

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8964-2024
Date of Decision:23.04.2024

HARBANS SINGH..... Petitioner

Versus

STATE OF PUNJAB AND ORS..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Navjot Singh, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to grant Assured Career Progression Scale (for short ‘ACP’) w.e.f. 01.01.1996.
2. The petitioner worked with respondent from August’ 1981 to March’ 2004. He is claiming benefits of ACP w.e.f. 01.01.1996. The said incentive was introduced by way of notification dated 25.09.1998 (Annexure P-1). The petitioner was in service at the time of introduction of said scale. He opted to remain silent from 1981 to 2004. He retired on 31.03.2004. He is relying upon judgment of this Court in *Amar Nath Vs. State of Punjab and others, CWP No.8573 of 2008* dated 28.05.2009 (Annexure P-4). He opted to remain silent despite said judgment.

3. On being confronted with afore-stated facts, Mr. Navjot Singh, Advocate submits that a Coordinate Bench of this Court vide judgment dated 30.01.2019 has extended benefit of ACP as was extended in the case of ***Amar Nath (supra)***, thus, delay needs to be ignored and this Court should entertain writ petition.

4. 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.

5. In ***Eastern Coalfields Ltd. v. Dugal Kumar (2008) 14 SCC 295***, supreme court has considered scope of interference in case of delay and laches. Court has held:

“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the

court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.”

6. 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.”

7. 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 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 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.”

8. In the case in hand, the cause of action arose in 1998 and at that point of time petitioner was in service. He retired in 2004. This Court in **Amar Nath (Supra)** allowed claim of petitioners therein on 28.05.2009. The petitioner has failed to explain reason of inordinate delay.

9. In the absence of any plausible reason, this Court finds that present petition suffers from vice of delay and laches. Thus, the petition deserves to be dismissed on the ground of delay and laches.

10. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

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