

*Before Ajai Lamba, J.*

**MOTA SINGH,—Petitioner**

*versus*

**STATE OF PUNJAB & OTHERS,—Respondents**

**CWP No. 15252 of 2010**

26th July, 2010

*Constitution of India, 1950—Art. 226—Delay & laches—Claim for pensionary benefits—Absence from duty—Petitioner failing to join inquiry proceedings—Dismissal from service—After more than 7 years petitioner challenging orders of dismissal before Civil Court—Petitioner failing before trial Court & 1st Appellate Court—No 2nd appeal against order of 1st Appellate Court filed in High Court—High Court in a similar case modifying order of dismissal & holding person entitled to pension admissible as per length of service—Whether such a case can be considered a binding precedent to allow same relief to petitioner—Held, no—Petitioner has no right to claim relief by relying on judgment of High Court after more than 9 years of matter having attained finality in civil Courts—Petition dismissed.*

*Held*, that the petitioner is not entitled to any relief on account of delay and laches. Even though all the orders passed by the departmental authorities upholding the order of dismissal of the petitioner from service have not been placed on record, it becomes evident that the last order passed by the departmental authorities against the petitioner is dated 27th February, 1985. The petitioner, thereafter, remained dormant and accepted his fate. It is only after more than seven years that the petitioner filed a civil suit, which was also pursued only till the filing of first appeal. Be that as it may, the first appeal of the petitioner was also dismissed in January, 2001. Under such circumstances, after more than nine years of the matter having attained finality in the civil suit, the present writ petition has been filed, which on account of delay and laches, cannot be entertained.

(Para 17)

*Further held*, that even on merits, the petitioner is not entitled to any relief. The judgment of this Court in Constable Surjit Singh does not lay down a legal precedent to be followed. The judgment does not declare a law unconstitutional and void. Therefore, the petitioner, in law, cannot take the plea that the same relief is admissible to him by mandate or declaration of law. In such circumstances also, the petitioner has no right to claim relief by way of relying on the judgment of this Court in Constable Surjit Singh's case and the order passed in consequence/deference thereto viz. order granting relief to Ex. Constable Surjit Singh.

(Para 19)

M.K. Bhandari, Advocate, *for the petitioner.*

**AJAI LAMBA, J.**

(1) This petition under Article 226 of the Constitution of India has been filed praying for issuance of direction to the respondents to grant pensionary benefits to the petitioner in terms of order dated 16th May, 2002 (Annexure P-5).

(2) A perusal of the order (Annexure P-5) reveals that the order is in the context of one Ex-Constable Surjit Singh whereby Surjit Singh has been held entitled to payment of pension admissible as per service rendered by him. It seems that said Ex-Constable Surjit Singh was dismissed from service for reason of wilful absence. The civil suit filed by him was decreed. The first appeal filed by the State of Punjab was dismissed. Thereafter, the State filed a Regular Second Appeal (Regular Second Appeal No. 2356 of 1996 titled '**State of Punjab versus Constable Surjit Singh**') in this court, which was allowed. Accordingly, the suit filed by Ex-Constable Surjit Singh was dismissed. In the concluding portion of the judgment rendered by this Court in the case of Surjit Singh, it has been observed in the following terms :—

“11. For the above reasons, this appeal is allowed, decree of the courts below is set aside and the suit filed by the respondent plaintiff is dismissed. However, having regard to the fact that the plaintiff had rendered service of about fifteen years, he should not be deprived of pensionary and other benefits earned by

him for rendering service. If the plaintiff makes a representation in this regard, the authorities will consider to grant such benefits to him and the representation, if any, made by the plaintiff will be decided within a period of three months, and benefits, if any held admissible to him shall be paid to him within three months of the disposal of the representation.

Appeal allowed.”

(3) Having regard to the service of 15 years rendered by Ex-Constable Surjit Singh, in view of the observations made by the High Court in its judgment, the order of dismissal was modified by the authorities to the extent that Ex-Constable Surjit Singh was only held entitled to the pension admissible as per his length of service till the time of passing of order dated 25th November, 1988, when he was dismissed from service by virtue of order (Annexure P-5). He was, however, not held entitled to other benefits, such as, Leave Encashment, Death-cum-Retirement Gratuity, etc.

(4) The petitioner claims benefit similar to the ones granted to Surjit Singh, as noticed above.

(5) The petitioner claims, by way of pleadings in the writ petition, that he was appointed as a Constable on 3rd January, 1963. He applied for leave, which was sanctioned *vide* DDR No. 9 dated 10th September, 1982. The petitioner submitted his joining report on 22nd February, 1983. The petitioner was reported absent from duty with effect from 22nd February, 1983. It is the pleaded case on behalf of the petitioner that the petitioner had requested the respondents to retire him prematurely, *vide* letter dated 1st August, 1983. However, inquiry was conducted against the petitioner and *vide* order 18th August, 1983 (Annexure P-2), the petitioner was dismissed from service.

(6) A perusal of the order (Annexure P-2) indicates that the petitioner had proceeded on leave for 20 days with effect from 10th September, 1982. The petitioner came back and joined duty on 29th September, 1982. However, subsequently, the petitioner was not found present at his place of posting. *Vide* report dated 22nd February, 1983, the petitioner was declared absent. The departmental action, accordingly, was proposed.

