



CWP-13351-2025

1

120

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

CWP-13351-2025**Date of Decision: 12.05.2025****BHUSHAN PARKASH**

..... Petitioner

*Versus***STATE OF HARYANA AND ORS**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Nipun Bhardwaj, Advocate
for the petitioner.

Ms. Rajni Gupta, Addl. AG, Haryana.

Mr. Gaurav Jindal, Advocate
for respondents No.2 to 6.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking re-fixation of his salary and pension.

2. Mr. Gaurav Jindal, Advocate has put in appearance on behalf of respondents No.2 to 6 and filed his power of attorney. The same is taken on record. Registry is directed to tag the same at an appropriate place.

3. The petitioner joined respondent as Blacksmith on 16.12.1980 on daily wage. He was regularized as Workmate on 11.05.1993. He was promoted as Assistant Foreman in 2006 and thereafter retired on 30.06.2022 on attaining the age of superannuation. He filed representation dated 12.09.2022 claiming counting of his service from December' 1982 to May' 1993. The said representation was



followed by legal notice dated 28.04.2023. He preferred Civil Writ Petition No.8977 of 2024 seeking directions to respondent to address his legal notice. The said petition came to be disposed of vide order dated 23.04.2024 (Annexure P-1) with a direction to respondent to decide petitioner's legal notice in accordance with law. The respondent, pursuant to orders of this Court, passed speaking order dated 19.09.2024 (Annexure P-2) whereby it was ordered to count services rendered by petitioner from March' 1983 to May' 1993 towards qualifying service for pension. The operative portion of order dated 19.09.2024 is reproduced as below:

“Thus, the claim of the petitioner to count daily wage service w.e.f. 01.03.1983 to 11.05.1993 (7) years 06 months 10 days) in term of rule no. 3.17 A (f) (i) of Pb. CSR Vol-II read with Financial Commissioner and Principal Secretary to Govt. Haryana Finance Department No-4/53/2009-2/Pension dated 17.03.2010 duly adopted by Managing Director, UHBVN, Panchkula Memo No. 131/UH/Pen. Misc./Vol-VI dated 17.06.2010 towards qualifying service for pension is feasible for acceptance. The Hon'ble Supreme Court has Civil Appeal 1772 of 2009 'State of Haryana V/s Kesho Ram' has held that service as daily wager should be considered as qualifying service. In order to comply with the orders of Hon'ble Court reliance has been placed upon the office order no. 90/NOD-003 dated 18.12.2023 issued for counting of daily wages service for the period 01.03.1983 to 11.05.1993. The service for the period 11.05.1993 to 30.06.2022 (29 years 01 months 18 days) was already counted towards pensionary benefits at the time of retirement and after counting daily wages service total qualifying service comes 39 years 4 months 30 days wherein under Rule No 40 of Haryana Civil Service (Pension) Rules, 2016 chapter -VII duly adopted by the CMD UHBVN



Panchkula vide his office Memo No. Ch-25/UH/GA-844/Cadre dated 12.12.2017, maximum retirement gratuity equal to 16½ months in case of Government employees of Group A, B and C is admissible. The detail of the services rendered by the petitioner are given below:-

Name	Period	Memo No.
Sh. Bhushan Parkash AFM (Retired) S/o Hem Raj	01.03.1983 to 11.05.1993	Service record verified from office order no.90/NOD-003 dated 18.12.2023 issued by the Executive Engineer ‘OP’ Division UHBVN Narwana.

The payment of Rs.143648/- has been made to the petitioner vide Cheque No. 379605 dated 26.07.2024 on account of counting of daily wages service for the period 01.03.1983 to 11.05.1993, which is duly received by the petitioner. The grouse of the petitioner has been addressed.”

4. Learned counsel for the petitioner submits that petitioner was appointed in December’ 1980 on daily wages and his basic pay was Rs.1200/-. He was regularized on 11.05.1993 as Workmate on basic pay of Rs.1150/- which was unjustified and against the principles of natural justice. Pay scale of petitioner, at the time of regularization, could not be reduced. On account of extending lower pay scale in 1993, he is drawing less pension in comparison to other similarly situated employees.
5. The petitioner retired on 30.06.2022. He is seeking higher pay scale from 1993. He filed Civil Writ Petition No.8977 of 2024 before this Court claiming counting his daily wage service towards qualifying service for pension. There was no prayer in the petition to grant higher pay scale from May’ 1993. The petitioner accepted lower pay scale at the



time of his regularization. The event of regularization took place in May' 1993. The petitioner remained silent with respect to his alleged right from 1993 to 2025 and at this stage, is claiming higher pay scale on the ground of discrimination.

6. On being asked, learned counsel for the petitioner expressed his inability to advance any plausible reason for the delay.

7. 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.

8. 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.”

9. Applying the aforesaid judgment, this Court finds no explanation for delay in the instant case. The petitioner was regularized in 1993 and he opted to remain silent till 2025. By serving legal notice, he has attempted to revive lapsed cause of action. The claim of petitioner is further hit by principle of constructive *res-judicata* because he while filing earlier writ petition raised question of counting of daily wage service and is now claiming higher pay scale from 1993. The present petition deserves to be dismissed on the ground of delay and laches as well as constructive *res-judicata*.

10. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.05.2025

Ali

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No