

**HIGH COURT OF PUNJAB AND HARYANA
Bench: Justice Jagmohan Bansal**

Date of Decision: 07.11.2023

CWP-19474-2016

Tara Chand Arora and Another

...Petitioners

Versus

Punjab National Bank and Others

...Respondents

Legislation:

Article 226 of the Constitution of India

Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

Subject: Challenge to the acceptance of voluntary resignation by a bank employee, with claims of coercion and medical incapacity due to Schizophrenia under the Persons with Disabilities Act, 1995.

Headnotes:

Employment Law – Voluntary Resignation – Petitioner's resignation accepted by the bank – Claim of coercion and ill health in resignation – Discrepancy in documents presented by petitioner and respondent – Petitioner's claim dismissed on grounds of incorrect documentation and delay in approaching the court. [Paras 8-9, 10, 15]

Medical Leave – Claim of suffering from Schizophrenia – Disputed claim, not corroborated by evidence – No coercion established from the bank's side – Petitioner's voluntary application for retirement not supported by evidence of mental health issues. [Paras 3, 15]

Delay and Laches – Petitioner approaching court after six years – Lack of plausible explanation for delay – Application of principles related to delay and laches in writ jurisdiction – Petition dismissed due to inordinate delay and absence of adequate explanation. [Paras 10-14]

Persons with Disabilities Act, 1995 – Application of Section 47 – Disputed applicability in petitioner's case – Court's discretion in cases of delay and alleged infringement of rights under the Act – Petitioner's claim not upheld due to lack of evidence and procedural issues. [Paras 3, 4, 15]

Decision – Dismissal of petition on grounds of incorrect documentation, delay, and lack of substantiated claims – Petitioner's resignation upheld – No merit found in petitioner's claims against respondent bank. [Para 16]

Referred Cases:

- Kunal Singh v. Union of India and Another, 2003(4) SCC 524
- Sukhdev Singh (lineman) v. Punjab State Power Corporation Limited, 2017(3) S.C.T. 42
- Santoshi Sondhi @ Sonia v. State of Punjab and Others, 2015(3) PLR 710
- Eastern Coalfields Ltd. V. Dugal Kumar (2008) 14 SCC 295
- Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110
- Rabindranath Bose v. Union of India (1970) 1 SCC 84
- Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu (2014) 4 SCC 108

Representing Advocates:

Mr. H.C. Arora, Advocate with Ms. Sunaina, Advocate for the petitioners

Mr. Madan Gupta, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 01.11.2010 (Annexure P-22) whereby resignation submitted by petitioner No.2 was accepted.

2. The petitioner No.2 (for short '**petitioner**') joined respondent bank as a Clerk. The petitioner requested the respondent for 3 years' sabbatical leave w.e.f. 26.02.2007 which was sanctioned. On the expiry of sabbatical leave, the petitioner reported at Circle Office, Ludhiana on 26.02.2010 and she was

asked to join at Branch Office, The Mall, Patiala. The petitioner did not report at Branch Office, The Mall, Patiala and she further applied for medical leave and extraordinary leave. The respondent bank issued letter dated 26.04.2010 and 10.05.2010 whereby petitioner was asked to submit discharge card of the hospital along with prescription. The respondent found that the petitioner is not suffering from *Schizophrenia* as claimed by her and she was discharged from hospital in satisfactory condition. The petitioner insisted for extraordinary leave and ultimately, she submitted her resignation on 18.10.2010 (Annexure R-2). The resignation of the petitioner was accepted by respondent vide impugned communication dated 01.11.2020. The respondent released entire retiral benefits of the petitioner and she deposited all the retiral dues with the respondent-bank. The petitioner was working with respondent-bank, thus, she was entitled to higher rate of interest. The husband of the petitioner was working with another bank. The petitioner served legal notice dated 27.06.2016 (Annexure P-23) upon the respondent which was replied by respondent-bank vide communication dated 03.08.2016 (Annexure P-24).

3. Learned counsel for the petitioner inter alia contends that petitioner was suffering from *Schizophrenia*, thus, she was medically unfit and her case was duly covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short '**1995 Act**'). As per Section 47 of the 1995 Act, the respondent could not dispense with services of the petitioner. The petitioner under compelled circumstances filed resignation and respondent was bound to consider case of the petitioner in terms of 1995 Act instead of accepting resignation.

