



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

CWP No.30483 of 2024
Date of decision: 12.11.2024

Surinder Singh

....Petitioner

Versus

Registrar, Cooperative Societies, Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Manjit Singh Sarao, Advocate
for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR J. (Oral)

1. The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the punishment order dated 12.04.2010 (Annexure P-1), imposing punishment of stoppage of two increments with cumulative effect; order dated 16.06.2011 (Annexure P-2), whereby the statutory appeal preferred by the petitioner has been rejected and the order dated 07.09.2021 (Annexure P-3), whereby the revision petition preferred by the petitioner has been rejected by the Revisional Authority. Further a writ of mandamus has been sought for directing the respondents to release the withheld increments along with arrears and grant consequential benefits and due promotions.

2. Brief facts, as have been pleaded in the present petition, are that the petitioner is an employee of Punjab State Cooperative

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Agricultural Development Bank Limited, Chandigarh and his service conditions are governed by “Punjab State Cooperative Agricultural Development Bank Common Cadre Rules, 1978” and “Punjab Civil Services (Punishment and Appeal) Rules, 1970”. While the petitioner was working as Manager at Primary Cooperative Agricultural Development Bank Limited, Baba Bakala, he was placed under suspension vide order dated 23.08.2008, followed by issuance of a charge-sheet dated 17.09.2008, wherein it was alleged that the petitioner is guilty of misusing his powers and violating the loan policies and instructions sanctioning loan in his own name and sending incomplete information to the higher authorities. The petitioner submitted reply to the charge-sheet, which was found to be unsatisfactory and Assistant Registrar (Vigilance), PADB, Chandigarh was appointed as an Enquiry Officer, who submitted the enquiry report dated 06.11.2009 (Annexure P-5), wherein the charges levelled against the petitioner were found to be proved. The petitioner was issued show cause notice dated 06.02.2010 (Annexure P-6), along with copy of the enquiry report, seeking his reply as to why his next three annual increments with cumulative effect be not stopped. The petitioner submitted reply dated 23.02.2010, to the show cause notice and the punishing authority i.e. Managing Director of the Bank, awarded the punishment of stoppage of two annual increments with future effect. Thereafter, the petitioner preferred a statutory appeal, which has been rejected by the Sub-committee constituted by the Board of Directors of the Bank in its

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meeting held on 04.04.2011, vide Item No.3 and the same has been conveyed to the petitioner on 16.06.2011 (Annexure P-2). Thereafter, petitioner had submitted an application dated 31.10.2011 for review of order of Appellate Authority, but to no avail and after a period of three years, the petitioner again submitted a request dated 05.03.2014 (Annexure P-9), for review of the order dated 04.04.2011 and the same was replied vide letter dated 14.03.2014 (Annexure P-10) by stating that the review application/appeal cannot be put up before the Board of Directors of the Bank for reconsideration, therefore, the same has been filed. Thereafter, after a period of five years, the petitioner again submitted application dated 31.07.2019 (Annexure P-11) for review of the order dated 04.04.2011, passed by the Appellate Authority, and the same was again replied by the Bank, vide letter dated 26.09.2019 (Annexure P-12), whereby it was informed that the earlier review application dated 31.07.2019, filed by the petitioner has been filed. Thereafter, after a period of two years, the petitioner preferred revision petition on 09.06.2021, before the Registrar, Cooperative Societies, Punjab, Chandigarh (Annexure P-13), which has been rejected by the Revisional Authority, vide order dated 07.09.2021 (Annexure P-3). Thereafter, now the petitioner has preferred the present petition, impugning the punishment order dated 12.04.2010 (Annexure P-1), appellate order dated 16.06.2011 (Annexure P-2) and the revisional order dated 07.09.2021 (Annexure P-3).

3. On a pointed query raised by the Court as to how the

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present petition is maintainable on account of huge delay, as the impugned orders relate to year 2010, 2011 and 2021, learned counsel for the petitioner submits that punishment of stoppage of two annual increments with cumulative effect, gives rise to recurring cause of action every month, therefore, there is no delay in filing the present petition.

4. Per contra, learned State counsel, who has caused appearance on behalf of the official respondents on the strength of advance copy having been served upon him, has opposed the submissions made by learned counsel for the petitioner. He, inter alia, submits that besides other issues, there is an inordinate, gross and unexplained delay in filing the present writ petition for espousing his cause, therefore, the same is liable to be dismissed on the ground of delay and laches.

