

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

112

CWP-8449-2017 (O&M)

Date of Decision : 11.01.2024

Des Raj Gur

..... Petitioner

Versus

Uco Bank and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.R.D.Bawa, Advocate
Mr. Samuel Gill, Advocate
Mr. Randhir Bawa, Advocate
for the petitioner.

Mr.R.S.Bhatia, Advocate
for the respondent-bank.

JAGMOHAN BANSAL, J. (Oral)

1. On 06.12.2023, the following order was passed by this Court:-

“From the pleadings, it comes out that case of the petitioner is that petitioner was compulsorily retired vide order dated 08.09.2007 passed by the Appellate Authority. The respondent, without associating petitioner initiated parallel proceedings with respect to pension of the petitioner. The respondent has reduced pension of the petitioner to the tune of 3/4 of the entitlement. The Appellate Authority constituted under Payment of Gratuity Act has ordered to release a sum of Rs.3.5 lakhs towards gratuity whereas petitioner is entitled to gratuity of Rs.5 lakhs. The respondent during the pendency of present petition has released leave encashment. The prime grievance of the petitioner is that respondent has reduced pension of the petitioner without associating him. Neither show cause notice was issued

nor opportunity of hearing was granted prior to passing impugned order, thus, the impugned order has been passed in gross violation of principles of natural justice.”

2. On 15.12.2023, the following was noticed :

“Learned counsel for the respondents submits that appellate authority under the Payment of Gratuity Act passed the impugned order on 21.09.2012 (Annexure P-8). The petitioner opted to remain silent for five years and thereafter, in 2017 preferred the present writ petition assailing order passed by appellate authority as well as order fixing his pension. The impugned order whereby pension of the petitioner was reduced to 3/4th was passed on 06.01.2009 and thereafter pension of the petitioner was fixed. Petitioner continued to receive pension from 2009 to 2017 without raising objection, however, in 2017, he has preferred the present writ petition. The respondent-bank is not having record of 2008-09. In such circumstances, the petition of the petitioner may be dismissed on the ground of delay and laches.

This Court is of the prima facie opinion that if impugned order dated 06.01.2009 has not been communicated to petitioner, he deserves an opportunity of hearing and fresh order needs to be passed.

On being asked, learned counsel for the respondents seeks time to produce record indicating communication of impugned order dated 06.01.2009.”

3. Learned counsel for the respondent-bank produced a copy of order dated 24.01.2009 which was served upon respondents on 05.02.2009 under his signatures, which is taken on record. Registry is directed to tag the same at appropriate place. The said communication confirms quantum

as well as rate of pension extended to the petitioner. It has been

categorically mentioned that the petitioner has been compulsorily retired and his rate of pension is 0.75 i.e. 3/4th.

4. Faced with this, learned counsel for the petitioner submits that in view of judgment of Hon'ble Supreme Court in **Union of India & Ors. vs. Tarsem Singh, 2008 (8) SCC 648** and a full Bench of this Court in **Saroj Kumari vs. State of Punjab, 1998 (3) SCT 664**, the principles of delay and laches are not applicable in the case in hand because the petitioner is claiming revision of pension. The Court at the most can confine arrears to 38 months, however, writ cannot be dismissed on the ground of delay and laches.

5. 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.

6. 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 including aforementioned judgments cited by counsel for the petitioner has dismissed similar petition on the ground that writ petition has been filed after a long time from the date of retirement. The relevant extracts of the judgment read

as :

6. The issue regarding delay in invoking extraordinary jurisdiction was considered by Hon'ble the Supreme Court in **U.P. Jal Nigam and another v. Jaswant Singh and another, (2006) 11 SCC 464**. It was a case in which 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. They were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon that judgment, some of the employees, who already stood retired, filed writ petitions claiming same benefit. The writ petitions were allowed by the High Court in terms of its earlier judgment. The judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in **Rup Diamonds v. Union of India, (1989) 2 SCC 356**; **State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267**; **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 the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are extracted below:

"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 reitirement 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 postretirement 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]

7. In *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others*, (2007) 2 SCC 725 as well, same issue was considered and following the earlier judgment in *U. P. Jal Nigam's case (supra)*, it was opined as under:

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

x x x x

9. *In a recent judgment in **State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others**, 2013 (6) SLR 629, Hon'ble the Supreme Court, 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 got revived even if such a representation has either been decided by the authority or got decided 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 permitting 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. Any one 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."

*14. In **Union of India and others v. M. K. Sarkar, (2010) 2 SCC 59**, this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.*

*15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K.***

Thangappan and another, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. *In State of Orissa v. Pyarimohan Samantaray, (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik, (1976) 3 SCC 579.*

17. *In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others, (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana, (1977) 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. v. Seshachalam, (2007) 10 SCC 137, this 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. *There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in **Ghulam Rasool Lone v. State of Jammu and Kashmir and another, (2009) 15 SCC 321.***

20. *In **New Delhi Municipal Council v. Pan Singh and others, (2007) 9 SCC 278**, the 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.*

21. *Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in **P.S. Sadasivasway v. State of Tamil Nadu, (1975) 1 SCC 152**, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of*

discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely

to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

(emphasis supplied)

7. 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.

8. In the case in hand, the petitioner opted to remain silent from 2009 to 2017. The petitioner has approached this Court in April 2017 with respect to cause of action which if any arose in 2009. The petitioner was claiming that he was not aware of reduction of his pension whereas communication produced by respondent during the course of hearing confirms that he was duly communicated factum of reduction of his

pension. The petitioner continued to receive reduced pension from 2009 to 2017. By his act and conduct, the petitioner acquiesced to action of respondents and waived of his right, if any. The judgments cited by learned counsel for the petitioner are applicable where there is no order and acquiescence on the part of pensioner whereas in the case in hand, the petitioner was compulsorily retired and thereafter his pension was reduced to 75% and petitioner continued to receive the said amount from 2009 to 2017 which beyond the pale of doubts shows acquiescence on the part of the petitioner.

9. In the wake of judgments of this Court 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.

10. Pending application, if any, shall also stand disposed of.

11.01.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>