



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

129

CWP-6155-2025

Date of Decision: 05.03.2025

Ishwar Singh

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Meghna Nehra, Advocate, for the petitioner.

Ms. Rajni Gupta, Advocate, for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

- i) Departmental inquiry report dated 17.08.2003 (Annexure P-1).
- (ii) Dismissal order dated 18.09.2003 (Annexure P-2);
- (iii) Order dated 14.01.2004 (Annexure P-3) whereby his appeal has been dismissed.
- (iv) Order dated 08.07.2004 (Annexure P-5) whereby his revision petition has been dismissed and;
- (v) Order dated 13.06.2017 (Annexure P-9) whereby his mercy petition has been dismissed.

2. The petitioner was dismissed from service by order dated 18.09.2003. His appeal was dismissed by Appellate Authority on 14.01.2004. His revision was dismissed by Director General of Police on 08.07.2004. He remained silent and all of sudden filed mercy petition before Government after 6



ground of maintainability.

3. Ms. Meghna Nehra submits that petitioner was dismissed on the ground of absence from duty. At that point of time, he was having 12 years service to his credit. He had no history still was subjected to harsh punishment of dismissal from service. The order of dismissal from service was contrary to mandate of Rule 16.2 of Punjab Police Rules, 1934 (as applicable in the State of Haryana).

4. From the perusal of record, it is evident that order of dismissal from service was passed in 2003 and thereafter petitioner's appeal as well as revision was dismissed in 2004. He remained silent for quite number of years and thereafter filed mercy petition before Government in 2011. The mercy petition was not maintainable at all. The petitioner has approached this Court after 8 years from the date of passing order by Government. There is no explanation for inordinate delay on the part of petitioner. Principally, last order was passed in July' 2004, thus, there is delay of 21 years in approaching this Court. Any order of this Court would amount to setting aside order of dismissal from service which was passed in 2003/2004.

5. There is no explanation much less reason for inordinate delay in approaching this Court. 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



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 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. In the wake of above cited judgment of Supreme Court 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.

05.03.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes