

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

112

CWP-28804-2023

Date of decision: 27.02.2024

HARJINDER SINGH

....PETITIONER

Vs.

FOOD CORPORATION OF INDIA AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Harinder Sharma, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking directions to respondents to appoint him on compassionate ground in terms of judgment dated 02.08.2016 (Annexure P-3) passed by this Court.

2. The petitioner is claiming compassionate appointment on the ground of death of his father who was working as labourer with respondent-FCI. He passed away in harness on 19.06.2009. The petitioner filed an application seeking compassionate appointment but respondent did not respond and left with no other option, he served legal notice dated 03.06.2019 (Annexure P-4) upon the respondents. The legal notice was replied vide letter dated 18/19.09.2019 (Annexure P-5). The claim of the petitioner was rejected on the ground that he is over age. The maximum age prescribed for appointment on compassionate ground is 30 years whereas he is more than 30 years. The respondent also formed an opinion that deceased employee was not sole bread winner of the family.

3. The legal notice was served upon respondents on 03.06.2019 and it was replied by respondent on 18/19.09.2019. The petitioner has approached this Court in December' 2023.

4. On being asked reason of delay, Mr. Harinder Sharma, Advocate, submits that claim of the petitioner was based upon judgment dated 02.08.2016 of this Court in CWP No.85 of 2011 and respondent has filed review application in said petition, thus, awaiting decision of review application, they did not approach this Court.

5. The conceded position emerging from record is that father of the petitioner died on 19.06.2009. As per petitioner, the application seeking appointment on compassionate ground was filed in 2009. The petitioner served legal notice upon respondents on 03.06.2019. The said legal notice was replied vide communication dated 18/19.09.2019.

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 **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.”

8. In **Tilok Chand Moti Chand 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.

9. 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.’

10. 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.”

11. The petitioner is claiming that application seeking appointment on compassionate ground was filed in 2009. The respondent is disputing existence of said application. The petitioner opted to serve legal notice upon respondents on 03.06.2019 i.e. after the expiry of 10 years from the date of filing of alleged application. It indicates that the petitioner remained silent for more than 10 years for appointment on compassionate ground and all of sudden woke up from slumber and served legal notice upon respondent.

12. The object of compassionate appointment or ex-gratia payment is to protect family of the deceased employee from destitution, penury and starvation. In

the object clause of the policy framed by the respondent, it has been specifically noticed that object of the appointment on compassionate ground is not to give a member of the deceased employee's family a post, much less a post for a post held by the deceased but to provide relief to the family of a deceased employee to tide over the sudden crisis brought about by his/her premature death. The relief envisaged would provide the distressed family immediate succor and financial assistance to recover from the unexpected deprivation of the income of the sole bread-winner of the family.

13. The Apex Court in **Umesh Kumar Nagpal Versus State of Haryana; (1994) 4 SCC 138**, has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read as:-

“2 The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is

made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

14. From the perusal of above-cited judgment and policy of the respondent-FCI, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury. Petitioner’s father passed away more than 15 years back and at present he is 39 years old. It seems that he wants to make hay at this belated stage which is impermissible in equity as well law.

15. In the wake of above-referral 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.

27.02.2024
anju

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes