

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20040-2023

Date of Decision:18.01.2024

SUNIL KUMAR

..... Petitioner

Versus

UNION OF INDIA AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. R.A Sheoran, Advocate for the petitioner.

Mr. Indresh Goel, Senior Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. On 18.12.2023, the following order was passed:

“1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 22.09.2022 (Annexure P-2) whereby claim of the petitioner qua seniority and pay fixation has been rejected.

2. The petitioner pursuant to an advertisement applied for the post of Constable (GD) in ITBP. The advertisement was issued in 2011 and selection process completed in 2012. The petitioner was not issued appointment letter though he had qualified all the tests. The petitioner preferred CWP No. 14813 of 2014 before this Court seeking direction to respondents to issue appointment letter. During the pendency of petition, the respondent issued appointment letter consequently, this Court vide order dated 18.12.2014 disposed of the writ petition. The petitioner joined respondent-Organization on 14.01.2015. The petitioner for the purpose of seniority and pay fixation has been considered employee of the Organization w.e.f. 14.01.2015.

3. Learned counsel for the petitioner submits that petitioner was denied appointment on account of lapse on the part of respondents. The petitioner was made to join on

the intervention of this Court. The petitioner deserves to be tagged below the last selected candidate of the 2011 advertisement.

4. *Learned counsel for the respondents submits that the petitioner opted to remain silent from 2015 to 2022 and he filed representation in 2022. The act of petitioner amounts to acquiescence of his date of appointment and pay fixation. It is settled proposition of law that seniority list cannot be challenged after a reasonable period.*

5. *On the asking of Court, learned counsel for the respondents seeks time to confirm the date on which petitioner filed representation, the seniority list was prepared and other selected candidates were promoted.*

6. *Adjourned to 18.01.2024.*

7. *To be shown in the **Urgent List**.*”

2. Pursuant to aforesaid order, learned counsel for the respondents-UOI, during the course of hearing produced copy of communication dated 12.01.2024 received from the Office of Directorate, ITBP, New Delhi. The same is taken on record. The Registry is directed to tag the same at an appropriate place.

3. From the aforesaid communication, it is evident that petitioner submitted representation on 06.01.2022 regarding protection of his seniority and the said representation was received by Directorate General, ITBP through 12th BN, ITBP vide letter dated 16.07.2022. The said communication makes it clear that petitioner made a representation on 06.01.2022 whereas he was appointed in 2015.

4. Faced with this, learned counsel for the petitioner submits that petitioner has made multiple representations to respondents prior to aforesaid representation, however, on being asked, he expressed his inability to produce copy of any communication made by him prior to

aforsaid representation dated 06.01.2022.

5. This Court vide order dated 18.12.2014 disposed of writ petition No. 14813 of 2014 of the petitioner as infructuous with liberty to approach authorities for service benefits for which he may be entitled. The petitioner has not produced any document disclosing that he approached authorities at any point of time prior to 06.01.2022. Ostensibly, the statement of respondent cannot be brushed aside. As per communication of the respondent, the petitioner for the first time approached authorities for protection of his seniority on 06.01.2022.

6. 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-eliberate delay.

In *Eastern Coalfields Ltd. v. Dugal Kumar (2008) 14 SCC 295*, supreme court has considered scope of interference in case of delay and laches. Court has held:

“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds

to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.”

In ***Tilokchand Motichand v. H.B. Munshi (1969) 1 SCC 110*** and ***Rabindranath Bose v. Union of India (1970) 1 SCC 84***, Supreme Court has ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court and if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner.

In ***Chennai Metropolitan Water Supply & Sewerage Board V. T.T. Murali Babu (2014) 4 SCC 108***, Supreme Court has ruled:

“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 scrutinise whether the lis 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.”

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

7. In the absence of any plausible reason, this Court finds that present petition suffers from delay and laches. Thus, the petition deserves to be dismissed on the ground of delay and laches and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.01.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No