

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

(108)

**2024:PHHC:008990
CWP-28690-2023
Date of Decision: 23.01.2024**

Ganesh Kumar

--Petitioner

Versus

Registrar General, High Court of Punjab &

Haryana and others

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Ms. Malkit Kaur, Advocate for petitioner.

Ms. Deepali Kaur, Advocate for respondents.

VIKAS BAHL.J (Oral)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 27.03.2014 (Annexure P-1A), whereby penalty of stoppage of two annual increments of pay with cumulative effect has been imposed on the petitioner. Challenge is also to the order dated 09.09.2016 (Annexure P-2) whereby a penalty of withholding of five increments of pay with cumulative effect has been ordered. Further challenge has been made to the order dated 27.07.2018 (Annexure P-3) whereby a penalty of withholding of six increments with cumulative effect has been imposed upon the petitioner and also to the order dated 27.07.2018 (Annexure P-4) whereby penalty of withholding of one increment without cumulative effect has been ordered by respondent no.2.

2. Brief facts of the present case are that the petitioner had joined the office of respondent no.2 as a Peon and an inquiry was initiated against the petitioner while he was posted as Water Man in the court of Addl. Civil

Judge (Sr. Divn.), Ferozepur Jhirka under Rule 7 read with Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter to be referred to as the “1987 Rules”) and Rule 12(2) of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (hereinafter to be referred to as the “1997 Rules”) on the charge that the petitioner had willfully absented himself from duty w.e.f. 27.4.2010 to 19.5.2010 and that he was not available at the headquarter on 9.8.2010 and 10.8.2010. After the conclusion of the departmental proceedings, an inquiry report dated 9.3.2011 was submitted by the Inquiry Officer Jasbir Singh, who was the then JMIC, Nuh in which the charges against the petitioner were proved. The relevant portion to the said inquiry report has been reproduced at page 29 in Annexure P-1, however, neither the said inquiry report has been annexed in the present petition nor the same has been challenged before this Court. The District & Sessions Judge, Gurgaon vide order dated 17.03.2011 agreed with the Inquiry Report and issued a show cause notice to the petitioner as to why enquiry report be not accepted. The petitioner filed his reply dated 09.04.2011 to the said show cause notice and one of the pleas taken in the said reply was that he was ill but the District & Sessions Judge, Gurgaon vide order dated 02.01.2012 (Annexure P-1) rejected the said reply on the ground that the petitioner had failed to produce any document or to examine any doctor in his defence. The District & Sessions Judge, Gurgaon vide order dated 02.01.2012 (Annexure P-1) agreed with the report of the Inquiry Officer and imposed a penalty of stoppage of one increment with cumulative effect for the said unauthorized absence.

3. For a period of more than 10 years the said order has not

been challenged nor the same is sought to be challenged in the present writ petition.

4. Another charge sheet under Rule 7 read with Rule 4 of the 1987 Rules read with Rule 12(2) of the 1997 Rules was issued against the petitioner for willful absence from duty w.e.f. 02.07.2012. In the said case also regular departmental inquiry was held and the Inquiry Officer vide Inquiry Report dated 10.02.2014 found the petitioner guilty of willful absence from duty w.e.f. 02.07.2012 to 16.09.2013 without prior permission or intimation. The said inquiry report was supplied to the petitioner and the petitioner in response had submitted that his absence was on account of his wife being ill and had further submitted that he had no medical certificate regarding the same and also sought unconditional apology. The District & Sessions Judge, Mewat vide order dated 27.03.2014 (Annexure P-1/A) considered all the facts and circumstances and agreed with the Inquiry Report dated 10.02.2014 submitted by the Inquiry Officer and observed that the petitioner had remained absent for a long period and could not produce any medical certificate regarding illness of his wife and thus a penalty of stoppage of two annual increments with cumulative effect was imposed upon the petitioner. Even the said order which was passed in the year 2014, was not challenged for a period of more than 8 years and even the Inquiry Report dated 10.02.2014 in the said case has neither been placed on record nor is sought to be challenged.

