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**(2014) 07 P&H CK 0667**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 19409 of 1997**

Nakli Ram

APPELLANT

Vs

The Haryana State Electricity Board

RESPONDENT

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**Date of Decision :** 03-07-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 10, 10(1), 25F

**Citation :** (2014) 3 LLJ 737

**Hon'ble Judges :** Gurmeet Singh Sandhawalia, J

**Bench :** Single Bench

**Advocate :** J.S. Maanipur and R.K. Dhiman, Advocate for the Appellant; Nitin Rathee, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

G.S. Sandhawalia, J.—The present judgment shall dispose of 8 writ petitions, in which there are 37 petitioners, details of which are given in Annexure "A", since common questions of facts and law are involved in all the writ petitions. The facts are being taken from CWP No. 19409 of 1997, Shri Nakli Ram and others vs. The Haryana State Electricity Board and another, which has been filed by 13 ex employees of the respondent-Board.

2. The relief claimed in the present bunch of writ petitions is that the respondents should be directed to take the petitioners back in service in pursuance of the decisions rendered by this Court in CWP Nos. 12538 of 1994, 12718-721 of 1994, 14418 of 1994, 16919-921 of 1994, Mani Ram and others vs. Haryana State Electricity Board decided on 27.02.1996 (Annexure P-1/A), reported as Mani Ram and others vs. Presiding Officer, Labour Court, Ambala, 1996 (2) RSJ 95, which was upheld in SLP (C) No. 12773-81 of 1996 on 17.02.1997.

3. The pleaded case of the petitioners is that they were appointed on work charge basis as team mates and Fitter etc. in the Hydel Project of the respondent-

Board at Bhud Kalan, District Yamuna Nagar (hereinafter referred to as the "Budh Kalan Project") and they worked from periods ranging from May, 1981 to January, 1983. In some cases, the appointments were made in November, 1979 and December, 1980 also, as per the details given in para no. 2 of the writ petition. The Board had taken a decision to retrench the services of the 62 workmen on the completion of the work for which they were employed and on 20.01.1983, the Executive Engineer of the said Project informed the workmen that there was less work and served one month's notice u/s 25F of the Industrial Disputes Act, 1947 (in short "the Act") informing that they were being relieved on 22.02.1983. That some of the employees, numbering 16 namely Mani Ram and others, served a demand notice and raised an industrial dispute, which was referred to the Labour Court, Ambala vide Reference No. 139 of 1987. The Labour Court dismissed the said reference vide Award dated 30.12.1993, which led to the filing of the writ petitions mentioned in para no. 2 above, on the basis of which the petitioners are also seeking the necessary relief. The said writ petitions were allowed by a Division Bench of this Court keeping in mind that the retrenchment compensation was not given on 20.02.1983 and on 25.02.1983 also, the management had written calling upon the workman to collect the same. It was accordingly held that the compliance of Section 25F of the Act had not been done. The said decision was subject matter of challenge in SLP Nos. 12773-781 of 1996, which were dismissed on 17.02.1997 (Annexure P-2). Once the litigation finalized in favour of Mani Ram and others, as noticed above, the present writ petitioners woke up from their slumber and served legal notice dated 19.02.1997 (Annexure P-3) upon the respondent-Board for taking them back in service on the strength of decision in Mani Ram's case (supra) and connected matters on the ground that they were identically placed. It was mentioned in the legal notice that since the employees were similarly situated, they should be given the same benefit and they should not be compelled to approach this Court. Resultantly, the present writ petitions were filed.

4. It is averred that in CWP No. 6491 of 1997, Sukar Ram vs. Presiding Officer, Labour Court and others, CWP No. 6492 of 1997, Sat Pal vs. Presiding Officer, Labour Court and CWP No. 6493 of 1997, Jaya Pal vs. Presiding Officer, Labour Court and others, same relief was granted by this Court on 10.10.1997 (Annexure P-4).

