

HIGH COURT OF PUNJAB AND HARYANA

BENCH : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Date of Decision: 1st May 2024

CWP NO. 20786 OF 2022

Dayaram ...Petitioner

VERSUS

Union of India and others ...Respondents

Legislation and Rules:

Articles 226, 227 of the Constitution of India

Subject: Petition under Articles 226/227 for setting aside the communication denying compassionate allowance and other benefits following dismissal from service.

Headnotes:

Administrative Law – Compassionate Allowance and Benefits After Dismissal – Petitioner seeks judicial review of the decision rejecting his claim for compassionate allowance and other benefits following his dismissal from service in 2001 – The petitioner remained inactive for 21 years before initiating legal action – High Court emphasizes the principles of delay and laches, noting that unexplained long delays can detrimentally affect the entitlement to relief – Court holds that attempts to revive a lapsed cause of

action are impermissible and, in the presence of a valid dismissal order, entitlement to retiral benefits does not arise [Paras 1-10].

Constitutional Law – Jurisdiction and Laches – The dismissal occurred outside the territorial jurisdiction of this Court – The petitioner failed to provide sufficient reason for the 21-year delay in seeking judicial review, which the Court found detrimental to the cause of justice – Reliance placed on Supreme Court precedent *Mrinmoy Maity v. Chhanda Koley and others*, 2024 SCC OnLine SC 551, regarding the adverse impact of delay and laches on the exercise of writ jurisdiction [Paras 7, 8, 9].

Decision: Petition Dismissed – The Court dismisses the petition on grounds of substantial delay, lack of jurisdiction, and failure to directly challenge the original dismissal order – No compelling case made out for entitlement to compassionate allowance under the circumstances described [Para 10].

Referred Cases:

- *Mahinder Dutt Sharma v. Union of India and others*, 2014 (11) SCC 684
- *Paras Ram (Ex. Sub) v. Union of India and others*, 2014 (14) S.C.T. 479
- *Mrinmoy Maity v. Chhanda Koley and others*, 2024 SCC OnLine SC 551

Representing Advocates:

Mr. Bhuwadesh Lakhera for the petitioner

Mr. Somesh Gupta, Senior Panel Counsel, for the Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 03.07.2022 (Annexure P-2) whereby his claim for compassionate allowance and other benefits has been rejected by respondent.
2. The petitioner was dismissed from service on 16.04.2001. He served upon respondent notice dated 17.03.2022 seeking re-calling of order of dismissal from service. He further prayed that he may be released pensionary and other benefits. The respondent did not reply to said notice and he preferred *CWP No.9157 of 2022* before this Court seeking direction to respondent to decide his representation. This Court vide order dated 05.05.2022 disposed of said petition with a direction to respondents to decide his representation. The respondent vide communication dated 10.07.2022 has rejected claim of the petitioner on the ground that he has been dismissed from service and there is no reason to interfere with penalty of removal from service imposed by D.I.G., C.R.P.F., Khatkhati (Assam).
3. Mr. Bhwnesh Lakhera, Advocate submits that respondent has not considered question of compassionate allowance even though petitioner in his legal notice had requested to release pensionary and other benefits. Other benefits include compassionate allowance. The respondent has not considered his 33 years' service.

4. I have heard the arguments of learned counsel for the petitioner and perused the record with his able assistance.

5. The petitioner was dismissed from service vide order dated 16.04.2001 passed by D.I.G., C.R.P.F. Khatkhathi (Assam). The said order was passed beyond the territorial jurisdiction of this Court. The petitioner remained silent for 21 years and all of sudden, served legal notice dated 17.03.2022 upon the respondent. He requested for recalling of order of dismissal from service and prayed for pensionary and other benefits. As per petitioner 'other benefits' include compassionate allowance despite dismissal from service, therefore, respondent was bound to consider his prayer for compassionate allowance while dismissing his prayer of recalling order of dismissal.

7. In support of his contentions, he relies upon judgment of Supreme Court in ***Mahinder Dutt Sharma v. Union of India and others, 2014 (11) SCC 684*** and judgment of Delhi High Court in ***Paras Ram (Ex. Sub) v. Union of India and others, 2014 (14) S.C.T. 479***. 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 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 laches 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 laches 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.”

9. The present petition deserves to be dismissed on the following grounds:-

- i. The petitioner was dismissed from service on 16.04.2001 and he remained silent till 16.03.2022. He served legal notice on 17.03.2022. By legal notice, he attempted to revive his lapsed right, if any. In view of judgment of Supreme

Court in ***Mrinmoy Maity (supra)***, it was impermissible; ii. He was dismissed by D.I.G., C.R.P.F, Khatkhati (Assam). No part of cause of action arose within the territorial jurisdiction of this Court;

iii. He, in the legal notice dated 17.03.2022, primarily requested for re-calling of his dismissal order. He also prayed for retiral and other benefits. In the presence of dismissal order, there was no question of release of retiral benefits; iv. The petitioner, during the course of hearing, pleaded that he was entitled to compassionate allowance. As prayed by him, 'other benefits' include compassionate allowance. The petitioner presumed that retiral and 'other benefits' include compassionate allowance. No case was made out for compassionate allowance; and

v. The petitioner is seeking setting aside of order dated 03.07.2022 whereby his representation dated 17.03.2022 has been rejected. The petitioner did not assail order dated 16.01.2001, thus, there was no question to re-call said order on the basis of legal notice served by the petitioner.

10. In the wake of aforesaid reasons, this Court is of the considered opinion that present petition deserves to be dismissed and accordingly dismissed.

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