

CWP-5010 of 2018

2024 PIIIC 167255



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

CWP-5010 of 2018

Reserved on: 05.12.2024

Pronounced on: 13.12.2024

Surinder Pal Sharma

.....Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Baltej Singh Sidhu, Senior Advocate,
with Mr. Gurpreet Singh Brar, Advocate,
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Abhishek Arora, Advocate,
and Ms. Ananya Ahluwalia, Advocate,
for respondent No.3.

Mr. Ashwani Prashar, Advocate,
for respondent No.4.

NAMIT KUMAR, J.

1. Instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking a writ of certiorari setting aside the order dated 10.05.2017 (Annexure P-5) passed by respondent No.4-the Ferozepur Central Cooperative Bank Limited, Ferozepur City, whereby the claim of the petitioner for protection of pay has been rejected. Further, a writ of mandamus has been sought for directing the respondents to protect the pay of the petitioner and release



all the consequential benefits like gratuity, leave encashment by refixing the pay of the petitioner along with interest @ 12% per annum.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner joined the Abohar Cooperative Spinning Mills Limited, Abohar, as Clerk on 03.08.1982 and thereafter he was promoted as Senior Clerk in the year 1986 and as Junior Assistant in the year 1992 and due to closure of the mill, the services of the petitioner were retrenched on 15.09.2003. It has also been pleaded that various employees of different cooperative spinning and sugar mills, who were also declared surplus, filed writ petitions before this Court for their absorption in other cooperative institutions or Government departments. This Court in CWP No.2483 of 1999 issued directions on 17.03.1999 to absorb the surplus staff and upon a review petition filed by different cooperative institutions, this Court reviewed the said order and issued directions dated 28.09.1999 to other cooperative institutions to absorb the surplus staff of cooperative spinning and sugar mills. The relevant directions read as under: -

“Keeping in view the aforesaid observations, the judgments of this Court and the apex Court referred to above as also the instructions of the Registrar dated November 25, 1997, Copy annexure P-4 to which reference has already been made above, we give the following directions, which, according to us, will meet the ends of justice:-

(i) Respondent No 4, i.e. the Kotkapura Co-operative Spinning Mills Ltd. Sandhwa Distt. Faridkot, through its Chief Executive and Liquidator, would send the list of those employees



who have been declared surplus to the Registrar of the Co-operative Societies giving their service particulars like the resignation service rendered by them, their education qualification, residential address and any such ancillary matter. The Registrar, Co- operative Societies, would ask all Co-operative Institutions in the State of Punjab to intimate to him the various posts in their institutions which may be lying vacant to see whether the persons like the petitioners can be absorbed against any of those posts.

ii) 50% of the posts which are already lying vacant or likely fall vacant and are to be filled by direct appointment against when any of the petitioners can be absorbed subject to relaxation in age, but fulfilling other qualifications may be filled under these directions and the rest of 50% posts by the normal process under the relevant rules.

iii) After the receipt of the information as mentioned in para (i) above, the Registrar would forward the names of the persons, who can be absorbed in different institutions appending upon their qualifications. The Registrar would inform the employees who are eligible for consideration for absorption by registered post at the residential address to be given in the intimation to be sent by respondent no. 4 intimating them that they are required to appear before a particular institution on a particular date or the Registrar may ask the institutions to intimate the eligible person for absorption to appear on a particular date and time by registered post on the addressees to be supplied by the Registrar to the institutions.



(iv) On absorption, such an employee would be considered as a fresh appointee. However his pay would be protected and the past service would be counted for benefits like pension (if the post is pensionable) and other service benefits but not for Seniority.

(v) The Registrar would also direct the Cooperative institutions that as and when any post(s) is/are created, the institution would inform the Registrar about the same and if all the surplus employees have not been absorbed then the newly created posts indicated above be filled under these directions.

This order of ours would substitute the order dated March 17, 1999, passed by us.

The review petition as well as the writ petitions stand disposed off in the aforesaid terms.”

