

IN THE HIGH COURT OF PUNJAB & HARYANA AT

CHANDIGARH

1.	CWP-29502-2023
Sohan Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents
2.	CWP-29488-2023
Tarsem Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents
3.	CWP-29516-2023
Avtar Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents
4.	CWP-29513-2023
Balbir Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents

Gurcharan Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

Harnek Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

Date of decision : 05.01.2024

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms.Nevadita Malik Sharma, Advocate and
Mr.Abhinay Sharma, Advocate
for the petitioner(s).

Ms. Rajni Gupta, Addl.A.G. Haryana.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of six writ petitions, i.e. CWP-29502-2023 filed by Sohan Singh, CWP-29488-2023 filed by Tarsem Singh, CWP-29516-2023 filed by Avtar Singh, CWP-29513-2023 filed by Balbir Singh, CWP-29477-2023 filed by Gurcharan Singh and CWP-29511-2023 filed by Harnek Singh, as common questions of law and fact arise in the present cases.
2. In all the writ petitions, prayer has been made for the issuance of appropriate writ or order directing the respondents to reinstate the petitioners in service as volunteer Home Guard by alleging that their services were illegally terminated. The following chart which has been

made on the basis of the averments made in the said writ petitions would show the period for which the petitioner in each of the writ petitions had served as Volunteer Home Gaurd and the year in which he was discharged:-

Name of petitioner	Period of service as per averments in para 3 of the writ petition	Period of service as per representation annexed with the writ petition	Year of discharge of service	First representation made by the petitioner
Sohan Singh in CWP-29502-2023	1999 to 2008	1999-2008	2008	02.08.2023 (Annexure P-1)
Tarsem Singh in CWP-29488-2023	1999 to 2008	2006-2008	2008	11.09.2023 (Annexure P-1)
Avtar Singh in CWP-29516-2023	2008 upto 05.05.2011	2008 upto 05.05.2011	2011	11.09.2023 (Annexure P-2)
Balbir Singh in CWP-29513-2023	2008 upto 05.05.2011	21.01.2014 to 02.11.2015	2011/2015	11.09.2023 (Annexure P-2)
Gurcharan Singh in CWP-29477-2023	2008 upto 05.05.2011	2000 to 2010	2011/2010	04.08.2023 (Annexure P-3)
Harnek Singh in CWP-29511-2023	2008 upto 05.05.2011	08.09.2015 to 05.05.2016	2011/2016	04.08.2023 (Annexure P-2)

A perusal of the above chart would show that there is contradiction with respect to the period of service and the date discharge in the averments made in para 3 of the writ petition and the averments made in the representation with respect to the cases of Tarsem Singh, Balbir Singh, Gurcharan Singh and Harnek Singh. The representations submitted by Gurcharan Singh and Harnek Singh have been rejected by the authorities vide reply dated 01.09.2023 which has been annexed in the case of Harnek Singh as Annexure P-3 and Annexure P-4 in the case of Gurcharan Singh and the said decision / reply has not been challenged in the said two writ petitions. It would also be relevant to note that in the case of Sohan Singh and Tarsem Singh, no document has been annexed along with their writ petitions to even remotely show that they were ever appointed/ served as volunteer Home Guard.

3. The facts, which emanate on the basis of the averments made in the writ petitions, would show that all the petitioners have been discharged from the service of volunteer Home Guards during the period from 2008 to 2016. The first representation given by the petitioners in all the cases is in the year 2023, which is after a period of several years. No explanation for delay has been given and the only averment on the said aspect is in paragraph 9 of each of the petitions in which it has been stated that ever since disengagement of the petitioners, the petitioners had been toiling around the respondent department for seeking explanation for their discharge/ dismissal and also for procuring record pertaining to their service. On a pointed query raised by this Court to the learned counsel for the petitioner as to whether there is any plausible explanation for the huge delay in giving the representations and filing the present writ petitions, learned counsel for the petitioner could not give any plausible explanation and has relied upon a judgment passed by the Hon'ble Division Bench of High Court of Himachal Pradesh at Shimla in **CWP-3628-2020** titled as ***"Inder Singh vs. State of H.P. and others"*** decided on 05.01.2021.