5. The respondent-Board, in its written statement, has pleaded that some of the petitioners had accepted compensation but some refused and there were different dates of the notice and even their date of relieving and compensation were different. The facts were different and no joint petition was maintainable. An example was given that petitioners no. 1, 4, 5, 12 and 13 were relieved w.e.f. 20.02.1983 and compensation was offered on 17/18.02.1983. Petitioner no. 2 was relieved on 13.07.1983 and petitioner no. 3 on 16.02.1983, petitioner no. 6 on 04.03.1983. Similarly, petitioner no. 8 was relieved on 15.03.1983, petitioner no. 10 on 10.11.1983 and petitioner no. 11 on 09.01.1984. It was further averred that some of them had accepted the compensation on 17/18.02.1983

and had been relieved on 20.02.1983. Those who had not accepted the retrenchment compensation, were sent the same through money order on their latest available addresses and they stood relieved in the year 1983 and the present writ petition was filed in December, 1997 i.e. after more than 14 years. Reliance was placed upon the judgment of this Court in *State of Punjab vs. Kali Dass and others*, 1997 (2) RSJ 240 to take the plea that the writ petition was liable to be dismissed on the ground of delay and laches and industrial dispute cannot be raised after 3 years from the date of termination since the writ petition could also not be filed after so long and neither a civil suit would lie. The factum of the details of the chart given in para no. 2 of the writ petition was also denied. It was specifically averred that compensation has been taken by petitioner nos. 7, 9 and 12 and the rest had been paid through money order. Accordingly, the cases of the petitioners were sought to be distinguished from the others. It was specifically mentioned that the provisions of Section 25F of the Act were complied with before relieving the petitioners and they had not agitated their right before the Labour Court. It was averred that the petitioners had not approached the Labour Court because there was no violation in their case and they could not be equated with the case of Mani Ram's case (supra).

6. In the replication, the contents of the writ petition were reiterated and it was pleaded that the action of retrenchment has been set aside and a common retrenchment order was there and retrenchment notices were issued and, therefore, once in principle, this Court had held that the retrenchment was suffering from an illegality, then all the 62 employees being similarly situated were liable to be treated on the same footing.

7. Counsel for the petitioner has further submitted that the writ petition was ordered to be heard alongwith CWP No. 1171 of 1998, *Mittar Pal vs. Presiding Officer and others* in which similar relief was allowed on 07.07.2000 whereby, Mittar Pal and one Chattar Singh, petitioners in CWP Nos. 1171 of 1998 and 1172 of 1998 had been granted the benefit by challenging the award dated 30.12.1993 belatedly. Accordingly, reliance is placed upon the said decision to submit that the petitioners are also entitled to similar relief but without back wages. Reliance is placed upon the judgment of the Apex Court in *State of Karnataka and Others Vs. C. Lalitha*, to contend that similarly situated persons are to be treated equally. Similarly, reliance was also placed upon Division Bench judgments of this Court in *Satbir Singh vs. State of Haryana*, 2002 (2) SCT 354 and (2008) ILR 2 511 (P & H.)

8. Counsel for the respondent, on the other hand, has submitted that the petitioners are guilty of delay and laches and it is fatal in such circumstances and submitted that there was no explanation given for the delay. Merely because the writ petition in Mani Ram's case (supra) has been decided in favour of the workmen there, the petitioners could not be entitled for the same benefit. It was further pointed out that the judgment in Mittar Pal and Chattar Singh's cases (supra) decided on 07.07.2000 was based on a wrong concession and it was

settled proposition that wrong concession of a counsel would not bind the party. It was pleaded that even if the equality clause is to be invoked, then also, it has to be claimed within a reasonable period of time and it was not open to the petitioners to agitate their rights at such a belated stage.

9. The issue thus which arises for consideration before this Court is that whether the petitioners having not raised an industrial dispute are entitled for the similar benefit of reinstatement as has been ordered in the case of similarly situated employees who had earlier approached this Court for seeking their legal redressal, in one bunch of cases by challenging the Award against them at the earliest and in other cases by filing writ petitions belatedly and challenging the award.