5. A third charge sheet was issued for creating ruckus in the court premises under the influence of liquor on 18.05.2015 at 10:08 PM. A reply was filed to the said charge sheet in which the factum of petitioner having consumed liquor was not disputed and after the disciplinary proceedings the

Inquiry Report dated 14.01.2016 was submitted holding the petitioner guilty. A copy of the said Inquiry Report was supplied to the petitioner and the petitioner in his reply submitted that he would give assurance that he would not consume alcohol in future. The District & Sessions Judge, Mewat vide order dated 09.09.2016 (Annexure P-2) observed that the said misconduct which had been duly proved warranted removal of the petitioner from service, yet, by taking a lenient view imposed the penalty of withholding of five increments with cumulative effect. Even the said order passed on 09.09.2016 for a period of more than 6 years was not challenged.

6. A fourth inquiry was initiated against the petitioner for absence from duty w.e.f. 10.03.2015 to 18.03.2015, 06.04.2015 to 06.06.2015 and 01.07.2015 to 16.07.2015 and a charge sheet was issued to the petitioner regarding the same, to which a reply was filed, which was found unsatisfactory and a regular departmental inquiry was ordered vide order dated 09.05.2016 and the Inquiry Officer submitted a detailed Inquiry Report dated 21.08.2017 holding that the charges were proved. Thereafter, a show cause notice was issued to the petitioner to which a reply was filed and the District & Sessions Judge, Mewat vide order dated 27.07.2018 (Annexure P-3) after giving personal hearing to the petitioner, observed that there was no dispute that the petitioner had remained absent for a considerable period of time without prior permission or getting the leave sanctioned and that the plea sought to be raised of his illness is not believable and was in contradiction to the earlier stand taken by the petitioner in his reply in which he had stated that his wife was ill. It was further observed that no medical proof supporting the said plea was produced and that the petitioner was habitually absent from duty without

intimation or prior permission and accordingly a penalty of withholding of six annual increments with cumulative effect was imposed upon the petitioner.

7. The fifth inquiry and punishment which is sought to be challenged before this Court was for remaining absent from duty on 31.07.2017, 01.08.2017 and on 2.8.2017 without any prior permission or intimation. With respect to the same, petitioner was charge sheeted and a reply to the same was filed by the petitioner and a personal hearing was also given and it was found that there was no substance in the pleas of the petitioner as neither any medical proof nor any intimation qua his absence from duty was produced by the petitioner and thus penalty of withholding of one increment without cumulative effect was imposed after following the due procedure vide order dated 27.07.2018 (Annexure P-4). The orders Annexures P-3 and P-4 were also not challenged for a period of more than four years without any explanation. The respective inquiry reports have neither been placed on record nor have been sought to be challenged in the present writ petition. A mercy appeal without reference to any provision of law is stated to have been filed by the petitioner before respondent no.1.

8. On a pointed query raised, counsel for the petitioner was not able to point out the exact date on which the said mercy appeal was filed but the counsel appearing for the respondents has submitted that the said mercy appeal was filed on 7.3.2022 and the same is not referable to any provision of law and has been rejected vide letter dated 21.10.2022.

9. Learned counsel appearing for the respondents has informed the Court that the petitioner had not preferred any service appeal against any of the five orders which were sought to be challenged before this Court

under Rule 14 of the 1997 Rules and has further submitted there there is no provision regarding filing of a mercy appeal against the five orders passed by the District & Sessions Judge, more so in a single petition/application as has been done by the petitioner. It has been further submitted that the service appeal is also barred by limitation as the appeal under Rule 14(c)(i) of the 1997 Rules is to be presented to the District & Sessions Judge within a period of 45 days of the date of the said order, which has not been done. The mercy appeal filed challenging all the five orders by filing a single petition has not been entertained as there is no rule providing for the same.

10. Learned counsel for the petitioner has not been able to refer to any rule to show that the mercy appeal filed after several years and challenging all the five orders in one mercy appeal is maintainable.

11. The only ground sought to be raised before this Court is that the petitioner was an illiterate person and thus he was not aware of the facts that service appeal was to be filed and the same was to be filed within a period of 45 days and was also not aware that on account of his absence the punishments imposed could be passed against him. It is further submitted that the petitioner and his wife were not well and it is for the said reasons that he remained absent from duty and for the same a lenient view may be taken.

12. Learned counsel for the respondents, on the other hand, has submitted that the petitioner is a govt. employee and has a service of more than 17 years. It is further submitted that in the proceedings the petitioner was issued various show cause notices to which he filed replies and thus the pleas raised by counsel for petitioner are an afterthought.