4. This Court has heard learned counsel for the petitioner(s) and has perused the paper book and is of the opinion that the present set of writ petitions deserve to be dismissed solely on the ground of delay and laches. As is apparent from the chart, which has been reproduced hereinabove and has been tabulated on the basis of averments made in the writ petitions / representations, all the petitioners, even as per their own case had worked as volunteer Home Guards and were discharged from their service during the period from 2008 to 2016 and the first representation given by each of the the said petitioners is in the year 2023 i.e., after a delay of several years.

The only explanation for delay has been given in paragraph 9 of each of the

writ petitions. Paragraph 9 of the CWP-29502-2023 is reproduced hereinbelow:-

“9. That the petitioner made a representation to the respondents on 02.08.2023 however, no response was received from them. Copy of representation is Annexure P-1. That ever since his disengagement he has been toiling around the respondent Department seeking explanation for his illegal dismissal and also for procuring record pertaining to his service however, the petitioner has not been provided any relief.”

The explanation for delay is to the similar effect in each of the other writ petitions as has been given in CWP-29502-2023. The said explanation as well as the explanations given in paragraph 9 of all the other writ petitions, cannot even remotely be treated as plausible explanation by this Court to condone the delay of several years.

5. 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 the 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 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.

6. 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.

7. 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.

8. 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 Article 226 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 thirdparty 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."

9. It would also be relevant to take note of the judgment of the Hon'ble Division Bench dated 07.07.2022 passed in ***LPA-1088-2018*** titled as ***"State of Punjab and others vs. Shingara Singh and others"*** and other connected matters. The said case was with respect to the Home Guard Volunteers who had worked in the State of Punjab and in the said case two primary issues were framed. The first being with respect to the maintainability of the writ petitions at belated stage after several years on account of legal notices having been served and the directions having been

issued by the Court to consider the same and as to whether the claim would stand barred by delay and laches or not. The second issue which was framed was on the aspect as to whether the Home Guards have any indefeasible right to be recalled for duty on account of certain persons having been taken back or recalled. The Hon'ble Division Bench after considering the law laid down by the Hon'ble Supreme Court in various judgments including that of ***C.Jacob vs. Director of Geology & Min. Indus. Est. and another*** reported as ***2008 (10) SCC 115*** as well as in the ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava*** reported as ***(2015) 1 SCC 347*** observed that the litigation had been initiated at a belated stage and after considering the said aspect set aside the judgment of the learned Single Judge who had entertained and allowed the writ petitions inspite of delay. Even on the second issue, after considering various judgments, the Hon'ble Division Bench held against the respondent Home Guards (therein). The relevant portion of the said judgment is reproduced hereinbelow:-

*“2. The present set of appeals arise out of the three different judgments passed by three different learned Single Judges. The relief has been granted vide judgment dated 23.02.2017 in CWP No. 23475 of 2015, **Jarnail Singh vs. State of Punjab and others**. Similarly, in CWP No. 22640 of 2011, **Shingara Singh and others vs. State of Punjab and others** dated 25.01.2018, the relief has been granted to the extent that the learned Single Judge has directed the State to consider the case of the petitioners in terms of cases of Shingara Singh and Paramjit Kumar, who had been recalled on duty as Home Guards Volunteers. The relief has been declined in CWP No. 19229 of 2018, **Joginder Singh and others vs. State of Punjab and others** alongwith 17 other cases on 06.06.2019.*

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4. Similarly, CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020 are also placed before us wherein, relief is sought for reemployment as Punjab Home Guards.....

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5. A perusal of the pleadings in CWP No. 22640 of 2011, out of which

LPA No. 1088 of 2018 has arisen, would go on to show that the prayer was for absorbing and re-employing the 9 writ petitioners as Home Guards Volunteers as they claimed that they have served for 1 year to 10 years from 1992 and also as Special Police Officers. Their services had been terminated without following proper procedure and without serving any notice....

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11. Counsels for the Home Guards-writ petitioners have accordingly argued that they were only seeking parity with persons who have been recalled and, therefore, the orders of the learned Single Judge allowing the writ petitions could not be said to be suffering from any illegality which would warrant interference. Reliance was placed upon the judgment in **Sengara Singh and others vs. The State of Punjab and others, 1983 (4) SCC 225**, wherein, reinstatement had been directed of the Members of the Police Force.

