



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28216 of 2023
Date of Decision:20.08.2024

Mukhtiar Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Onkar Rai, 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 award dated 10.11.2022 (Annexure P-8) whereby his reference has been rejected on the ground of delay and laches.

2. The petitioner joined Punjab Roadways as a Conductor. He proceeded on 90 days medical leave with effect from 14.10.1996. He did not rejoin his duty and respondents terminated him vide order dated 08.12.1998. The petitioner after the expiry of 21 years approached Labour Court assailing his termination. The Labour Court has dismissed his reference on the ground of delay and laches. The relevant extracts of the findings recorded by Labour Court are reproduced below:-

“16). Appraisal of the evidence adduced on the file proves that the workman was appointed as Conductor with the respondents Punjab Roadways, Jagraon. However, he absented from the duty without getting any



sanctioned leave w.e.f. 14.10.1996. Thereafter, charge sheet Ex.R2 was served upon the workman, but he failed to turn up to contest the enquiry proceedings. Charge sheet was also conveyed to the workman through publication Ex.R4, but when he failed to turn up despite issuance of letter and publication, regular domestic enquiry was initiated against him. Enquiry Officer recorded the statement of Mita Singh, Inspector and Bachan Singh, Inspector during the enquiry proceedings. Thereafter, the enquiry officer gave his report Ex.R4, wherein he found the workman guilty of absence from duty without intimation or sanctioning of any leave application. The said report was again sent to the workman at his residential address vide letter Ex.R10, but the same was received back unserved. Thereafter, show cause notice was sent to the workman by the General Manager, Punjab Roadways, Jagraon, but to no avail. The said show cause notice was also got published by the respondents in newspaper Ex.R12, but when the workman did not turn up despite sending of show cause notice, order of termination was passed on 8.12.1998 by the respondent No.3. The said termination order was sent to the workman through registered cover vide Ex.R13, but the same was again received back with the same report that he was not residing in the village. Testimony of RW-1 Inderjit Singh reveals that numerous letters were sent to the workman to appear before the enquiry officer and disciplinary officer on the address mentioned in the demand notice and the statement of claim. Surprisingly, all the said notices were received back unserved that the workman was not residing in the village on the said address, which goes to prove that the said notices were not deliberately received by the workman for the reasons best known to him. This fact is also corroborated from the



admission made by WW-1 in his cross examination that he has been residing at the same address mentioned in the affidavit till today. Thus, interference arises that the workman deliberately failed to file the reply to the charge sheet and to contest the enquiry proceedings or to file any reply to the show cause notice. A/R for the workman also failed to point out any discrepancy in the exparte enquiry proceedings during the course of arguments.

17) Apart from this, it is also pointed out that the impugned termination order was passed on 8.12.1998. Demand notice was filed on 1.09 2019, about 21 years after passing of the order of termination. Surprisingly, no cogent and convincing explanation has come, either in the demand notice or in the statement of claim, as to why, it took period of about 21 years by the workman to challenge the termination order. The long and undue delay in challenging the termination order goes to show that no dispute existed between the parties after passing of termination order as the workman remained sleeping for such a long period of 21 years. It seems that the workman woke up on one fine morning on 1.09.2019 and served the demand notice on the respondent calling upon them to reinstate his services with continuity and back wages. Thus, the relief sought by the workman is barred by his own act and conduct and the present petition is not maintainable against the respondents. The relief sought by the workman is badly barred by the axiom of delay and laches. Moreso, when the workman failed to point out any discrepancy or irregularity in the enquiry proceedings.”

3. On being confronted with the aforesaid findings of Labour Court, counsel for the petitioner expressed his inability to controvert the



factum of inordinate delay and further failed to cite any plausible reason for the delay except to cite two judgments of Supreme Court to the effect that inordinate delay can be condoned if there is no prescribed period of limitation.

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. 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.”

6. This Court finds no explanation for delay in the instant case. The petitioner was terminated on 08.12.1998 and he opted to remain silent for 21 years. By way of present petition, he is attempting 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

20.08.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	