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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10465-2024
Date of Decision:06.05.2024

KAMAL KUMAR Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Jasbir Singh Mohri, 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 setting aside of order dated 12.10.2009 (Annexure P-1) to the extent his service has been regularized w.e.f. 01.10.2009 instead of 01.02.2001.

2. The petitioner was regularized by way of order dated 12.10.2009 (Annexure P-1). He was regularized in terms of policy which in turn was formulated by State Government in view of judgment dated 10.04.2006 passed by a Constitution Bench in *Secretary, State of Karnataka and Others v. Uma Devi and Others, (2006) 4 SCC 1*. The petitioner claims that he should be regularized w.e.f. 01.02.2001 in terms of policy prevailing in 2001.

3. The Supreme Court in *Uma Devi (supra)* negated all the policies of regularization and opened a one time window for all the contractual or part-time employees. The States were directed to frame policy



for regularization of employees who have been working for more than 10 years. The respondent in terms of judgment of Supreme Court framed policy of regularization in 2006 and the petitioner in terms of said policy was regularized by impugned order.

4. The petitioner has approached this Court after 15 years from the date of passing the impugned order. He has failed to advance any plausible reason for the delay.

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 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 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. Apart from delay of 15 years in approaching this Court, the petitioner has no case on merits. As soon as Supreme Court passed judgment in **Uma Devi (supra)** on 10.04.2006, the respondents were bound to regularize employees in terms of policy framed in the light of directions in said judgment. The petitioner has been regularized in terms of policy of 2006 and he cannot claim regularization in terms of policy of 2001 which did not exist on the date of passing of impugned order.

8. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

06.05.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No