12. Keeping in view the above, the following two issues would arise for consideration:

(i) As to whether the writ petitions were maintainable at the belated stage after 15 years, only on account of legal notices having been served and directions issued by this Court to consider the same and whether the claim stood barred by delay and laches?

(ii) That on account of certain persons being taken back or recalled would entitle the persons employed earlier as Home Guards to have any indefeasible right as such to be recalled for duty?

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15. A co-ordinate Bench, of which one of us was a member, G.S. Sandhawalia, J., had dismissed **LPA No. 73 of 2021, Jagjit Singh vs. State of Punjab and another on 30.11.2021** wherein also, there was absence from 1994 after a service of less than 3 years. It had been noticed that the order under challenge passed by the Commandant General, Punjab Home Guard was dated 27.07.2020 whereby, the legal notice dated 06.11.2019 was being rejected in view of the orders passed by the writ Court in CWP No. 984 of 2020 on 17.03.2020. The same was dismissed on 30.11.2021 while also taking into account the judgment of the Apex Court in **C. Jacob vs. Director of Geology & Min. Indus. Est. and another, 2008 (10) SCC 115** that the cause of action does not get revived. The relevant portion of the judgment reads thus:-

“6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he

decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the exemployee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. 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.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with backwages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages."

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*17. The said principles, thus, would squarely apply to the present litigation which has been initiated at a belated stage and both the learned Single Judges have failed to advert to this fact. It is also settled principle that Article 14 of the Constitution of India does not apply in the negative context and there is no negative equality and a wrong benefit cannot be allowed to multiply. Reliance can be placed upon judgment of the Apex Court in **R. Muthukumar and others vs. The***

Chairman and Managing Director, Tangedco and others, 2022 LiveLaw (SC) 140 wherein, it was noticed that certain set of persons were already in Court and a compromise was effected on the basis of which, claiming parity, other petitions had been filed. Therefore, while rejecting the said claim of parity, the SLP was dismissed where the benefit had not been granted and allowed where the benefit had been granted by setting aside the judgments of the Madras High Court.”

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20. The Apex Court in State of Gujarat vs. Akshay Amrit Lal Thakkar, 2006 SCC (L&S) 290, was examining the issue of disengagement of the Home Guards. It was accordingly held that the services were as such honourary and no civil consequences were involved. A similar view was also taken in Jiban Krishna Modal and others vs. State of West Bengal and others, (2015) 12 SCC 74, wherein, also similar observations came and it was held that the organization of Home Guards is a voluntary organization and they could not be regularized in service. Reliance was placed upon the earlier view in State of Manipur vs. Ksh. Moirangninthou Singh and others, (2007) 10 SCC 544, that it was a voluntary citizen force and the view taken by the Delhi High Court in Rajesh Mishra vs. Government of NCT of Delhi, 2002 (4) SCT 249, was approved that there was no master servant relationship and they are not civil servants. The Division Bench of the Delhi High Court in the said case had come to the conclusion that Home Guards could not be said to be civil servants and applications could not be entertained under the Administrative Tribunals Act, 1985.

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22. In such circumstances, we are of the considered opinion, by answering the questions above that the writ petitions were reviving a dead cause which was burdened with delay and laches and were not liable to be entertained by the learned Single Judges. The view taken by the learned Single Judge in CWP No. 19229 of 2018, Joginder Singh and others Vs. State of Punjab, decided on 06.06.2019, is a more acceptable view since there is no legal right as such of the writ petitioners whereby they could ask for consideration for being recalled as held by the Apex Court that they are volunteers and not regular employees of the State. In the absence of any such legal right, the learned Single Judges were not correct in issuing the necessary directions. As noticed above, the two learned Single Judges as such, while deciding the cases in Jarnail Singh and Shingara Singh, have not taken into consideration the status as such of the Home Guards and their entitlements and their right as such to claim recall specially after a period of over two decades. However, the said

respondent has also passed an order in three cases as such considering the claim and rejecting the same on 31.05.2017 (Annexure R-2) which has apparently also not been challenged. Even otherwise, we are of the considered opinion that the said order has kept in mind the factum of the status of the writ petitioners as such and even on merits otherwise not found them fit as such to perform the duties of constabulary having been out of service for the last two decades. The public interest element has also been kept in mind and the fact that they had absented on their own account and duly discharged.

