

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CWP-12942-2023
Date of Decision: 16.01.2024

David Masih ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Khushbir K. Bhullar, Advocate for the petitioner
Mr. Inderpreet Singh Kang, AAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking direction to the respondents to reinstate him on the post of Home Guard as well as release consequential benefits in terms of judgment of Supreme Court in *Davinder Singh and others v. State of Punjab and others, (2010) 13 SCC 88*.
2. The petitioner joined as Home Guard (Volunteer) on 18.03.1992 and he was injured in bomb blast on 23.04.1992. He was hospitalized and thereafter never permitted to join the force. As per the petitioner, during elections from 20.04.1996 to 30.04.1996, he served the respondent. The petitioner served upon the respondent legal notice dated 28.02.2023 (Annexure P-9) calling upon the respondents to reinstate him as Home Guard and release his consequential benefits.

3. Learned counsel for the petitioner submits that in view of judgment of Supreme Court in ***Davinder Singh (supra)***, the respondent was duty bound to permit the petitioner to join the force. The petitioner was always ready to join, however, he was not permitted to join. The petitioner has been removed from the service without granting any opportunity of hearing. The respondent till date has not passed any speaking order.

4. The petitioner joined Home Guard on 18.03.1992 and he worked till April 1992. As per petitioner, he had worked with respondent during 20.04.1996 to 30.04.1996 apart from one month's service during 1992. The petitioner has served upon the respondent legal notice dated 28.02.2023. There is delay of more than two decades in approaching the authorities as well as this Court.

5. On being asked the reason of delay, learned counsel for the petitioner submits that case of the petitioner is squarely covered by judgment of Supreme Court in ***Davinder Singh (supra)*** and respondent has not passed any order rejecting claim of the petitioner.

6. Mr. Inderpreet Singh Kang, AAG, Punjab, who on advance notice is present in Court, on behalf of the respondents, submits that similar petitions were filed by other Home Guard Volunteers which came to be allowed by different Single Judge Benches. Matter travelled to Division Bench in ***LPA No.1088 of 2018, State of Punjab and others v. Shingara Singh and others*** and Division Bench of this Court vide judgment dated 07.07.2022 has set aside orders passed by Single Judge Benches.

7. The operative part of judgment dated 07.07.2022 passed by Division Bench of this Court reads as:

22. *In such circumstances, we are of the considered opinion, by answering the questions above that the writ petitions were reviving a dead cause which was burdened with delay and laches and were not liable to be entertained by the learned Single Judges. The view taken by the learned Single Judge in CWP No. 19229 of 2018, Joginder Singh and others vs. State of Punjab, decided on 06.06.2019, is a more acceptable view since there is no legal right as such of the writ petitioners whereby they could ask for consideration for being recalled as held by the Apex Court that they are volunteers and not regular employees of the State. In the absence of any such legal right, the learned Single Judges were not correct in issuing the necessary directions. As noticed above, the two learned Single Judges as such, while deciding the cases in Jarnail Singh and Shingara Singh, have not taken into consideration the status as such of the Home Guards and their entitlements and their right as such to claim recall specially after a period of over two decades. However, the said respondent has also passed an order in three cases as such considering the claim and rejecting the same on 31.05.2017 (Annexure R-2) which has apparently also not been challenged. Even otherwise, we are of the considered opinion that the said order has kept in mind the factum of the status of the writ petitioners as such and even on merits otherwise not found them fit as such to perform the duties of constabulary having been out of service for the last two decades. The public interest element has also been kept in mind and the fact that they had absented on their own account and duly discharged.*

23. *In such circumstances, we are of the considered opinion that the reasons given as such are well justified and, therefore, the writ petitions filed for similar relief are also not liable to be allowed.”*

8. 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.

9. A Division Bench of this Court vide judgment dated 04.04.2018 in ***Kartar Singh v. Managing Director, HVPNL and others, CWP No.26962 of 2015***, after noticing various judgments of Apex Court has dismissed similar petition on the ground that writ petition has been filed after a long time from the date of retirement.

10. A Coordinate Bench of this Court vide order dated 03.05.2015 in ***Sandeep Kharab v. State of Haryana and others, CWP No.5965 of 2011***; order dated 04.09.2012 in ***Bal Krishan v. State of Punjab and others, CWP No.18498 of 2011*** and order 29.11.2012 in ***Tarsem Pal v. Punjab State Power Corporation Limited and others, CWP No.13965 of 2010*** has dismissed petitions on the ground that writ jurisdiction cannot be invoked at the will and convenience of the litigant. Anyone who claims rights must be vigilant and he must enforce his rights within reasonable time.

11. In ***Union of India v. N. Murugesan, (2022) 2 SCC 25***, the 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. The 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.”

12. In the case in hand, there is no explanation for delay. The petitioner opted to remain silent for a long time. By his act and conduct, the petitioner acquiesced to action of the respondents and waived off his right, if any. The case of the petitioner is hit by doctrine of delay and laches.

13. In the wake of Division Bench judgment of this Court in *Shingara Singh (supra)* and considering inordinate delay on the part of petitioner, this Court does not find it appropriate to invoke its extra-ordinary writ jurisdiction. The present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.01.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No