



CWP-30905-2024

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

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CWP-30905-2024

Date of Decision: 18.11.2024

Sukhpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sardavinder Goyal, and
Mr. Nishant Sindhu, Advocate for the petitioner
Mr. Aman Dhir, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to the respondents to re-measure her height and issue her appointment letter for the post of Constable.

2. The petitioner pursuant to Advertisement No.1/2016 dated 31.05.2016 (Annexure P-1) applied for the post of Constable under Scheduled Caste (M&B) Category. She was not selected. She claims that respondent has wrongly measured her height. If her height is re-measured, she would succeed.

3. Learned counsel for the petitioner submits that this Court vide judgment dated 05.07.2021 disposed of a bunch of writ petitions including

CWP No.22985 of 2016 whereby respondents were directed to re-measure

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height of all the petitioners. The respondent re-measured height of the petitioners. Another petition i.e. *CWP No.14858 of 2019* was also allowed and respondents were directed to re-measure height of the petitioner.

4. *CWP No.22985 of 2016* was disposed of on 05.07.2021. *CWP No.14858 of 2019* was disposed of on 29.05.2023. First petition was filed in 2016 and second was filed in 2019. The second petition was filed before adjudication of first petition i.e. *CWP No.22985 of 2016*. This Court while passing order dated 05.07.2021 made it clear that it is one time arrangement and height of all the petitioners be re-measured. The relevant extracts of judgment dated 05.07.2021 are reproduced as below:-

“32. Accordingly all those candidates who are before this Court and have any grievance qua their height, shall approach the competent authority along with their application within 30 days of this order being uploaded on the court website, to seek re-measurement of their height. In case, on remeasurement, there is any discrepancy in the same, the advantage of the correct measurement be given to the candidate and the merit list shall be redetermined by giving/ changing marks as per their height, in accordance with law. In case, a candidate has become overaged during pendency of CWP, then one time relaxation in age shall be given.

33. In case of change of merit position owing to re-measurement of height, the same shall be corrected. Candidates who have allegedly been given inappropriate advantage of their height shall have to make way in case their merit gets lower as a result thereof. It is re-iterated that those, who have already been selected, their selection was made subject to the final outcome of the writ petition as per order dated 06.12.2016.

34. It is, however, made clear that this one time liberty/ indulgence of remeasurement of height across board is being granted in view of



the concession/ stand taken by the State in its Review Application, that in order to mitigate the grievance a onetime exercise can be carried out qua those, who are aggrieved against measurement of their height.

35. *The aforesaid indulgence is merely to balance the equities and to give a quietus to the height controversy without re-opening the selection process. It shall not, in any manner, be construed to mean that the selected candidates have been given any kind of advantage of wrong measurement of height, as has been alleged by the petitioners.”*

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 two Judge Bench of Supreme Court recently in ***Mrinmoy Maity v. Chhanda Koley and others, 2024 SCC OnLine SC 551*** has held that High Court ought to dismiss petition on the ground of delay and laches where there is no explanation of delay. An applicant who approaches the Court belatedly or in the other words sleeps over his rights for a considerable period ought not to be granted the extraordinary relief by writ Courts. Delay defeats equity. High Court may refuse to invoke its writ jurisdiction if laxity on the part of applicant has allowed the cause of action to drift away and attempts are made to rekindle the lapsed cause of action. Multiple communications cannot



create cause of action. The relevant extracts of the judgment are reproduced as below:

“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed



period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court.”

7. The petitioner was neither party in the bunch of writ petitions nor CWP No.14858 of 2019. The advertisement in question was published in 2016. The petitioner opted to remain silent from 2016 to 2024 despite the fact that number of candidates approached this Court and the matter remained pending before this Court till 2021. Nothing convincing is on record which prohibited the petitioner from approaching this Court. The petitioner has raised lame excuse of illness of her father. Every selection process needs to be settled. Selection of one candidate, at a later point of time, may create problem for already selected candidates as well as lead to other consequences. Selection to a particular post is neither a fundamental nor vested right. It is not case of the petitioner that she was actually selected and appointment letter was misplaced or issued to a wrong person whereas she is assailing measurement of her height.

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8. This Court finds no explanation for delay in filing the instant case. The present petition deserves to be dismissed on the ground of delay and laches and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.11.2024
Mohit Kumar

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