Consequently, Punjab State Central Cooperative Bank Limited invited applications for recruitment of Clerk-cum-Data Entry Operators and 50% posts were reserved for surplus staff of the cooperative spinning and sugar mills in the State of Punjab. The petitioner applied in pursuance to the said advertisement and he was selected and appointed as Clerk-cum-Data Entry Operators in the pay scale of Rs.5910-20200+1900 grade pay vide appointment letter dated 14.07.2011 and after serving for four years he retired as such on 31.03.2015 on attaining the age of superannuation and was further granted extension of two years service upto 31.03.2017. The last pay drawn by the petitioner as per certificate dated 17.07.2014 issued by the Liquidator, Spinfed and Cooperative Spinning Mills Ltd., Chandigarh,



Rs.6600+allowances as sanctioned by the Punjab Government from time to time. It is further the case of the petitioner that after joining with respondent No.4-Bank, he made various representations for protection of his pay in view of the directions given by this Court vide order dated 28.09.1999 but to no avail. It has further been stated that on a contempt petition bearing COCP No.2834 of 2013 filed by similarly situated employees who were also declared surplus from cooperative sugar/spinning mills and were absorbed as Clerk-cum-Data Entry Operators in different Central Cooperative Banks, some of the persons had been extended the benefit of pay protection during the pendency of the said contempt petition and the same was disposed of vide order dated 18.01.2017 with a further liberty to the petitioners that in case of any discrepancy, the petitioners can approach the Managing Director of the bank concerned, for redressal of their grievances by making a representation, which shall be decided by the Managing Director concerned, within a period of three months of receipt of such representation by passing a reasoned order. The petitioner, when came to know about the said order, submitted representation/reminder to respondent No.4 on 16.02.2017 (Annexure P-4). However, the said claim has been rejected by respondent No.4 vide letter dated 10.05.2017 on the ground that he was already getting more basic pay at the time of his appointment in respondent No.4-Bank on 18.07.2011 as compared to his last pay drawn in the Abohar Cooperative Spinning Mills Limited, Abohar. Hence, this writ petition.



3. Separate written statements have been filed on behalf of respondents No.3 and 4. In the written statement filed on behalf of respondent No.4-Bank (present employer of the petitioner), it has been stated that firstly the writ petition against the bank is not maintainable in view of the law laid down by the Hon'ble Supreme Court in ***General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, U.P. v. Satrughan Nishad and others, JT 2003 (8) SC 235; S.S. Rana v. Registrar, Cooperative Societies and another, JT 2006(5) SC 186*** and this Court in ***CWP-10806 of 2006 – Prem Singh and others v. State of Punjab and others decided on 20.07.2006; CWP-2595 of 1991 – Bhajan Singh and others v. State of Punjab and others decided on 02.07.2007; CWP-16478 of 1999 – Gurmej Singh v. Registrar, Cooperative Societies, Punjab and others decided on 19.09.2007; CWP-2486 of 1987 – Pardeep Kaur and others v. The Jalandhar Central Cooperative Bank Ltd. and others decided on 03.04.2008; Ranjit Singh v. Registrar Cooperative Societies, Punjab, Chandigarh 2010 (4) SCT 750; Tek Chand v. State of Punjab, 2012(3) SCT 443; Som Nath v. Deputy Registrar Cooperative (Punjab and Haryana)(DB) 2012 (4) PLR 262.*** Secondly, it has been stated that the petitioner joined the Bank on 18.07.2011 and he made representation for the first time on 16.02.2017 i.e. after a lapse of around 5½ years from the date of joining and after about two years from the date of retirement.

On merits, it has been stated that since the petitioner was already getting higher pay at the time of joining respondent No.4-Bank



as compared to his last pay drawn in the earlier institution, therefore, his claim has rightly been rejected.

4. Mr. Baltej Singh Sidhu, learned Senior Counsel for the petitioner, has submitted that the claim of the petitioner has wrongly been rejected by the respondents vide order dated 10.05.2017 (Annexure P-5) and the petitioner was entitled for the pay scale and the grade pay of the post of Junior Assistant which he was holding in the earlier institution.

5. *Per contra*, learned counsel for the respondents has submitted that the claim of the petitioner has rightly been rejected by the respondents/Bank as the petitioner was getting higher salary at the time of his appointment as Clerk-cum-Data Entry Operator in respondent No.4-Bank as compared to his pay which he was drawing in the earlier institution.

