



CWP-16540-2025

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

151

CWP-16540-2025

Date of Decision: 29.05.2025

Surinder Pal Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. R.K. Arora, Advocate and
Mr. Jugam Arora, Advocate for the petitioner
Mr. Aman Dhir, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to grant her benefit of military service rendered by her deceased husband during 1st and 2nd National Emergency.

2. The petitioner's husband was enrolled as Hawaldar in Indian Army on 27.11.1964. He was discharged on 19.11.1985. He served Indian Army during 1st and 2nd Emergency. He joined Punjab Police on 01.06.1989. He retired on 31.07.2004 as Assistant Sub-Inspector. He was allotted PPO for the service rendered from 01.06.1989 to 31.07.2004. He was not granted benefit of military service rendered during 1st and 2nd emergency. He passed away on 13.11.2010. The petitioner served legal notice dated 08.04.2021 upon the respondent claiming dual pension as well as benefit of military service during emergency. The respondent has granted dual pension, however, benefit of military service rendered during first and second emergency has not been granted.



3. The petitioner's husband rendered service with State of Punjab from June' 1989 to July' 2004. He passed away on 13.11.2010. He received pension from 2004 to 2010. He did not claim benefit of military service either during his service or post-retirement. The petitioner has approached this Court after 20 years from the date of cause of action, if any.

4. On being asked, learned counsel for the petitioner expressed his inability to advance any plausible reason for inordinate delay in approaching this Court.

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 v. 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 nonsuited 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 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. There is no explanation for delay. The petitioner and her husband by their act and conduct acquiesced action of the respondent and at this belated stage, want to make hay while the sun shines. Case of the petitioner is badly hit by doctrine of delay and laches.

8. In the wake of afore-cited judgment 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.

(JAGMOHAN BANSAL)
JUDGE

29.05.2025
Mohit Kumar

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