year 2023 when CWP No. 11664 of 2023 was filed, only the pensionary benefits were sought and the order of termination was not challenged and the said writ petition was withdrawn. Thereafter, the petitioner again filed a legal notice claiming the pensionary benefits, which was rejected on 15.03.2024 by giving the due details that as the petitioner was dismissed from service, the pensionary benefits cannot be released, hence, as there is an unexplained delay of more than ten years in challenging the order of termination, hence, the said prayer cannot be taken into consideration at that belated stage.

13. The conduct of the petitioner is such that he filed a writ petition in the year 2023 being CWP No. 11664 of 2023, which was

withdrawn and thereafter, he again started filing legal notice and representation to claim the same relief, which claim has also been rejected by the respondents, which have been challenged now in the present petition. Once, the claim raised before this Court was withdrawn, there was no occasion to seek the same before the authorities concerned.

14. This is total abuse of the process of law at the hands of the petitioner, which needs to be curbed with stern hand, hence, keeping in view the facts and circumstances noticed here-in-before, no ground is made out for interference by this Court, especially when, the earlier writ petition i.e. CWP No. 11664 of 2023 was withdrawn without any liberty to file a fresh one, hence, the present petition is dismissed with cost of ₹10,000/- to be deposited with Institute for Blind, Sector 26, Near Homoeopathic Medical College And Hospital, Chandigarh.

15. Dismissed.

April 22th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No