



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

CWP No. 20643 of 2024

Date of Decision: 17.01.2025

Sh. Shiv Kumar

....Petitioner

VS.

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Rahish Pahwa, Advocate
for the petitioner

Mr. Raman Sharma, Addl. A.G., Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking direction to respondents to grant 3rd Assured Career Progression (in short "ACP") on completion of 30 years of service.

2. The petitioner joined respondent department as Tube Well Driver on 18.07.1977. He was regularized on 06.03.1979 and retired on 28.02.2017 on attaining the age of superannuation. He was granted 1st ACP on 01.04.1994 on completion of ten years service. He was granted 2nd ACP on 14.06.2000. As per petitioner, he was entitled to 3rd ACP in 2009. He has filed representation dated 24.03.2022 (Annexure P-1) followed by legal notice dated 20.08.2024 claiming 3rd ACP.



3. The benefit, if any, accrued to petitioner in 2009 and he retired in 2017. He lodged his claim in 2024. From the petition and arguments of counsel for the petitioner, no plausible reason is coming forward for the inordinate delay. The right, if any, accrued in 2009 and cannot be enforced by this Court after more than 15 years. There is no reasonable explanation for the inordinate delay.

4. 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 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.

5. 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 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.”

6. The petitioner claims that his cause is recurring in nature, thus, writ is maintainable. There is no question of delay. A Division Bench of this Court vide judgment dated 04.04.2018 in **Kartar Singh v. Managing Director, HVPNL and others, CWP No.26962 of 2015**, after noticing various judgments of Apex Court has dismissed similar contention.

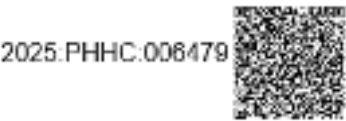
7. A Coordinate Bench of this Court vide order dated 03.05.2015 in **Sandeep Kharab v. State of Haryana and others, CWP No. 5965 of 2011**; order dated 04.09.2012 in **Bal Krishan v. State of Punjab and others, CWP No.18498 of 2011** and order 29.11.2012 in **Tarsem Pal v. Punjab State Power Corporation Limited and others, CWP No.13965 of 2010** has dismissed petitions on the ground that writ jurisdiction cannot be invoked at the will and convenience of the litigant. Anyone who claims



rights must be vigilant and he must enforce his rights within reasonable time.

8. This court has noticed that employees, with respect to cause of action which arose during their service period, are filing petitions after their retirement and sometimes after so many years from the date of retirement. As soon as an employee retires, employee-employer relation snaps. It is normally pleaded that employee-employer relation on account of retirement has snapped, thus, no departmental action can be taken. There are service rules providing that no departmental action, after 4-5 years from the date of retirement or with respect to cause of action which arose 4-5 years prior to date of retirement, would be taken. Only object of these rules is to end the litigation. Object of principles of delay, laches and acquiescence is to put litigation to rest. The rights and liabilities of parties must settle at a particular point of time. Normally, limitation to file civil suit is 3 years. No specific period for approaching the Court under article 226 has been prescribed. Taking advantage of said fact, the retired employees are approaching this Court as and when they feel convenient. There is no Court fee and they have sufficient time to pursue the matter. The Courts are already inundated and many urgent matters are not adverted to. This Court is not oblivious of the fact that on the ground of huge pendency doors of this Court cannot be closed for any litigant, however, there is need to maintain balance and take care of interest of all the litigants in the light of limited time and resources.

9. There is no explanation for delay and as per the petitioner, he can approach Court at any point of time because he has a recurring cause.



The petitioner by his act and conduct acquiesced action of the respondent and at this belated stage he wants to make hay while the Sun shines. Case of the petitioner is badly hit by doctrine of delay and laches.

10. In the wake of judgments of this 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.

(JAGMOHAN BANSAL)
JUDGE

17.01.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	