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

6. The facts are not in dispute that the petitioner was placed under suspension on 23.08.2008 and thereafter, he was issued charge-sheet dated 17.09.2008 (Annexure P-4). The allegations levelled in the charge-sheet were enquired into by the enquiry Officer and in the enquiry report dated 06.11.2009 (Annexure P-5), the same were proved and the petitioner was issued show cause notice dated 06.02.2010 (Annexure P-6), along with copy of the enquiry report, wherein provisional punishment of stoppage of three annual grade increments

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with cumulative effect was proposed. The petitioner filed reply dated 23.02.2010 to the show cause notice, which was duly considered by the punishing authority and he was awarded the punishment of stoppage of two increments with future effect, vide order dated 12.04.2010 (Annexure P-1), and against the said punishment order, the petitioner preferred an appeal, which has been rejected by the Sub-Committee constituted by the Board of Directors of the Bank, in its meeting held on 04.04.2011. Thereafter, instead of filing the statutory revision before the Revisional Authority, the petitioner vide his letter dated 31.10.2011 (Annexure P-8), 05.03.2014 (Annexure P-9) and 31.07.2019 (Annexure P-11), sought review of the appellate order dated 04.04.2011, which was duly replied by the Bank vide letters dated 14.03.2014 (Annexure P-10) and dated 26.09.2019 (Annexure P-12), respectively. Thereafter, the petitioner preferred a revision petition dated 09.06.2021 (Annexure P-13), before the Revisional Authority, which has been rejected by the said authority vide order dated 07.09.2021 (Annexure P-3).

7. Perusal of the facts narrated above show that the statutory appeal of the petitioner was rejected by the Sub-Committee constituted by the Board of Directors of the Bank in its meeting held on 04.04.2011. Thereafter, after a period of more than ten years from dismissal of his appeal, the petitioner preferred statutory revision petition dated 09.06.2021 (Annexure P-13), which has been rejected by the Revisional Authority by passing a detailed order dated 07.09.2021 (Annexure P-3) and the relevant portion from the same, reads as under:-

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“I have perused the documents presented and heard the arguments forwarded by both the parties. Petitioner has admitted that he had taken a loan for the purpose of poultry farming while working as a Manager in PADB, Baba Bakala, which was repaid by him within 35 days. He was charge sheeted and after conducting a regular enquiry, punishment of stoppage of two annual increments with cumulative effect was inflicted upon him by the Managing director vide order dated 12.04.2010. Afterwards, Appellate Authority rejected the appeal of Petitioner vide order in its meeting dated 04.04.2011.

1. A plea has been taken by the Petitioner that Poultry farming is an allied activity to agriculture and no prior permission was required to be taken for obtaining loan or starting poultry farming. But as per Rule 21 of The Punjab State Cooperative Agricultural Development Bank Service Common Cadre Rules, 1978, service of the Petitioner is governed by the Government Employee Conduct Rules, 1966. As per Rule 15 of the Conduct Rules, 1966, no Government employee shall except with the previous sanction of prescribed authority engage directly or indirectly in any trade or business or negotiate for or undertake any other employment. Therefore, it is evident that previous sanction of the prescribed authority was required to be taken before starting the business of Poultry Farming. Another plea taken by the Petitioner that other employees have also been doing the business of this sort and never took permission/sanction from the higher authorities, cannot be sustained in this case. A wrong precedent taken by the Petitioner does not absolve the Petitioner of the above said charge. Even Enquiry Officer has proved this charge as Petitioner as himself admitted before the Enquiry Officer that he was unaware of the fact that prior approval/permission was required to be taken.

2. On the one hand, it has been submitted by the Petitioner in the revision petition that first payment of loan was utilized by him and question of utilizing second payment did not arise as entire loan was repaid within 35 days. On the other hand, in the

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replication Petitioner has submitted that the project was not started and the Petitioner was yet to apply for starting the project, which was mid-way stopped by the report of AGM. Statements are contradictory to each other as first in the main revision petition, he has admitted the utilization of one loan and in the replication, he submitted that project was not yet started.

3. As far as the matter of sanctioning of loan to himself is concerned, though Enquiry Officer has not proved the charge given the tenure of the Board of Directors had ended and the power to sanction the loan was given to Manager concerned. This does not mean that the power/authorization given to the Manager would be used by him to grant loan to himself. He should have acted diligently and taken the permission or asked for the sanction from the higher authorities for the same.

