

2024:PHHC:095243



CWP-17571-2024

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

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CWP-17571-2024

Date of Decision : 29.07.2024

AMARJIT SINGH

.... PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr.Kashav Chadha, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 20.11.1997 whereby SSP, Amritsar forfeited his 02 years' service permanently. He is further seeking directions to the respondents to decide his representation dated 07.05.2024 (Annexure P-3).

2. The petitioner joined Punjab Police as Constable on 16.12.1991. He was implicated in FIR No.85 dated 25.07.1996 under Sections 222 and 223 of IPC registered at Police Station Ajnala. He was acquitted vide judgment dated 10.04.1999 passed by the trial Court. In the integrum, SSP, Amritsar vide order dated 20.11.1997 forfeited his 02 years' service permanently.



3. On being asked, Mr.Kashav Chadha, Advocate submits that an appeal against order dated 24.11.1997 passed by SSP, Amritsar was filed before the appellate authority, however, no order has been passed. He expressed his inability to explain reason of delay in approaching this Court.

4. Notice of motion.

5. Mr. Aman Dhir, DAG, Punjab, who on advance notice is present in Court, accepts notice and waives service. He submits that there is inordinate delay on the part of the petitioner in approaching this Court, thus, the petition needs to be dismissed on the ground of delay and laches.

6. The petitioner is seeking setting aside of order dated 20.11.1997 after the expiry of more than 25 years.

7. 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.

8. 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 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 laches 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

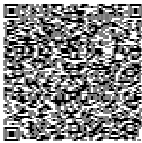


conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of 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 laches 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 laches, 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 laches on the part of the applicant in approaching a writ court.”

9. This Court finds no explanation for delay in the instant case. The petitioner is claiming that he had filed appeal/revision in 2015 and no order till date has been passed. The respondent is directed to adjudicate appeal/revision, if any is pending, within three months from today.

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10. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.07.2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No