10. After hearing counsel for the petitioner and the respondents and keeping in view the case law in mind on the said subject which has been noticed above and discussed below, this Court is of the opinion that no relief is liable to be granted to the petitioners on two accounts. Firstly, a specific stance has been taken by the respondent-Board that some of the petitioners have already received their compensation way back in the year 1983 and had chosen not to raise any industrial dispute and get the matter referred to the Labour Court. Another set of petitioners had also initially refused the said compensation but were sent the same by way of money order and accordingly, having received the said amounts without any demand it would not be open to the said petitioners to submit that on the same principle as to the fact that compensation was offered subsequently there was violation of the mandatory provisions of the Act. A factual finding would thus necessarily have to be recorded firstly as to whether the petitioners in the present cases, were paid/offered the compensation at the time of the notices of the retrenchment or it was paid to them subsequently after the notices and there was violation of the mandatory provisions of Section 25F of the Act. Reference to the correspondence in the connected cases in Mani Ram's case (supra) on account of the fact that all of the said persons were retrenched vide common decision would not be correct since a factual finding will have to be recorded that the workman had not been paid/offered compensation at the time of the retrenchment. It is settled principle of law that this exercise cannot be carried out under Articles 226 and 227 of the Constitution of India and it is only to be done after going through the records and the evidence and the petitioners have chosen not to agitate their grievance at that relevant point of time in the year 1983 but only chose to agitate when the litigation became final in Mani Ram's case (supra) on 17.02.1997 since the legal notice was served on 19.02.1997 and the present writ petitions pertain to the year 1997 onwards till 2007. Thus, it is apparent that the petitioners are only wanting to piggy back on the strength of the said litigation which was in favour of the other workmen who were vigilant over their rights.

11. Secondly, it is settled principle that though there is no limitation provided under the Act but that does not mean that the workman can get up and raise an

industrial dispute as and when it is convenient to him. It is to be noticed in the present case that the retrenchment was in the year 1983 and the legal notice was served in the year 1997. Thus, for a period of 14 years, the workmen kept silent on their rights. The Apex Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, held that there is no limitation under the Industrial Disputes Act, 1947 and the Labour Court can mould the relief by refusing to grant back wages and can grant the same only from the date of demand. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, an industrial dispute was raised after a period of 7 years and the State Government rejected the same which was challenged by filing a writ petition. Direction was issued to re-examine the matter, which was upheld by the Division Bench of the High Court on the basis of which the Central Government referred the matter. The bank challenged it which was allowed by the Single Bench, however, the Division Bench upheld the reference. The Apex Court held that the powers are to be exercised in a reasonable manner and there can be no rational basis on which the Central Government can exercise the powers after a lapse of 7 years when the matter had become final. The relevant observations of the Nedungadi Bank's case (supra) read thus:-

6. Law does not prescribe any time limit for the appropriate government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was *ex facie* bad and incompetent.

7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as

industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power u/s 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

12. The said view has been followed by the Apex Court in *Kuldeep Singh Vs. G.M., Instrument Design Development and Facilities Centre and Another*, and it has been held that the workman has to show and put sufficient material for the delay and if the same is not there then it would be fatal and the delay would disentitle him to any relief. In the said case, it was held that the workman was able to explain the delay and relief was granted. The relevant observations read thus:-

21. In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute u/s 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference u/s 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management

or by the State Government.

13. In the present case, explanation for the delay or rather the reason for not approaching the Labour Court at any point of time is missing. Rather, as noticed above, the writ petitions pertain to the year 1997 to 2007 and, therefore, for their own lapse, the petitioners cannot be held entitled for the benefits and equated with the workmen who had successfully agitated their cases and fought for the same at the first instance.