4. Apart from the above said charges, other charges with regard to irregularities in the loan case file were levelled against the Petitioner. Petitioner has submitted that charges which pertain to availability of membership form and fard jamabandi in the loan case file were not proved by the Enquiry Officer. But it is evident from the enquiry report that other charges were proved by the Enquiry Officer and nothing in defence has been produced by the Petitioner to prove his stance on other charges. Rather, at various places in the enquiry report, he has admitted that photographs of applicant and third party could not be attached in the loan case file. Similarly, signatures of Deputy Manager and Manager could not be taken on the loan case sanction note and order of sanction of loan could not be signed by the Manager due to engagement in loan waiver scheme. It clearly proves the gross negligence on the part of Petitioner. Being a Manager of the Bank, he was expected to work diligently.

Besides, Managing Director, respondent has already taken a lenient view of the matter and a punishment of stoppage of two annual increments has been inflicted upon

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the Petitioner against the proposed punishment of stoppage of three annual increments with cumulative effect. Thus, in view of the above said facts and circumstances and gravity of charges levelled against the Petitioner, I do not find any reason to interfere in the punishment orders dated 12.04.2010 passed by the Managing Director of the Bank and appellate order passed by the sub-committee of Board of Directors in its meeting dated 04.04.2011. Therefore, this revision petition is dismissed and punishment order of Managing Director and Appellate order of the sub-committee of Board of Directors are upheld.

*Order has been announced in the open Court.
File be consigned to the record.*

Date: 07.09.2021

*Vikas Garg, I.A.S.,
Registrar, Cooperative Societies,
Punjab, Chandigarh.”*

Even the present writ petition has been filed after more than three years of dismissal of the revision petition preferred by the petitioner. There is a delay at every stage on the part of the petitioner and, therefore, the instant petition is liable to be dismissed on the ground of delay and laches. A person who approaches the Court at belated stage dis-entitles himself to seek discretionary relief under Article 226 of the Constitution of India. If the petitioner wants to invoke jurisdiction of a writ Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction.

8. 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



latches, 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, if 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.”

9. 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

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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. 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.”

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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.*

10. 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.

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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

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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.”

11. 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

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*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***

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*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*

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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.

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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-suiting 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

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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 relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.

13. Ordered accordingly.”

12. 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

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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.”

13. The contention of the petitioner that stoppage of increments with cumulative effect is a recurring cause of action, cannot be accepted as in **“Gurbax Singh vs Pepsu Board Transport Corporation and others”**, 2014 SCC Online (P&H) 8063, it has been held by this Court that punishment of stoppage of increments is not a recurring cause of action and the punishment order of stoppage of increments has to be challenged before the Civil Court within 03 years and the suit filed after 03 years is barred by limitation. The operative part of the said judgment, reads as under:-

*“Learned counsel for the appellant has argued that the stoppage of increments with cumulative effect has a recurring cause of action affecting pay and allowance payable to him and therefore, the suit cannot be said to be barred by limitation. Reliance is placed upon judgment of this Court in **Malkiat Singh v. State of Haryana, 2008 (2) SLR 192** and **Yog Raj Mittal, since deceased through is legal representatives v. State of Punjab, 2008 (4) SLR 169.***

The question of law as to whether, the punishment of stoppage of increments has the recurring cause of action or that suit is to be instituted within three years of the passing of the order was considered by the Division Bench in RSA No. 1927 of 1994 titled ‘Amar Singh v. State of



*Punjab’ decided on 03.05.2006. In the aforesaid case, the challenge was to 12 orders in respect of stoppage of increments with or without cumulative effect. Such suit was filed after three years of passing of the last of such order as well. The learned Division Bench relied upon an earlier judgment of the Division Bench in **Randhir Singh v. State of Haryana 1994 (3) RSJ 110** to hold that the suit instituted on 12.04.1990 against the 12 order passed on 23.07.1984 is clearly barred by limitation and had been rightly dismissed by the lower Appellate Court. While dismissing the appeals filed by the plaintiff, the Bench also placed reliance on two judgments of the Supreme Court in **Punjab State v. Darshan Kumar 1995 Supp (4) SCC 220** and **State of Punjab v. Rajinder Singh, Conductor 1999 SCC (L&S) 664**.*

It has been held that the suit for declaration challenging the order of punishment of the stoppage of increments has to be disputed before the civil court within three years. The suit filed after three years is barred by limitation.”

