

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

238

**CWP No.17708 of 2020
Date of Decision : 13.3.2024**

*Ashok Kumar**..... Petitioner**versus**State of Haryana and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajesh K. Sheoran, Advocate and
Mr. Hardeep Singh Poonia, Advocate, for the petitioner

Mr. Suneel Ranga, DAG, Haryana

Mr. Deepak Balyan, Advocate,
Mr. Sushant Sharma, Advocate and
Mr. Daksh Attri, Advocate, for respondents no.2 and 3

TRIBHUVAN DAHIYA J. (ORAL):

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order of punishment dated 16.11.2010, Annexure P-9, passed by the Director, Haryana Board of School Education, Bhiwani (for short 'the Board'), whereby the petitioner has been awarded punishment of 'compulsory retirement from service'; the order in appeal dated 23.5.2011, Annexure P-10, whereby the punishment was upheld; and the order dated 22.2.2012, Annexure P-11, passed by the third respondent/Chairman of the Board, whereby petitioner's request to reconsider the decision taken in appeal was declined.

2. The petitioner was working as Assistant in Accounts Branch in the Board, when a complaint was made against him to the police

regarding manipulation in the awards/marks lists of three hundred seventeen candidates in English subject, belonging to S. R. Memorial Senior Secondary School. It was alleged that the School Principal, in connivance with some officials/employees of the Board, got the awards/mark lists manipulated. This led to registration of a criminal case, FIR No.189 dated 24.10.2003 under Sections 419, 420, 467, 468 and 471 IPC at Police Station Civil Lines, Bhiwani.

2.1. Later, the petitioner was issued charge-sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short 'the Rules') dated 9.1.2004 for the misconduct. After considering his reply to the same, a regular disciplinary enquiry was instituted to enquire into the allegations. The petitioner was served notice to join the enquiry on 16 and 28 June, 2005. He, however, refused to do so, and requested the proceedings to be adjourned to await outcome of the criminal trial. The request was not accepted, and the enquiry continued. The Enquiry Officer submitted his report, Annexure P-6, concurring with the findings of a five-member preliminary enquiry committee headed by the then Deputy Secretary, Exams. On that basis, it was concluded that charges against the petitioner stood proved.

2.2. Based on the disciplinary enquiry report, a show cause notice for the proposed punishment of 'dismissal from service' was issued to the petitioner which was replied to by him, and he was personally heard by the punishing authority as well. Looking into the facts of the case and taking into account findings of the enquiry report, the petitioner was awarded punishment of 'compulsory retirement from service'. His appeal against the order of punishment was dismissed by the Board vide order

dated 23.5.2011.

2.3. It has also come on record that the petitioner was acquitted in the criminal trial vide judgment dated 22.5.2010, Annexure P-8, by giving benefit of doubt. His request for reconsideration of the appellate order was declined by the third respondent vide order dated 22.2.2012, but he filed the instant petition after more than eight years.

3. Learned counsel for the petitioner has contended that a similarly placed employee, who was charge-sheeted alongwith the petitioner for the same misconduct, has been reinstated in service vide order dated 22.2.2012, by reconsidering decision of the Appellate authority/Board; whereas, the petitioner's request for reconsideration has been declined. He is also entitled to reinstatement on grounds of parity. It is also contended that disciplinary enquiry was conducted ex-parte, wherein the Enquiry Officer only concurred with the findings recorded by a fact-finding committee which is not sustainable. It is further contended that after the petitioner's acquittal in criminal trial, there is no basis to sustain the order of punishment, as it is based upon the same act/misconduct.

4. *Per contra*, learned counsel for the respondent/Board contends that the petition itself is not maintainable as it has been filed after inordinate delay of more than eight years, and there is no explanation for the same. Merely because the petitioner suffered from paralysis, is no ground to entertain the petition after such a long delay. It is further contended that he was rightly awarded the punishment for the serious misconduct in manipulating the awards/marks lists of students, which stands duly proved on record during a preliminary enquiry. His case is not similar to that of the other employee, who was reinstated in service. The

charges proved against the petitioner are grave and serious, and no employer can ignore the same. Besides, the acquittal in criminal trial also cannot be a ground for setting-aside the order of punishment, since the petitioner has not been acquitted on merits; he was only given benefit of doubt.

5. Submissions made by learned counsel for the parties have been considered.

6. Maintainability of the petition is to be decided first. Concededly, the petition has been filed after delay of more than eight years from the date the petitioner's representation for reconsidering the order in appeal was declined, vide impugned order dated 22.2.2012. There is no explanation for such a long delay. The only ground put forth is that he is suffering from paralysis, and was not able to approach the Court earlier on that account. However, the medical record, Annexure P-14, regarding the petitioner's physical condition is dated 1.5.2018. There is nothing on record to establish that he was paralytic at the time of passing of the impugned orders. Besides, filing of repeated appeals against the Chairman's order declining to reconsider the order of punishment, provides no justification for the delay. There is no provision under the Rules, nor has any been pointed out which entitled the petitioner to file such an appeal against the order of Appellate Authority. Seventh such appeal preferred by him was 'filed', vide impugned order dated 17.10.2017. This cannot extend the period of limitation for the petitioner; rather, it shows he was aware of the need to challenge the impugned orders and was capable of doing so as well. But chose not to approach this Court and remained contented with approaching the Board for the same

relief time and again. Therefore, there is no escape from concluding that the petition suffers from delay and laches, and this Court is not inclined to exercise extraordinary jurisdiction to entertain such a stale claim.

7. Law in this regard is well settled that the belated claim should not be entertained by a writ court without adequate explanation. Reference in this regard can be made to the Supreme Court judgment in *State of Jammu and Kashmir vs. R. K. Zalpuri and others*, (2015) 15 SCC 602. Relevant paragraphs of the same read as under:

23. Recently in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu*, it has been ruled thus : (SCC p.117, para 16)

“....16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the list at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant-a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

24. and 25. xxx xxx xxx

26. In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim

remained stale and it could not have been allowed to rise like a phoenix by the writ court.

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim ‘*Deo gratias*’- “thanks to God”.

8. Since the petition is not maintainable on the ground of delay and laches, as discussed hereinabove, considering other arguments advanced by the learned counsel will only be an academic exercise which need not be undertaken.

9. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

13.3.2024
Ashwani

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