23. *In such circumstances, we are of the considered opinion that the reasons given as such are well justified and, therefore, the writ petitions filed for similar relief are also not liable to be allowed.*

24. ***Accordingly, LPA Nos.1088, 1089, 1885, 1886 and 1887 of 2018 of the State are allowed and LPA Nos. 1567, 1571, 1573, 1599, 1624, 1656, 1814, 1815, 1818, 1673, 1754 and 1855 of 2019 of the writ petitioners stand dismissed and CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020 stand dismissed.”***

10. A revision petition was filed against the said judgment i.e., RA-LP-15-2022 which was dismissed vide order dated 11.11.2022. The Special Leave Petition (Civil) Diary no.4592/2023 filed against the said judgment dated 07.07.2022 and 11.11.2022 was also dismissed by the Hon'ble Supreme Court vide order dated 13.03.2023. Thus, keeping in view the abovesaid facts and circumstances and also the law laid down in the abovesaid judgments, all the writ petitions which have been filed after a delay of 7 years to 15 years without any reasonable justification, deserve to be dismissed on the ground of delay and laches. Additionally, it would also be relevant to mention that in the cases of Gurcharan Singh and Harnek Singh, the respondent authorities in response to the representations given by the said two petitioners, had filed reply rejecting the said representations. The said rejection /reply has not been challenged either by Gurcharan Singh or by Harnek Singh nor any argument has been raised to contradict the observations / averments made in the said reply / rejection letter dated

01.09.2023. The reply/ rejection letter which has been annexed as Annexure P-4 in the case of Gurcharan Singh is reproduced hereinbelow:-

“From

*District Commander
Department of Home, Haryana, Panchkula*

To

*Gurcharan Singh, S/o Sh.Pyar Singh
Village Khol Mola, PO Nanakpur, Distt. Panchkula
No.GO/1078 date 01.09.2023*

Subject: Regarding providing reasons for illegal termination from service and request to reinstate with immediate effect.

With regard to the subject cited above you are informed that your services were terminated in the year 2010 however, as per the order of the Director appointment procedure has been stopped w.e.f. 03.11.2016. Therefore appointment can only be made as per the orders of the State Head Quarters.

*District Commander
Department of Home, Haryana, Panchkula.”*

To the similar effect is the reply / rejection dated 01.09.2023 in the case of Harnek Singh. A perusal of the above would show that as per the stand of the respondent authorities, the appointment procedure had been stopped w.e.f. 03.11.2016. As stated hereinabove, the said reply/rejection has not been challenged, nor any argument has been raised to challenge the said stand of the respondent authorities.

11. The reliance placed upon the judgment of the Hon’ble High Court of Himachal Pradesh at Shimla dated 05.01.2021 passed in CWP-3628-2020 (Annexure P-3 in CWP-29502-2023) would also not further the case of the petitioner inasmuch as from the facts of the said case, it is not clear as to what was the period of delay as in paragraph 1 of the said judgment, it has been stated that the petitioner therein was enrolled as a volunteer Home Guard on 15.01.1997 and thereafter on 15.02.2001 he was put in the reserved force. No date, on which his services were discharged,

has been mentioned in the judgment. Moreover, the judgments of the Hon’ble Supreme Court, which have been mentioned hereinabove and also of the Division Bench of this Court which has been upheld by the Hon’ble Supreme Court, have not been considered in the said judgment and there is no finding on the aspect of delay and laches in the said judgment. At any rate, this Court is bound by the law laid down by the Hon’ble Supreme Court which has been mentioned hereinabove.

12. Keeping in view the above said facts and circumstances, all the writ petitions are meritless and thus, deserve to be dismissed and are accordingly, dismissed.

(VIKAS BAHL)
JUDGE

January 05, 2024.
Davinder Kumar

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