14. To the same effect is the judgment passed in “**Guru Dutt vs Pepsu Road Transport Corporation**”, 2001(3) SCT 1066, wherein it has been held as under:-

“2. The plaintiff has been non-suited by the first appellate Court for the following reasons given in para Nos. 8 to 11 of the impugned judgment :-

"In the instant appeal, the only point for determination is whether the suit filed by the appellant was within limitation. On this point Shri S.K. Sharma, ld. counsel for appellant has mainly argued that the suit filed by the appellant was within limitation because right of increment is recurring



right. He has cited ruling ***State of Punjab v. Gurdev Singh, Ashok Kumar, 1991(3) SCT 93 (SC) : AIR 1991 Supreme Court 2219***, that the limitation for challenging the impugned orders is three years. If the party approaches the Court after the expiry of statutory period, the Court cannot give the declaration sought for. In the supra ruling it has been held as under:-

"A suit for declaration that an order of dismissal or termination from service passed against the plaintiff dismissed employee is wrongful, illegal or ultra vires is governed by Article 113. It cannot be said that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article it is to provide for cases which would not be covered by any other provision in the Limitation Act. The party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for".

Similar view was held by our own Hon'ble High Court in ***State of Punjab v. Balbir Kaur, 1996(3) Punjab Law Reporter 795*** in which the penalty of withholding one increment with cumulative effect was imposed and it was held that the period of limitation to challenge the said order

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was three years as provided under Article 113 of the Limitation Act (36 of 1963). In para No. 9, it was held that :

".....The order of penalty, may be illegal or otherwise, can only be set aside within a period of three years from the date of cause of action accrued to the Government employee. In the present case cause of action accrued to the plaintiff, when the order of penalty was initially passed on 30.8.1993 and later on 8.5.1986 when the order of penalty was modified. Therefore, the suit to get these orders declared as illegal and void ought to have been filed within a period of three years from the latter dated viz 8.5.1986 as by virtue of this order right to revise salary by the employee on expiry of the month was put to an end. The order of penalty still stands, it having not been set aside within the period of limitation. Once that is so, it was not open to the Courts below to grant relief as has been granted in the present case."

*To the similar effect are rulings **Punjab State v. Hardev Singh, 1997(2) SCT 101 (P&H) : 1997(1) PLR 669, State of Punjab v. Babu Singh, 1996(2) SCT 91 (P&H) : 1996 PLR 482 and the Punjab State v. Kulwinder Singh, 1995(2) PLR 718.***

*9. On the other hand, ruling 1996(2) AIJ 652 (supra) cited by the learned counsel for the appellant do not apply to the facts of the present case and is quite distinguishable. In the said ruling the delinquent official has claimed arrears of increment and it was held by their Lordships that no doubt the right to increment is a recurring right and the petitioner is entitled to the same, but in view of the laches on the part of the (petitioner) payment of any arrears of the increments prior to 1990 was declined. Similarly, the other rulings **State of Punjab v. Sandhu Singh, 1993(2) Recent Services Judgments 766, Punjab***



State v. Paramjit Singh, 1992(1) Punjab Law Reporter 417 and State of Punjab v. Parkash Singh, 1993(3) SCT 394 (P&H) : 1992(8) SLR 689 are also quite distinguishable and do not apply to the facts of the present case.

10. As far as the ruling *State of Madhya Pradesh v. Syed Qamarali, 1967 Services Law Reporter 228* cited by the learned counsel for the appellant is concerned, the same is also not applicable to the facts of the present case in view of ruling AIR 1991 Supreme Court 2219 (*supra*) cited by the learned counsel for the respondents.

11. Thus, relying upon the *supra* authorities, I hold that the period of limitation for challenging the impugned orders was within three years. The appellant has failed to file the suit within three years and as such his suit has been rightly dismissed by the learned trial Court being time barred. The learned trial Court has, therefore, rightly appreciated the evidence while dismissing the suit being time barred and thus, I affirm the same".

3. Faced with this difficulty, the learned counsel for the appellant submitted that both the Courts below fell in error by holding that the suit of the plaintiff was beyond limitation. He submitted that the case pertains to the arrears of salary of the plaintiff and in these circumstances there will be no limitation. In support of his contention, the learned counsel for the appellant has relied upon **1996(1) SCT 8, M.R. Gupta v. Union of India and others**. I do not subscribe to the argument of the learned counsel for the appellant. The cited judgment is distinguishable on facts. In fact the plaintiff was challenging the order dated 18.11.1971 and other orders dated 7.4.1972, 18.7.1975 and 17.2.1977 vide which his two annual increments with cumulative effect were stopped and the period with effect from 9.1.1977 to 21.1.1977 was treated as leave without pay. The cause of action arose to the plaintiff on the date of

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the passing of these orders. Resultantly, the suit ought to have been filed by the plaintiff within three years. The present suit was filed in the year 1991 which was hopelessly barred by limitation. There is no error of law on the part of the Courts below.
No merit. Dismissed.
Appeal dismissed.”

15. In view of the foregoing discussion 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 on the ground of delay and latches.

(NAMIT KUMAR)
JUDGE

12.11.2024

yakub

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