

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

145

CWP-5455-2025

Date of Decision: 27.02.2025

AMIT KUMAR

.....Petitioner

Vs.

THE STATE OF PUNJAB AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Himmat Singh, Advocate
for the petitioner.

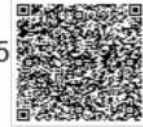
Mr. Rajesh Sehgal, Addl. AG, Punjab
for respondent No.1

DEEPAK GUPTA, J.

By way of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of appropriate writ to quash condition No.3 (b) of the joining letter dated 03.06.2015 (*Annexure P-2*) to the effect that petitioner shall not entitled to any benefits including pension, gratuity, leave encashment etc. Further prayer is made to direct the respondent to re-calculate the salary of the petitioner in terms of joining letter dated 03.06.2015 for the period from July 2017 to December 2019 and release the arrears etc.

2. Petitioner joined the office of respondent No.2 on the post of Company Secretary on contractual basis on lump sum salary of ₹30,000/- per month with a provision of increase of 10% every year. The contract was for period of 05 years, as is evident from the appointment letter dated 03.06.2015 (*Annexure P-2*). Condition No.3(b) of the appointment letter reads as under:-

“Appointment made on contract basis will not be pensionable, will not be entitled for any kind of benefit like pension, gratuity, leave encashment etc.”



3. After expiry of the contract period, it was extended for another year on 26.08.2021 vide *Annexure P-4* and thereafter, petitioner submitted his resignation. He was relieved from the duties of Company Secretary from 30.05.2022 as per *Annexure P-5*.

4. Petitioner has now challenged the condition No.3(b) of the joining letter dated 03.06.2015 (*Annexure P-2*) as reproduced earlier, as arbitrary, unconstitutional and discriminatory. It is contended that petitioner is entitled for all the service benefits including leave encashment, gratuity etc.

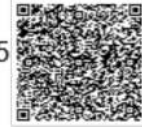
5. On advance notice, Mr. Rajesh Sehgal, Additional AG, Punjab has appeared on behalf of respondent-State.

6. As rightly pointed out by Additional AG, Punjab for respondent-State, the petitioner joined the Company Secretary pursuant to the appointment letter dated 03.06.2015 (*Annexure P-2*). He continued to serve the respondent till 2022. During this entire period, he never challenged any condition of his appointment letter. Even after his resignation, effective from 30.05.2022, he has approached this Court by way of present petition in February 2025 i.e. after much delay and latches.

7. In the aforesaid facts and circumstances, when petitioner never challenged condition of the appointment letter issued way back in 2015 and has approached this Court almost after 03 years from the date of his resignation, this Court does not find any ground so as to issue any writ in favour of the petitioner as sought by him.

8. **In *P.S. Sadasivaswamy vs The State Of Tamil Nadu AIR 1974 SC 2271***, Hon'ble Supreme Court observed as under:

“A person aggrieved by an order of promoting a junior over his bead should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the

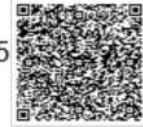


passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

9. Hon'ble Supreme Court has recently held in ***Mrinmoy Maity Vs Chhanda Koley and others, 2024 SCC Online SC 551, 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 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

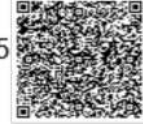


ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

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 laches 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 laches, 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 laches on the part of the applicant in approaching a writ court.

10. It is, thus, clear that High Court should not entertain the writ petition and should dismiss the same on the ground of delay and laches, when there is no explanation of delay. The applicant who approaches the Court belatedly or sleeps over his rights for considerable period, does not deserve to be granted the extra-ordinary relief by invoking the writ jurisdiction of the Court. It is settled proposition of law that delay defeats equity. High Court will be well within its jurisdiction to refuse to invoke its writ powers, if there is laxity on behalf of the applicant, as the said laxity allows the cause of action to drift away and attempts to rekindle the lapse cause of action. Even the delayed multiple communications cannot create cause of action.

11. In the present case also, there is absolutely no explanation on part of the petitioner for delay of more than 9 years in approaching the court from the date of issuance of the joining letter dated 03.06.2015, the condition of which is assailed by the petitioner. The contention that the petitioners can approach the court at any point of time because of recurring



cause, has no merit, therefore, at this belated stage, petitioner cannot be allowed to put forth his grievance.

12. As such, the present petition is hereby dismissed being badly hit by the doctrine of delay and latches, as this Court does not find it appropriate to invoke its extra-ordinary writ jurisdiction

27.02.2025

Pry

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No