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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8934-2024

Date of Decision:23.04.2024

MANDEEP SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Lupil Gupta, Advocate with
Mr. Sumit Bhardwaj, Advocate,
Ms. Khushi Praduman, Advocate &
Ms. Ashmeen, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking direction to respondents to grant 15 marks as his height is 183 cm.
2. This is second round of litigation. The petitioner on the earlier occasion preferred Civil Writ Petition No.12832 of 2018 assailing selection of different candidates as Constables. This Court vide order dated 05.07.2021 decided a bunch of 209 petitions including Civil Writ Petition No.12832 of 2018 of the present petitioner. The petitioner in the previous round of litigation was disputing measurement of his height. This issue was also raised by other petitioners. This Court in Para 34 of the judgment asked the State to re-measure height of all the candidates who are aggrieved with their earlier measurement. Para 34 of the

judgment dated 05.07.2021 is reproduced as below:

“34. It is, however, made clear that this one time liberty/ indulgence of remeasurement of height across board is being granted in view of the concession/ stand taken by the State in its Review Application, that in order to mitigate the grievance a one time exercise can be carried out qua those, who are aggrieved against measurement of their height.”

3. The respondent concededly re-measured height of the petitioner and he was not declared successful candidate. He on 09.03.2022 approached Post Graduate Institute of Medical Education and Research (for short ‘PGIMER’), Chandigarh. The PGIMER measured his height as 183 cm. The petitioner served upon respondent legal notice dated 04.04.2024 (Annexure P-4) seeking appointment on the ground that his actual height is 183 cm whereas respondent has wrongly measured 181.8 cm.

4. From the perusal of record, it is evident that this Court vide order dated 05.07.2021 directed the respondent to re-measure height of the petitioner. The respondent in compliance of orders of this Court re-measured his height. He claims that respondent did not communicate him outcome of remeasurement. It is interesting to note that petitioner remained silent from July’ 2021 to March’ 2024 and all of sudden approached PGIMER for measurement of his height. PGIMER as per Annexure P-2 in the OPD has measured his height. The report of PGIMER nowhere indicates that height of petitioner was measured with Stadiometer. He has served legal notice in April’ 2024. By getting measured height at PGIMER and serving legal notice in March-April’ 2024, the petitioner has attempted to rekindle the lapsed cause of action.

5. 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.

6. 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 consideration 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 laches 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 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.”

7. Applying the aforesaid judgment, this Court finds no explanation for delay in the instant case. The petitioner was re-measured in 2021 and he opted to remain silent till March’ 2024. By serving legal notice, he has attempted 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

23.04.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No