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**(2011) 05 SHI CK 0135**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 7099 of 2010**

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|---------------------------|----|------------|
| Ram Lal                   | Vs | APPELLANT  |
| State of H.P. and Another |    | RESPONDENT |

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**Date of Decision :** 09-05-2011

**Acts Referred:**

Central Civil Services (Pension) Rules, 1972 — Rule 26.1  
Constitution of India, 1950 — Article 226

**Citation :** (2011) 05 SHI CK 0135

**Hon'ble Judges :** R.B. Misra, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

R.B. Misra, J.—Heard Mr. Rajeshwar Thakur, learned Counsel for the Petitioner and Mr. R.K. Sharma, learned Senior Additional Advocate General, for the Respondents.

2. In the present writ petition, following prayers have been made:

- (i) That since unlawfully the Petitioner's services were dispensed with in 1973, the Petitioner's arrears of salary with interest of 12% till the date of his retirement should be given to the Petitioner;
- (ii) That the Petitioner be given his pension in context to the different ranks, he would have been promoted to along-with interest at the rate of 12%.

3. The Petitioner has submitted that, being a citizen of India, he was appointed by Principal Secretary (Agriculture) to the Government of Himachal Pradesh, as a Gardner, on ad-hoc basis in the year 1958. Thereafter, the Petitioner was regularized to the post of Gardner on 1.4.1960. However, no documentary evidence or proof has been placed on record, as contended by the learned Counsel for the Petitioner. On 23.10.1971, State of Himachal Pradesh bifurcated the department and a department of Horticulture was created and employees, working with the Petitioner, were absorbed in the Department of Horticulture, but

the Petitioner was left with the assurance that he should continue working in the Department of Agriculture and shortly he would be absorbed by the Department of Horticulture.

4. According to the Petitioner, his services were dispensed with by the State Government and thereafter he was not paid salaries and pension. The Petitioner has further averred that his services were dispensed with in the year 1973, as such he is entitled to the salaries and all other retiral benefits. As has been prayed by him that promotion and all the service benefits were not given to him despite serving legal notice dated 23rd March, 2010, issued to Secretary, Department of Agriculture, Secretary, Department of Horticulture, Director, Department of Agriculture and Director, Department of Horticulture, Government of Himachal Pradesh.

5. Learned Counsel for the Petitioner has argued that a certificate produced by him that he was given training of Gardner for six months from April 1960 shows that the Petitioner was deployed in the State Government but to frustrate the cause of Petitioner, a forged letter has been issued by the State Government to show as if the Petitioner had tendered resignation.

6. Reply has been filed on behalf of Respondents No. 1 and 2. It has been submitted on behalf of Respondent No. 1 that the present writ petition has been presented before the Court after a lapse of about 40 years. It has also been submitted on behalf of Respondent No. 1 that vide letter dated 11.8.2009, the Director of Agriculture requested the Petitioner to furnish appointment letter and any document pertaining to his service in support of his case, but he failed to supply any such document. According to Respondent No. 1, there was neither any post of Gardner in existence in the Department of Agriculture at the relevant time nor the Petitioner was ever appointed as ?Gardner?. The Respondent No. 1 has further stated that no assurance of any kind was ever given to the Petitioner to absorb him with Respondent No. 2.

In view of the reply of Respondent No. 2, it appears that a resignation was submitted by the Petitioner which was accepted by the authority with effect from 30.4.1972. The letter dated 15.5.1972, issued by District Horticultural Officer, District Mahasu, Shimla, to the Petitioner, indicates that resignation of the Petitioner was accepted subject to the condition that no Government property should remain in his custody. Subsequently, vide letter dated 27.4.1973 of District Horticultural Officer, Shimla, issued to the Petitioner, it was submitted that his salaries for the months of July to December, 1971 would be drawn as soon as his leave case for 187 days w.e.f. 15th June, 1971 to 18th December, 1971 is finalized as the Petitioner remained on leave w.e.f. 15.6.1971 to 18.12.1971 without prior sanction of the competent authority on the ground of illness of his wife. However, regarding salary for April 1972 (duty period) was remitted to the Petitioner by M.O. In view of the reply of Respondent No. 2, Petitioner tendered his resignation to the Respondent department on 27.4.1972, which was accepted vide letter dated 15.5.1972 and the Petitioner since had

rendered about 12 years of Government service, as such, under Rule 26.1 of CCS (Pension) Rule, 1972 was not entitled for pensionary benefits unless the resignation from a service or a post was allowed to be withdrawn in public interest by the appointing authority.

7. I have perused the documents enclosed along with the writ petition and have heard learned Counsel for the parties. I find that the Petitioner has not enclosed any documentary evidence/proof to show as to when he was appointed and how he was regularized to the post of Gardner in the year 1960 and after bifurcation how and by whom he was assured to be absorbed with Respondent No. 2 and by which order his service was dispensed with by Respondent No. 1. When his service was dispensed with, the Petitioner could have come forward for the redressal of his grievance. However, the Petitioner has failed to take any legal remedy and has come to this Court after a lapse of about 38 years. The contention of the Petitioner that the letter dated 15.5.1972 accepting the resignation of the Petitioner w.e.f. 30.4.1972 is a forged document, cannot be adjudicated upon before this Court as the disputed and controversial issues cannot be dealt with and adjudicated upon in the writ petition.

8. The learned Counsel for the Petitioner has referred and relied upon a decision of Hon<sup>ble</sup> Supreme Court in S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, where the Applicant/widow prayed for family pension in the context of the death of her husband employee (who died in harness) where statutory pension was directed to be given even after a long lapse of time. In my respectful consideration, the judgment of Hon<sup>ble</sup> Supreme Court is not helpful to the Petitioner as the facts of the case of S.K. Mastan Bee (supra) were different. The Petitioner has not come before this Court with clean hands, moreso, without any documentary proof of appointment letter and without the termination letter with erroneous assertion that the acceptance of resignation letter was fabricated.

9. The issue of delay in filing a writ petition was considered by the Apex Court in Smt. Sudama Devi Vs. Commissioner and Others, wherein the Apex Court has observed as under:

There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. For every case it would have to be decided on the facts and circumstances, whether the Petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the Petitioner.

Similarly, in State of U.P. and Others Vs. Raj Bahadur Singh and Another, the

Apex Court held that "there is no time limit for filing the writ petition. All that the Court has to see is whether the laches on the part of the Petitioner are such as to disentitle him to the relief claimed by him."

In *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, the Apex Court held that the High Court cannot ignore the delay and laches in approaching the writ Court and there must be satisfactory explanation by the Petitioner as how he could not come to the Court well in time. A similar view has been reiterated by the Supreme Court in *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, wherein the Supreme Court held that the High Court should have dismissed the writ petition on the ground of delay and laches.

10. The present writ petition is suffering from serious laches. In these circumstances, Petitioner is not entitled to the reliefs, as prayed for, after such a long lapse of time, therefore, the writ petition is dismissed, so also the pending application(s), if any.