13. This Court has heard learned counsel for the parties and has

perused the paper book and finds that the present writ petition is meritless and deserves to be dismissed for the following reasons:-

(i) Four different proceedings culminating into the passing of four different orders are sought to be challenged in one writ petition. Neither the Inquiry Report in the said four proceedings nor the show cause notices nor replies to the said show cause notices nor the documents/evidence on the basis of which the authorities have passed the impugned orders, have been placed on record nor the same are under challenge. No argument has been raised to show that the proceedings in any of the four cases were in violation of any statutory provision of law or the findings arrived at were perverse or in violation of law.

(ii) Three of the four proceedings culminating into passing of the orders dated 27.03.2014 (Annexure P-1/A), 27.07.2018 (Annexure P-3) and 27.07.2018 (Annexure P-4) were with respect to the absence of the petitioner from duty for various periods of time without prior intimation and without getting the leave sanctioned. The plea taken in the said proceedings by the petitioner was that the absence was on account of his illness or the illness of his wife. After due inquiry in each of the said proceedings the Inquiry Officer had come to the conclusion that there was no medical evidence or defence witness produced by the petitioner in support of the same and had thus found the said plea to be false and the inquiry report had been duly accepted by the punishing authority. Even with the present writ petition no such medical evidence/document has been annexed. Thus, no fault can be found in the said proceedings or in the impugned orders.

(iii) Admittedly, no service appeal in accordance with law has been filed against any of the said orders and only a mercy appeal has been filed

on 07.03.2022 against all the orders, which is not referable to any rule/regulation.

(iv) The present writ petition also deserves to be dismissed on the ground of unexplained delay and laches inasmuch as the impugned orders have been passed in the years 2014, 2016 and 2018 and the same are being sought to be challenged now after much delay. The Hon'ble Supreme Court has repeatedly held that a petition filed after an unexplained lapse of time should not be entertained and mere filing of repeated representations or even directions to decide said representations would not give rise to a fresh cause of action. Reference in this respect may be made to the judgment passed by Hon'ble Supreme Court of India in ***“Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu” reported as 2014(4) SCC 108*** in which one of the grounds for setting aside the judgment of the High Court was the fact that the petitioner therein had approached the High Court after a delay of 4 years and it was observed by the Hon'ble Supreme Court that it was the duty of the Court to scrutinize whether such an enormous delay is to be ignored without any justification and the Hon'ble Supreme Court came to the conclusion that interference by the High Court after a lapse of 4 years was unjustified and that the writ petition should not have been entertained. The Hon'ble Supreme Court of India in the case ***“State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others” reported as 2013(12) SCC 179*** had observed that repeated representations or reply to such representations cannot furnish a fresh cause of action or revive a stale or dead claim and that the issue of limitation or delay should be considered with reference to the original cause of action and not with reference to the date on which an order was passed in

compliance of the Court's directions and 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. In ***“Chairman, U.P. Jal Nigam and Anr. v. Jaswant Singh & Anr.”*** reported as ***2006(11) SCC 464***, the Hon'ble Supreme Court had rejected the claim of the persons who were guilty of delay and had approached the Courts after some years and had sought to raise the plea that similarly situated persons, who had filed the writ petitions earlier, had been granted the relief. The judgment of the Hon'ble Supreme Court in ***“State of Uttaranchal's case (supra)”*** has further been referred to in the latest judgment of the Hon'ble Supreme Court passed in ***State of West Bengal Vs. Debabrata Tiwari and Others reported as 2023-SCC-Online-SC-219***. The relevant portion of the same is reproduced hereinbelow:-

*“37. Whether the above doctrine of laches which dis-entitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution came up for consideration before a Constitution Bench of this Court in ***Moon Mills Ltd. v. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450***. In the said case, it was regarded as a principle that dis-entitled a party for grant of relief from a High Court in the exercise of its discretionary power under A Article 226 Â of the Constitution. 38. In ***State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566*** this Court restated the principle articulated in earlier pronouncements in the following words:*

9. ... 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 train 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.”

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40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005- 2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in **State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179**, wherein the following observations were made:

19. 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.”

The plea raised by the counsel for the petitioner with respect to not approaching the Court or filing a statutory appeal within time, is completely unfounded and deserves to be rejected.

14. Keeping in view the above said facts and circumstances, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

23.01.2024

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No