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

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CWP-35319-2024

Date of Decision : 07.01.2025

EX CONSTABLE JOGINDER SINGH

.... PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Harjeet Singh Minhas, Advocate and
Mr. Rajat Singh, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

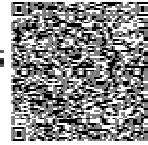
JAGMOHAN BANSAL, J. (Oral)

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

(i) order dated 30.06.2013 (Annexure P-14) whereby he was dismissed from service;

(ii) orders dated 26.05.2014 (Annexure P-16), 23.04.2015/11.05.2015 (Annexure P-17) and 06.02.2019 (Annexure P-22) whereby appeal, revision and mercy petition respectively filed by him were dismissed.

2. The petitioner joined Punjab Police on 01.02.1992. On account of repeated absence from duty, he was subjected to punishment

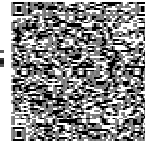


on multiple occasions which included stoppage of his 18 years' annual increments, 05 times warnings and 10 times physical punishment. He was dismissed from service vide order dated 04.10.2010. He preferred an appeal before the Appellate Authority which vide order dated 20.05.2011 set aside order of dismissal from service and awarded punishment of stoppage of 03 annual increments with cumulative effect. The petitioner did not mend his behaviour despite lenient view taken by Appellate Authority. He again absented himself from duty for 46 days in December' 2011 and 41 days in February' 2012. On account of repeated absence from duty, SSP Patiala vide order dated 30.06.2013 ordered to dismiss him from service. He unsuccessfully preferred appeal before 1st Appellate Authority and thereafter 2nd Appellate Authority. He also preferred representation before Home Secretary who rejected his claim.

3. Mr. Harjeet Singh Minhas, Advocate submits that the petitioner had worked with respondent for 21 years and order of dismissal has deprived him from valuable right of pension. The order of dismissal from service needs to be converted into compulsory retirement or some other punishment. The petitioner was absent from duty because of his family circumstances. His son and wife have passed away and on account of these circumstances, he was absent from duty.

4. Notice of motion.

5. Mr. Aman Dhir, DAG, Punjab, who on advance notice is present in Court, accepts notice on behalf of respondent-State and waives service.



6. With the consent of both the parties, the matter is taken up today itself for final disposal.

7. Mr. Dhir submits that the petitioner was habitual absentee. He was multiple time subjected to punishment. On the earlier occasion, he was dismissed from service, however, Appellate Authority taking lenient view ordered to reinstate him. Despite orders of Appellate Authority, he did not mend his behaviour which compelled the Disciplinary Authority to dismiss him from service.

8. I have heard the arguments of counsel for the parties and perused the record.

9. Concededly the petitioner prior to passing of impugned order was subjected to stoppage of 18 years annual increments, 05 times warning and 10 times physical punishment. The Appellate Authority on the earlier occasion, vide order dated 20.05.2011 restored his service, however, he did not mend his behaviour. He remained absent from duty subsequent to aforesaid order. This shows that the petitioner was habitual offender.

10. Supreme Court in **Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100** while advertng to disciplinary action in case of absence from duty has held that the Court should not set aside order of dismissal where delinquent is part of Armed Forces and remained absent from duty. The relevant extracts of the judgment read as:

“11. It is apparent from the above table that the



appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

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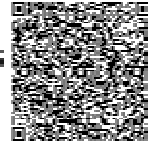
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18. *For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.”*

11. A Division Bench of this Court while dealing with similar issue in **Balwinder Singh versus State of Punjab and others, (LPA-934-2023, decided on 21.02.2024)**, has held that act of remaining absent from duty for a man in uniform is a gravest act of misconduct. The relevant extracts of the judgment read as:

“That a man in uniform has to maintain greater



discipline and the act of remaining absent from duty is a gravest act of misconduct. Reliance can be placed upon the judgment in State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182 wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by the Constable. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is fatal. Keeping in view the fact that the appellant voluntarily kept away from his duties which were very much required by his department and the fact that the matter was duly enquired upon. Copy of the notice was sent to his foreign address through registered post to which he had not replied and also copy had been sent to his father which would be clear from the order of dismissal.”

12. As the petitioner despite being member of disciplined Police Force was habitual absentee and did not mend his behaviour, this Court does not find it appropriate to look into the quantum of punishment awarded to him.

13. The impugned order of dismissal from service was passed in 2013 and last order was passed by higher authorities in 2019 whereas the petitioner has approached this Court in 2024 means after more than 05 years from the date of last order passed by competent authority. There is no reasonable explanation for the said delay. The petition deserved to be dismissed on the ground of delay apart from merits.

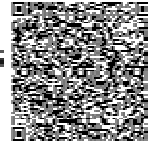


14. In **Eastern Coalfields Ltd. v. Dugal Kumar (2008) 14 SCC 295**, Supreme Court has considered scope of interference in case of delay and laches wherein Court has held:

“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.”

15. In **Tilok Chand Moti Chand v. H.B. Munshi (1969) 1 SCC 110** and **Rabindranath Bose v. Union of India (1970) 1 SCC 84**, Supreme Court has ruled that even in cases of violation or infringement of fundamental rights, a writ Court may take into account delay and laches on the part of the petitioner in approaching the Court and if there is gross or unexplained delay, the Court may refuse to grant relief in favour of such petitioner.

16. In **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu (2014) 4 SCC 108**, Supreme Court has ruled:



‘16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.’

17. In **Union of India v. N. Murugesan, (2022) 2 SCC 25**, Court has observed that a neglect on the part of a party to do an act which law requires, must stand in his way for getting the relief or remedy. The Court laid down two essential factors i.e. first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. Relevant extracts of the judgment read as:



“20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done



during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

18 In the wake of above-referred judgments and considering inordinate delay on the part of petitioner, this Court does not find it appropriate to invoke its extra-ordinary writ jurisdiction.

19. The petition deserves to be dismissed on the ground of delay as well as merit and is accordingly dismissed.

07.01.2025

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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No