



CWP-4516-2019 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-4516-2019 (O&M)**Reserved on : 28.07.2026****Date of Pronouncement : 04.08.2026****Date of Uploading : 07.08.2026**

Vijay Kumar

.....Petitioner

Vs.

Punjab and Haryana High Court

.....Respondent

*Whether only the operative part of the judgment is pronounced?**NO**Whether full judgment is pronounced?**YES***CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Gunjan Mehta, Advocate,
for the petitioner.

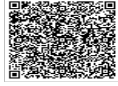
Ms. Himani Sarin, Advocate, and
Ms. Manveen Narang, Advocate,
for the respondent.

SUDEEPTI SHARMA J.

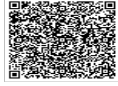
1. The petitioner in the present writ petition is asking for issuance of a writ in the nature of mandamus directing the respondents to fix the seniority of the petitioner as 'Clerk' from the date of clearance of typing test i.e. 03.02.1996 in view of the order dated 12.02.1996, 03.02.1996 and 27.07.2005. Further asking for setting aside order dated 14.03.2013, whereby representation filed by the petitioner has been rejected.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that the petitioner was appointed as 'Peon' on ad hoc basis against the leave vacancy in the year 1981. He

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was promoted as 'Restorer' in the year 1989. He misplaced the record of CRA-485-SB-1986. In this regard, under the order of Hon'ble the then Chief Justice, FIR was registered against him and in the year 1995, he was placed under suspension, vide order dated 18.04.1995. Thereafter, charge-sheet was issued to him. On 15.12.1995, this Court invited applications from the graduate Supervisors/Restorers with 02 years of service and matriculate Supervisors/Restorers with 05 years of service, who wanted to appear for the typing test to bring their names on the panel for filling up subsequent vacancies for the post of Clerk. Petitioner gave a representation dated 25.01.1996 to allow him to appear in the type test to be held on 03.02.1996. He was permitted to appear for the type test vide letter dated 02.02.1996, wherein it was categorically stated that petitioner has no right to be promoted till the completion of inquiry initiated against him. On 03.02.1996, he was declared qualified for the type test. Vide letter dated 12.02.1996, he was informed that his name has been brought on the panel, subject to the condition that he has no right to be promoted till the completion of inquiry against him. On 16.09.1997, Inquiry Officer submitted a report that charges against the petitioner do not stand proved. On 03.09.2003, petitioner was acquitted by learned Special Judge considering the report of regular departmental inquiry and his acquittal from the criminal case. On 26.05.2004, petitioner gave a representation requesting for promotion to the post of Clerk w.e.f. 21.03.1996, when the other employees, who had cleared the typing test were promoted. On

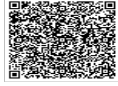
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27.07.2005, Hon'ble the Chief Justice of this Court exonerated the petitioner and the period for which he remained under suspension, i.e. from 18.04.1995 to 21.12.1999, was regularized and he was treated as on duty during that period. On 27.07.2006, his representation was considered by the Promotion Committee and it was recommended that the petitioner be promoted to the post of Clerk against available vacancy w.e.f. the date of order of promotion. On 18.08.2006, recommendation of the Promotion Committee was approved by Hon'ble the Acting Chief Justice of this Court. Petitioner was promoted to the post of Clerk w.e.f. 18.08.2006, vide office order dated 18.08.2006. He filed representation on 08.11.2012 requesting that he be promoted w.e.f. 03.02.1996 along with all consequential benefits. His representation was rejected vide order dated 05.03.2013. Hence, the present writ petition.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

3. Learned counsel for the petitioner contends that since the petitioner cleared the type test in the year 1996 only and he was exonerated by Hon'ble the Chief Justice of this Court and the period for which he remained under suspension, i.e. from 18.04.1995 to 21.12.1999, was regularized and treated as on duty, therefore, he should have been promoted w.e.f. the year 1996 along with all consequential benefits. He further contends that his representation was rejected without any reason. He, therefore, prays that the present petition be allowed.

4. *Per contra*, learned counsel for the respondents submits that the present writ petition deserves to be dismissed on the ground of delay and

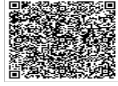
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laches, since the cause of action accrued to the petitioner in the year 2006 when he was promoted and thereafter, in the year 2013 when his representation was rejected, but the present writ petition is filed in the year 2019. She, therefore, prays that the present writ petition be dismissed.

5. I have heard learned counsel for the parties and perused the whole file of this case with their able assistance.

6. A perusal of the file shows that admittedly, the petitioner was involved in FIR in the year 1995. He was allowed to appear in the type test in the year 1996. Hon'ble the Chief Justice exonerated the petitioner and the period for which he remained under suspension i.e. 18.04.1995 to 21.12.1999 was regularized and he was treated as on duty during the said period. Thereafter, on 27.07.2006, he filed representation before the Promotion Committee with a request to promote him to the post of Clerk. The same was considered and he was recommended to be promoted to the post of Clerk against available vacancy w.e.f. the date of order of promotion. The recommendation of the Promotion Committee was approved by Hon'ble the Acting Chief Justice and the petitioner was promoted to the post of Clerk w.e.f. 18.08.2006.

7. Admittedly, after 18.08.2006, neither the order of promotion w.e.f. 18.08.2006 was challenged nor any representation was made by the petitioner requesting for promotion w.e.f. 03.02.1996 along with all consequential benefits. He moved representation for the first time on 08.11.2012, which was rejected on 05.03.2013 and petitioner was duly

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informed regarding the same on 14.03.2013, which is attached with the present petition as Annexure P-13. After rejection of his representation, the petitioner did not pursue any legal remedy. He retired on 31.01.2019 after availing two years extension in service beyond the age of 58 years and the present writ petition was filed on 14.02.2019. As per facts of this case, first cause of action arose to the petitioner in the year 2006 when he was promoted to the post of Clerk. The second cause of action arose to him in the year 2013 when his representation regarding the request of his promotion w.e.f. 03.02.1996 along with all consequential benefits was rejected and he was duly informed on 14.03.2013. He was sleeping over his rights for about 13 years at the first instance when for the first time his cause of action arose and for about 06 years after the rejection of his representation i.e. 05.03.2013, which was duly informed to him on 14.03.2013. It was only after availing two years of extension in service beyond the age of 58 years, the petitioner preferred the filing of the present writ petition.

8. Hon'ble the Supreme Court in **Mrinmoy Maity Vs. Chhanda Koley and others, 2024(15) SCC 215** held as under:-

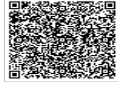
“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and latches itself. An applicant who 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 latches 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. This Court in the case of **Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768** has held to the following effect:*

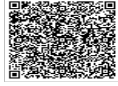


"56. **We are unable to uphold** the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumate matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide **State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261]**, **Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450]** and **Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]**). This principle applies even in case of an infringement of fundamental right (vide **Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110]**, **Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185]** and **Rabindranath Bose v. Union of India [(1970) 1 SCC 84]**).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in **Karnataka Power Corporation Ltd. and**

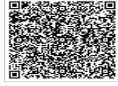


another v. K. Thangappan and another, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769]**. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in **Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492]** (PC at p. 239) was approved by this Court in **Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450]** and **Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329]**. Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.



But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in **Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470]** that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in **State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251]** that the High Court in 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 and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause



confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

13. *Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108** has held:*

"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 scrutinize 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.""



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9. In view of the above, this Court does not find any merit in the present writ petition and the same is hereby **dismissed**.
10. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

04.08.2026
Virender

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No