14. Similar view was taken by this Court in *M/s. Management, Indian Sugar and General Engineering Corporation vs. State of Haryana and others*, 2010 (1) RSJ 204 wherein, a reference u/s 10 of the Act was made after 14 years of delay. The plea of the workman was that the criminal proceedings were pending and once they had been adjudicated in his favour, he had opted for raising the industrial dispute. The said reference was quashed by referring to case law on this point that no industrial dispute existed on the date of the reference after 14 long years once the workman had been totally silent. The Apex Court in *Pundlik Jalam Patil (D) by L.Rs. vs. Executive Engineer, Jalgaon Medium Project and another*, 2009 (1) PLR 128 held that the law protects the ones who are vigilant and do not sleep over their rights and let them crystallize. The relevant observations read thus:-

14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights.

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18. Shri Mohta, learned senior counsel relying on the decision of this court in *N. Balakrishnan Vs. M. Krishnamurthy*, submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely

choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

15. In the present case also, similar are the facts that the petitioners have slept over their rights. In Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another, it was held that one who claims equity must enforce his claim within a reasonable period of time. It was held that the remedy under Article 227 of the Constitution of India is a discretionary one and sufficient or cogent reasons could enable the Court to refuse jurisdiction. In the said case, the petitioner had chose not to agitate his right of promotion and sat on the fence and waited for the outcome of a similar writ petition filed by others who had asked for their rights way back in 1987. The litigation became final in the year 1999 and then the petitioner therein had filed the writ petition, which was initially allowed but set aside by the Division Bench on the ground of delay and laches. The said order was upheld by the Apex Court. Similarly, in Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others, similar observations flowed from the Apex Court that a litigant who invoked the jurisdiction at a belated stage, cannot be permitted as the delay is likely to usher a state of anarchy.

16. The judgment in C. Lalitha's case (supra) which has been relied upon by the petitioners would not be applicable to the facts and circumstances of the present case since it pertained to a question of seniority and in the said case, it was noticed that the said employee had been enjoying a higher scale of pay and had been also promoted during the litigation and accordingly, she was allowed to continue in her post and was directed to be last in the seniority list of the appointees on the post of Assistant Commissioner in Karnataka Administrative Services. Similarly, the Division Bench judgments in Satpal Singh's case (supra) also pertained to the issue of counting the work charge period of service rendered and for grant of additional increments and the Division Bench accordingly held that the State should grant the said benefits to all who are affected to avoid unnecessary litigation. In Balraj Singh's case (supra) also, the dispute pertained to the vacancies in the lower school course of the police department and the petitioners were claiming relief in view of the earlier judgments passed by this Court. Necessary directions were issued by holding that the State could not compel the similarly placed employees to approach the Courts to get the orders on similar grounds. The petitioners in the present case, as noticed above, chose not to agitate their grievances and sat on the fence and now seek grant of the said benefit on the strength of the Division Bench judgment in Mani Ram's case (supra), which cannot be permitted in view of the

position of law enumerated above.

17. Lastly, reliance upon CWP Nos. 1171 and 1172 of 1998 also would be of no avail to the petitioners. The said petitions were disposed of on 07.07.2000 on a concession made by the counsel keeping in view the position of law settled where the workman had challenged the award dated 30.12.1993 belatedly which would be clear from order which reads thus:-

Mr. H.S. Gill, Senior Advocate who has appeared for Haryana State Electricity Board and other respondents has at the very outset conceded that the petitioners are similarly placed and they will be reinstated with continuity of service but without back wages as ordered in the other writ petitions mentioned above. These writ petitions are, thus, allowed and the impugned award and retrenchment notice placed in each of the writ petitions are set aside. The Haryana State Electricity Board is directed to reinstate the petitioners with continuity of service but without back wages. No order as to costs.

18. The said judgment would not be binding to the facts of the present case as no industrial dispute had been raised. In the present case, the Board is not giving any concession and is agitating the issue on merits by rightly distinguishing the same.

19. Accordingly, finding no merit in the present writ petitions, the same are dismissed.