6. I have heard learned counsel for the parties and perused the record.

7. The facts are not in dispute that the petitioner had joined as Clerk on 03.08.1982 in the Abohar Cooperative Spinning Mills Limited, Abohar. As per the case of the petitioner, he was further promoted as Senior Clerk in 1986 and as Junior Assistant in 1992. He was retrenched on 15.09.2003 due to closure of the said mill. In pursuance to advertisement issued by respondent No.3-Punjab State Cooperative Bank Limited, he was appointed as Clerk-cum-Data Entry Operator in the pay scale of Rs.5910-20200+1900 grade pay vide appointment letter dated 14.07.2011 in the respondent No.4-Bank and



he joined as such on 18.07.2011. He retired as such on 31.03.2015 on attaining the age of superannuation, however, he was granted further extension of two years upto 31.03.2017. Much after the retirement of the petitioner, he submitted representation dated 16.02.2017 (Annexure P-4) for protection of his pay. Although the said document has been addressed as reminder, however, neither any date of earlier representation has been given in the said reminder nor the same has been attached with the writ petition. The said claim of the petitioner has been rejected by the respondents vide order dated 10.05.2017 by stating as under: -

“In connection with the letter under reference, it is hereby written that according to the certificate, issued by, Liquidator, Spinfed and Co-operative Spinning Mills Ltd., Chandigarh No.Liquidator/Spinfed/33/2014-15 dated 17.7.2014, which has been presented by you, you were retrenched by the Abohar Co-operative Spinning Mills Ltd. w.e.f. 15.9.2003 and at the time of retrenchment, you were in the pay scale of 5480-8925, last pay drawn Rs.6600/-. You had joined this Bank on 18.7.2011 and at the time of joining you were given the basic pay of Rs.7810/- according to the pay scale 5910-20200+1900 Grade Pay. Thereafter, according to the revision of pay scales by the Punjab Government on 1.12.2011, you have been given the basic pay of Rs.13500/- according to the revised pay scales i.e. Rs.10,300-34800+3200 G.P. In this way, the bank has given you the more basic pay than the last pay of Rs.6600/- drawn by you from the Abohar Co-operative Spinning Mills Ltd.”

8. From the above facts, it is clear that the petitioner has raised the claim of protection of his pay after retirement. The petitioner



retired on 31.03.2015 and representation dated 16.02.2017 was submitted by him after a period of two years. While the petitioner was in service from 18.07.2011 to 31.03.2015 he never raised the issue of protection of his pay and rightly so because his pay in respondent No.4-Bank was much higher than what he was getting in Abohar Spinning Mill. In the garb of claim of pay protection, a new case has been set up by the petitioner and indirectly he is claiming the pay scale and grade pay of the post of Junior Assistant which is prevalent in various departments of the State of Punjab. It is apt to mention here that in pursuance to the advertisement issued by respondent No.4-Bank whereby certain posts of Clerk-Cum-Data Entry Operators were advertised, the petitioner applied in pursuance to the said advertisement and was appointed on the said post on 14.7.2011 and accepted the terms and conditions of the appointment letter and retired from the said post. The claim of pay protection cannot be raised by an employee after he has already superannuated. Even otherwise, there is unexplained delay in approaching the respondent-authorities for protection of pay.

9. The Hon'ble Supreme Court in ***“Yunus (Baboobhai) A Hamid Padvekar vs State of Maharashtra Through its Secretary and others”***, 2009(2) SCT 24, while referring to the issue of delay and laches, had held as follows:-

“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the ‘Constitution’). In



*an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769)**. Of course, the discretion has to be exercised judicially and reasonably.*

9. What was stated in this regard by Sir Barnes Peacock in **Lindsay Petroleum Company v. Prosper Armstrong Hurde etc. (1874) 5 PC 221** at page 239 was approved by this Court in **Moon Mills Ltd. v. Industrial Courts (AIR 1967 SC 1450)** and **Maharashtra State Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329)**, Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance



of justice or injustice in taking the one course or the other, so far as relates to the remedy."

10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in **R.N Bose v. Union of India (AIR 1970 SC 470)** that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

11. It was stated in **State of M.P. v. Nandlal (AIR 1987 SC 251)** that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also



weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.”

10. Further the Hon’ble Supreme Court in ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others***, 2013(6) SLR 629, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be revived even if such a representation has been decided either by the authority or by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach

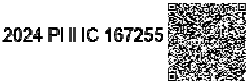


the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Anyone who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches.