4. Learned counsel for the petitioner in support of his contention relied upon judgment of Apex Court in ***Kunal Singh v. Union of India and Another, 2003(4) SCC 524***; judgments of this Court in ***Sukhdev Singh (lineman) v. Punjab State Power Corporation Limited, 2017(3) S.C.T. 42*** and ***Santoshi***

Sondhi @ Sonia v. State of Punjab and Others, 2015(3) PLR 710. In all the judgments, the Courts have held that a person with disability should be extended benefit of Section 47 of 1995 Act. The petitioner was not extended benefit of said Act and her resignation was straightway accepted.

5. *Per contra*, learned counsel for the respondents submits that petitioner filed resignation in 2010 and it was accepted in the same year. The petitioner received entire retiral benefits and approached this Court after the expiry of almost 6 years from the date of acceptance of resignation. The petitioner has enclosed Annexure P-21 as resignation letter dated 18.10.2010 which is factually incorrect. As per said letter dated 18.10.2010 submitted by the petitioner, she was forced to seek voluntary retirement due to ill-health and continuous medication whereas contents of actual resignation letter which is enclosed as Annexure R-2 are totally different. The petitioner was asked to submit her medical record and on perusal thereof it was found that she is in satisfactory condition. The petitioner, at her own, applied for resignation and there was no coercion on the part of respondent-bank, thus, reliance upon judgments placed by petitioner is misconceived.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. The conceded position emerging from record is that the petitioner joined respondent-bank in 1986. The petitioner remained on sabbatical leave from 2007 to 2010. The petitioner initially, in 2010, sought medically leave, however, she later on filed resignation letter which was accepted by respondent-bank. The petitioner was released retiral benefits which she deposited with respondent-bank. The husband of the petitioner is also working with some other bank.

8. From the perusal of record, it transpires that petitioner at her own filed resignation letter. The petitioner has enclosed Annexure P-21 as resignation letter whereas respondent has enclosed actual resignation letter as Annexure R-2. The contents of Annexure P-21 and Annexure R-2 are reproduced as below:-

Annexure P-21

“Sub:- Request for voluntary retirement from service on medical grounds.

Sir,

As I am not keeping good health and I am under treatment and unable to continue my service, I am forced to seek voluntary retirement from the service of the Bank on medical grounds.

I request you to please accept my request for voluntary retirement.

As I am forced to seek voluntary retirement due to my ill health and continuous medication, I further request to please waive off the notice period for seeking voluntary retirement to my deteriorating health.”

Annexure R-2

“Resignation from Bank’s Service.

Due to my ill health, it is not possible for me to continue in Bank’s service.

I hereby tender my resignation from Bank’s service, which may please be accepted, waiving the ‘Notice Period.’

I may please be got relieved at the earliest. ” 9.

From the perusal of both documents, it comes out that petitioner has tried to make out her case as if she was forced to resign due to ill-health and continuous medication and she requested for retirement on medical grounds whereas contents of actual resignation letter are totally different. It shows that petitioner has placed an incorrect document on record. The petition deserves to be dismissed on this sole ground.

10. The petitioner filed resignation letter on 18.10.2010 and it was accepted on 01.11.2010. The petitioner opted to remain indolent for almost six years and has approached this Court after such a long delay. The only plea raised by the petitioner for approaching this Court after six years is that she was suffering from mental illness. The petition has been filed by petitioner Nos.1 and 2 i.e. husband and wife. The husband has opted to approach this Court after six years and he was not suffering from any medical issue. If he can approach this Court in 2016, he could very well approach this Court within a reasonable time from 2010. There is no plausible explanation for the long delay of almost 6 years, thus, petition deserves to be dismissed on the ground of delay and laches.

11. 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.

12. In ***Eastern Coalfields Ltd. v. Dugal Kumar (2008) 14 SCC 295***, the Apex Court has considered scope of interference in case of delay and laches. The 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.”

13. In ***Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110*** and ***Rabindranath Bose v. Union of India (1970) 1 SCC 84***, the Apex 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.

14. In ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu (2014) 4 SCC 108***, the Apex 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.’

15. Learned counsel for the petitioner has cited judgments of Hon'ble Supreme Court as well as of this Court wherein benefit of Section 47 of 1995 Act has been extended to the employee. It is a disputed question whether petitioner was suffering from *Schizophrenia* or not. There is nothing on record to indicate that there was coercion on the part of bank. It was petitioner who voluntarily applied for the retirement. The petitioner was released all the retiral benefit and she deposited with respondent-bank to get higher rate of interest. The act and conduct of petitioner was voluntary and she never raised grouse against respondent-bank during long period of 6 years, thus, judgments cited by learned counsel for the petitioner do not come to rescue of the petitioner.
16. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

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