(7) The petitioner did not join the inquiry proceedings and therefore, after various attempts at service, *ex parte* inquiry was conducted. The statement of charges and list of witnesses was sent to the petitioner at his residential address by Registered Post. After taking evidence, the petitioner was invited to bring his defence. Despite such offer also, the petitioner did not join the inquiry proceedings and the proceedings were concluded *ex parte*. On considering the same, a show cause notice for imposition of punishment of dismissal from service was served on the petitioner. The petitioner, however, did not appear at the first instance, despite service through special messenger. Be that as it may, the petitioner appeared before the Punishing Authority on 11th August, 1983 and stated that the officers were against him and, therefore, he was being dismissed from service.

(8) Considering the evidence against the petitioner and other circumventing circumstances, the Punishing Authority ordered dismissal of the petitioner from service with effect from 11th August, 1983.

(9) It seems that, thereafter, the petitioner filed a civil suit in challenge to the order of dismissal which, however, was dismissed by the Civil Judge (Senior Division), Patiala, *vide* judgment and decree dated 13th October, 1997. The petitioner carried an appeal in the court of the District Judge, Patiala, which also was dismissed by Additional District Judge, Patiala, *vide* judgment dated 18th January, 2001.

(10) The only ground taken by the learned counsel for the petitioner is that Ex-Constable Surjit Singh had been given relief by virtue of order (Annexure P-5) passed by the authorities in consequence of judgment of this Court rendered in RSA No. 2356 of 1996 (**State of Punjab versus Constable Surjit Singh**) to which reference has been made above and, therefore, even the period of service rendered by the petitioner be taken into account and the respondents be directed to release the pensionary benefits. The case of Surjit Singh be considered as a binding precedent to allow same relief to the petitioner.

(11) The issue raised before me for adjudication, in the facts and circumstances noticed above, is whether the petitioner is entitled to take benefit of judgment passed in the case of another person i.e. Surjit Singh and consequent orders passed by the authorities ?

(12) In the context of the issue raised before me, the law in regard to delay and laches, in similar circumstances, is required to be taken into account.

(13) In **M/s Rup Diamonds and others versus Union of India and others (1)**, while considering the issue of laches, the Hon'ble Supreme Court of India has held (in paras 8 and 9) in the following terms :—

- “8. ....Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost a year after the first rejection.....
9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves, persuade us to decline to interfere.”

(14) In **Jagdish Lal and others versus State of Haryana and others (2)**, a Three Judge Bench of the Hon'ble Supreme Court of India (in para-18) has held in the following terms :—

- “18. That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from **Union of India versus Virpal Singh Chauhan**, (1995)6 SCC 684 and **Ajit Singh Januja**

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(1) 1989 (2) S.C.C. 356

(2) (1997) 6 S.C.C. 538

*versus State of Punjab*, (1996) 2SCC 715 ratios..... The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

(15) In **Government of W.B. versus Tarun K. Roy and others** (3) the Hon’ble Supreme Court of India (in para 34) has held as under :—

“34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in **State of W.B. versus Debdas Kumar**, 1991 Supp. (1) SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.....”

(16) In **U.P. Jal Nigam and another versus Jaswant Singh and another** (4), while making a reference to various Supreme Court judgments, the following has been held (in paras 6 and 13) :—

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights.....”

“13. In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in

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(3) (2004) 1 S.C.C. 347

(4) (2006) 11 S.C.C. 464

time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent.....”

While thus holding, the Hon'ble Supreme Court of India granted relief only to the persons who had approached the court in time while they were still in service or who had obtained interim order for their retirement.

(17) Considering the facts and circumstances of the present case, in the context of the law as declared by the Hon'ble Supreme Court of India, I am of the considered opinion that the petitioner is not entitled to any relief, on account of delay and laches. Even though all the orders passed by the departmental authorities upholding the order of dismissal of the petitioner from service have not been placed on record, it becomes evident that the last order passed by the departmental authorities against the petitioner is dated 27th February, 1985. The petitioner, thereafter, remained dormant and accepted his fate. It is only after more than seven years that the petitioner filed a civil suit, which was also pursued only till the filing of first appeal. Be that as it may, the first appeal of the petitioner was also dismissed in January, 2001. Under such circumstances, after more than nine years of the matter having attained finality in the civil suit, the present writ petition has been filed, which on account of delay and laches, cannot be entertained.

(18) The petitioner has no right to rely on the order passed in the context of Ex- Constable Surjit Singh for the reason that Ex-Constable Surjit Singh was vigilant and had pursued his remedy in civil court and, thereafter, with the authorities, whereupon order (Annexure P-5) came to be passed on 16th May, 2002, allowing pension to Ex-Constable Surjit Singh. The conduct of the petitioner has been such that the petitioner has waited for eight years after relief was granted to Ex-Constable Surjit Singh to file the present writ petition.

(19) Other than the fact that the writ petition cannot be entertained because it suffers from delay and laches even on merits, the petitioner is not entitled to any relief. The judgment of this Court in **Constable Surjit Singh's case** (*supra*) does not lay down a legal precedent to be followed.

The judgment in **Constable Surjit Singh's case** (*supra*) does not declare a law unconstitutional and void. Therefore, the petitioner, in law, cannot take the plea that the same relief is admissible to him by mandate or declaration of law. In such circumstances also, the petitioner has no right to claim relief by way of relying on the judgment of this Court in **Constable Surjit Singh's case** (*supra*), and the order passed in consequence/deference thereto viz. order (Annexure P-5), granting relief to Ex-Constable Surjit Singh.

(20) In such circumstances, no right is vested in the petitioner to claim any relief through extra ordinary writ jurisdiction.

(21) The petition is, accordingly, dismissed in limine.

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*R.N.R.*