



113

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5785-2024
Date of Decision:09.08.2024

RAJESH KUMAR Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM
LABOUR COURT-I, GURUGRAM AND ANOTHER
..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Atul Yadav, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 06.11.2019 (Annexure P-6) whereby reference has been answered against him.
2. The petitioner joined respondent No.2 (for short 'respondent') on 02.09.1994. He was served charge-sheet on 01.12.2000. An inquiry was conducted and thereafter, he was terminated on 26.08.2012. On his application, reference was made to Labour Court which by impugned order has dismissed his claim. The Labour Court has held that there was misrepresentation of facts by workman. He has filed a false affidavit, thus, he does not deserve any leniency and relief from the Court.
3. Learned counsel for the petitioner submits that petitioner is a poor fellow and he has been deprived from his livelihood. He cannot be



denied of his rights just because of mis-statement in affidavit filed before Labour Court.

4. On being asked reason of delay, he submits that petitioner initially preferred petition before this Court in 2020 which was returned with objections by Registry.

5. He filed fresh petition on 04.03.2024. The delay has occurred on account of COVID-19 and as per judgment of Supreme Court in ***Suo Motu, Writ Petition (Civil) No.3 of 2020***, the period of two years starting from 15.03.2020 to 28.02.2022 should be ignored.

6. I have heard the arguments and perused the record.

7. The relevant extracts of findings of record by Labour Court are reproduced as below:

“19. After considering the rival submissions made on behalf of the parties and going through the proceedings of the enquiry held against the workman-claimant, I find that the above referred various acts and omissions of the workman amount to a serious misconduct on his part. The authoritative pronouncements of the Hon'ble Apex Court on the doctrine of proportionality shows that generally the choice as regards to the quantum of punishment is within the jurisdiction and discretion of the disciplinary authority. An exception is carved out only in a case where the quantum of punishment ex facie appears to be so disproportionate to the offence charged that it shocks the conscience of the Court.

At the very outset, it may be noticed in the present case that the workman has made false averments in para no. 1 of his affidavit Ex. X-1 (tendered on 30.01.2019 in his evidence on remaining issues) to the effect that he is unemployed since the date of his dismissal on 26.08.2002. However, during his cross-examination on 13.05.2019, he has clearly admitted that he is working in Svam Power



Plants Pvt. Ltd., Gurgaon. MW-1 Rajat Nakra, working as Deputy Manager in the respondent company, in his affidavit Ex. MW-1/A has also testified that the workman was found working with Svam Power Plants Pvt. Ltd., Plot No. 3, Sector-18, Maruti Industrial Area, Gurgaon which company deals in sales and service of M/s Commins Generators. These facts were identified by the teams of M/s Fourthforce Surveillance Indo Private Limited. In this regard, he has also placed on record verification report Ex. MW-1/2 (consisting of pages no. 1 to 6) of the aforesaid agency. Even during the course of arguments, learned AR for workman has fairly admitted that the workman joined the aforesaid company in December, 2014. Thus the workman instead of being honest and straightforward with this Court, by disclosing full particulars of his gainful employment, chose to be mendacious and made wrong statement in his said affidavit with regard to his employment. This certainly is most reprehensible and should disentitle him for relief. It may be observed that the workman has clearly spoke lies on oath which clearly shows that he was prima facie guilty of perjury for making false statement before the Court. In considered opinion of this Court, the workman, who has the audacity to tell lies before the Court on oath does not deserve any interference by this Court in the matter punishment awarded to him.

*Otherwise also, the Hon'ble Apex Court in the case of **Bharat Fore Limited V/s Uttam Nakhate 2005(2) SCC489** has clearly laid down that interference in cases where the acts committed by a workman being abusive nature should be deprecated. In the case in hand, having considered the abusive language used by the workman and his act of creating riotious and disorderly behaviour amounts to grave and serious acts of misconducts.*



While referring the abstract of the month wise production data as also planned vs actual production data for the period from April 2000 to March 2001 Ex. X-2, the learned AR for the management would also submit that there was huge loss of production during the labour unrest in the company during the agitation period. Even the workman did not sign "Good Conduct Undertaking" as per the notice of the management dated 11.10.2000 which clearly reflects indiscipline on his part.

As regards the submissions of the learned AR for the workman that workman could not have been charge sheeted after the settlement dated 08.01.2001 (Ex.X3.) and allegations levelled against him are the result of workman's failure to opt for VRS scheme as per the wishes of the management, I find no merit in these submissions for two reasons. Firstly, no such plea was taken by the workman when charge-sheets were issued to him. Secondly, the said settlement arrived at between the management and union of the workman did not preclude the management in any way to initiate disciplinary proceedings against the workman for his alleged misconduct.

Having regard to the nature of misconduct of the workman and the above discussed factual position of the case, the respondent had thus rightly exercised its choice having regard to the nature of misconduct of the workman. The punishment of dismissal from service has been correctly applied to the fact situation of the case and this Court finds no error in interfering with the order of dismissal from service. The punishment so imposed in the given facts does not come within the realm of being strikingly disproportionate to the extent of shocking the conscience of the Court. Therefore, this issue is answered against the workman holding therein that termination of his service is fully justified in the facts and circumstances of the present



case.”

8. From the perusal of record, it is evident that petitioner filed false affidavit before Labour Court. There is no denial of said fact still instant petition has been filed before this Court. It is a settled proposition of law that a person who does not come with clean hands cannot claim relief from the Court. No litigant has right to pollute holy water of justice. The petitioner concededly filed false affidavit before Labour Court, thus, he does not deserve any sympathy or equitable relief from this Court.

9. 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.”

10. The petitioner has conceded that writ petition, at the first instance, was filed in 2020 and thereafter, it has been filed in 2024. He filed petition in 2020, thus, he cannot claim benefit of COVID-19 and in any case, there is no justification for delay of two years even after expiry of COVID-19 period.

11. The instant petition deserves to be dismissed on merits as well delay and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.08.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No