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

CWP-3247-2025

Date of Decision:05.02.2025

KULWANT SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Saurabh Savara, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

Mr. Sumeet Jain, Advocate with
Mr. Himahshu Arora, Advocate
for the respondent-U.T. Chandigarh.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondent to pay 100% instead of 50% subsistence allowance for the period from 10.02.2009 to 29.01.2010.

2. The petitioner during the aforesaid period was placed under suspension. He came to be reinstated vide order dated 18.07.2011 (Annexure P-7). In the said order, it was made clear that he will not be paid more than what he has already been paid during the suspension period. The relevant extracts of order dated 18.07.20211 are reproduced as below:

“In view of the judgment dated 01.06.2011 of Hon’ble High Court of Punjab and Haryana and the above said circumstances of the case, now at this stage, no action is warranted, so the departmental enquiry



against HC (PR) Kulwant Singh No.82/528 (912/CP) 3-IRB//696 is consigned to be filed. He will not be paid more than that what he has already been paid during his suspension period.”

3. The petitioner is assailing said order by way of instant petition. The said order was an appealable order and petitioner opted not to file appeal against said order. A period of 13 years from the said order has passed away. There is no explanation for the aforesaid inordinate delay.

4. This Court, at this belated stage, especially when there is no reasonable explanation for delay of more than a decade, cannot ask the State or its instrumentality to consider claim of petitioner.

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 Vs. 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 latches 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 latches 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 laches 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 laches, 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 laches on the part of the applicant in approaching a writ court.”

7. Applying the aforesaid judgment, this Court finds no explanation for delay in the instant case. The present petition deserves to be dismissed on the ground of delay and laches and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

05.02.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No