IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.102

CWP-23767-2021
Date of decision: 29.11.2022

Om Parkash ....Petitioner

Versus

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anirudh Indora, Advocate
for the petitioner.

Mr. Jagbir Malik, Addl. A.G., Haryana.

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DEEPAK SIBAL, J. (Oral)

Through the present petition, the petitioner seeks quashing of order dated 30.06.2004 through which the petitioner, after having been found guilty of having consumed alcohol while on duty, was awarded the punishment of stoppage of five increments with permanent effect by the Superintendent of Police, Sirsa (for short – the SP); order dated 22.09.2005 through which in an appeal preferred by the petitioner against the aforesaid punishment order, the Inspector General of Police, Hisar Range, Hisar (for short – the IG) reduced the petitioner's punishment to stoppage of two future increments with permanent effect and order dated 26.10.2006 through which the Director General of Police, Haryana (for short – the DGP) enhanced the petitioner's punishment from stoppage of two increments with permanent effect to stoppage of three increments with permanent effect. The petitioner also seeks the grant of all consequential reliefs which would flow to the petitioner after the quashing of the afore-referred impugned orders.

On 20.07.1995, the petitioner joined as a Constable in the Haryana Police and is presently serving as an Assistant Sub Inspector. On 05.03.2004, while the petitioner was on duty in Police Station, Ellenabad, he was found to have consumed alcohol. His medical tests were conducted on the basis whereof it was medically opined that the petitioner had consumed alcohol. On 23.03.2004 the petitioner was suspended and a departmental enquiry was initiated against him. The enquiry officer found the petitioner guilty. The SP, who was the petitioner's disciplinary authority, agreed with the findings returned by the enquiry officer resulting in the issuance of a show cause notice to the petitioner as to why he be not dismissed from service. The petitioner filed a reply and was also granted an opportunity of hearing. The explanation given by the petitioner did not find favour with the SP resulting in the passing of the order dated 30.06.2004 through which the petitioner was awarded the punishment of stoppage of five increments with permanent effect. The petitioner filed an appeal before the IG who reduced the petitioner's punishment to stoppage of two increments with permanent effect. The petitioner then filed a revision petition before the DGP who through his order dated 22.08.2006 dismissed the revision petition. On the same day the DGP passed an order to issue to the petitioner a show cause notice as to why he be not dismissed from service. The petitioner replied to the show cause notice after consideration of which the DGP did not order dismissal of the petitioner but through order dated 26.10.2006 enhanced the petitioner's punishment to stoppage of three increments with permanent effect. After about 14 years i.e. on 10.08.2020, the petitioner filed the instant petition through which he has sought the aforesaid reliefs.

A perusal of the afore facts vividly reveal that the last order in point of time which is assailed by the petitioner through the instant petition is dated 26.10.2006 and that the present petition has been filed after about 14 years of its passing. The only explanation offered by the petitioner for such delay is found in paragraph 12 of the petition wherein the petitioner has stated that the delay was caused because due to some inevitable circumstances he had lost the documents relating to his departmental enquiry. Therefore, on 31.10.2019 he applied for a copy of these documents under the Right to Information Act, 2005 and after he procured some of them, he filed the instant petition.

The only explanation offered by the petitioner that the delay of about 14 years in knocking the doors of this Court was caused due to "some inevitable circumstances" on account of which he had lost the documents pertaining to his departmental enquiry is found to be absolutely vague. The petitioner does not disclose as to when and under which circumstances which of the relevant documents were lost as also why did it take him about 13 years to seek their retrieval. Thus, for the inordinate delay of nearly 14 years in the filing of the present petition is inordinate and the explanation offered by the petitioner is not found to be satisfactory.

In **State of M.P. and others vs. Nandlal Jaiswal and others**, (**1986) 4 SCC 566**, the Supreme Court has held that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and that the High Court in the exercise of its discretionary power would not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there was inordinate delay on the part of the petitioner in filing of the writ petition and such delay is not satisfactorily

explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The relevant portion of the judgment in **Nandlal Jaiswal's case (surpa)** reads as under:-

> *"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the*

> *State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramanna Dayaram Shetty v. International Airport Authority of India, (1979)3 SCR 1014 and the other in Ashok Kumar v. Collector, Raipur, (1980)1 SCR 491 . We may point out that in R.D. Shetty's case (supra), even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."*

In **Ex. Capt. Harish Uppal vs. Union of India and others, (1994) Supp 2 SCC 195**, the Supreme Court went on to hold that even if no third party rights had intervened the High Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India at the instance of persons who do not pursue their rights and remedies properly

and sleep over them. Paragraph 8 of the judgment reads as under:-

> "*8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.*"

In **New Delhi Municipal Council vs. Pan Singh and others, (2007) 9 SCC 278**, the Supreme Court held that though there is no period of limitation provided for filing of a writ petition under Article 226 of the Constitution of India but ordinarily a writ petition should be filed within a reasonable time and that discretionary relief may not be exercised in favour of those who approach the Court after a long time especially when there is no explanation offered for such delay. Paragraphs 16 and 17 of **Pan Singh's case (supra)** are reproduced below:-

> "*16. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their*

> *grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.*
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> *17. Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time."*

To the same effect is the law laid down by the Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu, 2014(4) SCC 108**, wherein it has been held that the doctrine of delay and laches should not be lightly brushed aside and that in belated claims the writ Court should intervene only after weighing the explanation offered for having approached the Court after undue delay. Paragraphs 16 and 17 of the judgment in **T.T. Murali Babu's case (supra)** read as under:-

> "*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 the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to

> *such indolent persons - who compete with Kumbhakarna or for that matter Rip Van Winkle. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."*

In the light of the afore discussed law laid down by the Supreme Court the inordinate delay of about 14 years in the filing of the instant petition cannot be brushed aside especially when for the same the petitioner does not offer any reasonable explanation.

There is another major flaw in the petitioner's case. Through the present petition he has not challenged the order dated 22.08.2006 passed by the DGP dismissing the revision petition filed by him against the order dated 22.09.2005 passed by the IG as the only order passed by the DGP which has been assailed is the order dated 26.10.2006 through which, after dismissing the petitioner's revision petition on 22.08.2006, the DGP had ordered the enhancement in the petitioner's punishment.

In view of the afore discussion, in the facts of the present case, this Court is disinclined to exercise its discretionary jurisdiction.

Dismissed.

November 29, 2022 **(DEEPAK SIBAL)**
Jyoti 1 **JUDGE**

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