Relevant paragraphs from the aforesaid judgment are extracted below:

*“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In **C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115**, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-*

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the



Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

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17. In **Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others, (2011) 4 SCC 374**, a three-Judge Bench of the Hon’ble Supreme Court reiterated the principle stated in **Jagdish Lal v. State of Haryana, (1997) 6 SCC 538** and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In **State of T. N. vs. Seshachalam, (2007) 10 SCC 137**, the Hon’ble Supreme Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

“... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

- 19. XXXX XXXX XXXX XXXX



*20. In **New Delhi Municipal Council v. Pan Singh and others**, (2007) 9 SCC 278, the Hon'ble Supreme Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.*

11. In a recent judgment by the Division Bench of this Court in **"Ram Kumar vs State of Haryana and others"**, 2022 (3) SCT 346, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition filed by him suffered from gross, inordinate and unexplained delay in approaching the High Court. In the said judgment, it has been held as under:-

*"10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in **New Delhi Municipal Council v. Pan Singh & Ors.**, 2007(9) SCC*



278, observed:

*“15. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See **Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347]**, **Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347]** and **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]**”*

11. Similarly, in **Jagdish Lal & Ors. v. State of Haryana & Ors., (1997) 6 SCC 538**, it was held by the Supreme Court:

“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for



long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios..... Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage...."

12. *In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed."*

12. The Co-ordinate Bench of this Court in ***"Prem Nath and others vs State of Punjab and others"***, 2018(2) SCT 687, while rejecting the claim of additional increments of acquisition of higher qualifications has held as under:-

"3. It is the case set up on behalf of the petitioners that they had all been appointed before 19.02.1979 and had even improved/acquired higher qualifications before 19.02.1979 and as such there would be no difference between the employees working with the Punjab Government, holding corresponding post and the employees like the petitioners who have worked for Punjab Privately Managed Recognised Aided Schools. It is also the assertion made by counsel representing the petitioners that their claim would be covered in terms of decision dated 02.07.2013 rendered by this Court in a bunch of writ petitions including CWP No.8083 of 1989 titled as Radha Krishan Narang and others vs. State of Punjab and others.

4. Having heard counsel for the petitioners at length, this Court is of the considered view that the claim of the petitioners would not require any consideration on merits



and the writ petition deserves to be dismissed on the sole ground of delay and laches.

5. Placed on record and appended at Annexure P-1 are the particulars of the petitioners. The tabulation at Annexure P-1 would show that all the petitioners stand retired on various dates between the years 1995 to 2012. Out of 32 petitioners in all, 22 petitioners superannuated more than 10 years back.

6. There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. There is also no explanation put forth by the petitioners as to why the claim raised in the instant petition was not agitated by the petitioners while they were in service. The entire thrust of the submissions advanced by counsel is that similarly situated employees had approached this Court and have been granted relief.

*7. The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464**. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356**; **"Jagdish Lal v. State of***



Haryana, (1997)6 SCC 538 and Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-

*“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in **Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300**. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?*

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has



been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others."

[Emphasis supplied]

*8. The issue of delay was also dealt with by this Court in **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3) SLR 314**. In the case of Tarsem Pal (supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first*



time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suited the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and



laches.”

9. *At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in Saroj Kumar's case(supra), matters of pay fixation involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred.*

10. *The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ 502**. In M.R. Gupta's case(supra), it had been categorically held that so long as an employee “is in service” a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation “is a right which subsists during the entire tenure of service”.*

11. ***In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.***

12. *Considering the dictum of law as laid down in*



*Chariman, U.P. Jal Nigam's case (supra), **the petitioners herein are not entitled to any releif as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.***

13. Ordered accordingly.”

13. The Division Bench of this Court in“***H.S. Gill vs Union of India and others***”, 2016(2) SCT 477, has held that an employee cannot claim the revised pay scale after retirement once he has been receiving the pay scale granted by the employer for the last 09 years. The relevant portion from the said judgment, reads as under:-

“14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs.6500-10500 right from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale.”

14. In view of the foregoing discussions and abovesaid authoritative enunciation of law by the Hon’ble Supreme Court and this Court, the aforesaid issue as raised in the present writ petition cannot be allowed to be agitated at this belated stage accordingly, the present petition is dismissed being devoid of any merit and on the ground of delay and latches.

13.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

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