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2024:PHHC:016009

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-22358-2023
Date of decision: 06.02.2024

HARJINDER SINGH

....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. D.S. Kahlon, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 30.07.2019 (Annexure P-6) whereby claim of the petitioner for grant of benefit of Military Service rendered by him during the Second National Emergency has been rejected.

2. The petitioner during Second Emergency i.e. 1971 to 1977 served Indian Army. After retirement from Army, he joined Punjab Police. He retired from Punjab Police on 14.01.2009. The State Government issued notification dated 15.10.2009 whereby it was provided that military service rendered during Second Emergency would be counted for the purpose of pension and increment. The petitioner filed CWP No. 10682 of 2019 before this Court seeking counting of Military Service rendered by him during Second National Emergency for

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pension. The said writ petition came to be disposed of vide order dated 25.04.2019. The operative part of the order reads under:-

“Without expressing any opinion on the merits of the case or the claim, being made by the petitioners in the present petition, the respondent are directed to decide the representation dated 20.02.2019 and 15.02.2019 (Annexure P-5 and P-6) respectively and passing the appropriate speaking orders within a period of three months from the date of receipt of a certified copy of this order. In case after the decision, it is found that the petitioners are entitled for any monetary benefit, the same shall also be released to them within a period of next three months.

Present writ petition stands disposed of”.

3. The respondents in compliance of aforesaid order, passed order dated 30.7.2019 (Annexure P-6) whereby claim of the petitioner has been declined. The operative portion of the order dated 30.07.2019 reads as under:-

“The both above said Retd. Police officials (Petitioners) have rendered military service during the Second National Emergency from 03.12.1971 to 25.03.1977 and they are drawing pension from both departments i.e. police department and military authorities.

The petitioner No. 1 Retd. LR/ASI Jasbir Singh No. 144/GSP and petitioner No.2, PHC Harjinder Singh No. 305/GSP had retired from service on 31.03.2009 and 14.01.2009 respectively prior to 15 Oct, 2009 i.e. the date on which the 2009 amendment in rules was notified by the Government of Punjab.

Upon consideration, the claim of the above said 02 retired police officials for grant of benefits of military service during the Second National Emergency is inadmissible on the ground that prior to the '2009 Amendment' in the Rules, there was no stipulation for grant of benefit of military service rendered during the Second National Emergency from 03 December 1971 to 25 March 1977 towards increments and/or pension and the '2009 Amendment' to the Rules is not applicable in the case of these 02 retired officials, as they had retired from Punjab Government Service prior to 15

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October 2009, when ‘2009 Amendment was notified, without any retrospective effect.’

4. The petitioner is drawing pension from police department as well as Indian Army. The petitioner preferred petition before this Court in April’ 2019 and respondents passed impugned order in July’ 2019. The petitioner has approached this Court seeking setting aside of aforesaid order after 4 years.

5. On being asked reason of delay in filing petition before this Court, Counsel for petitioner submitted that petition could not be filed on account of Covid-19 and inaction of another lawyer.

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, 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.

7. 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.

8. 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.’

9. 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 of Apex Court has dismissed similar petition on the ground that writ petition has been filed after a long time from the date of retirement.

10. 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

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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.

11. In the case in hand, the petitioner is claiming benefit of Military Service, in view of Notification dated 15.10.2009 issued by State of Punjab. The respondents disposed of representation of the petitioner on 30.07.2019 and he opted to remain silent till 2023. There is inordinate delay of 4 years. The Covid-19 erupted in March' 2020. The petitioner prior to Covid-19 as well post Covid-19 had sufficient time to approach this Court. There is no plausible justification for delay.

12. In the wake of above-cited judgments 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.

06.02.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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