

105.

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

CWP-6098-2020

Date of Decision: 31.10.2022

Ex. Constable Jasbir Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rishu Mahajan, Advocate, for the petitioner.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing order dated 26.12.2005, Annexure P-4, whereby he has been dismissed from service, as well as subsequent orders dated 01.12.2006 and 21.05.2019, Annexures P-7 and P-8. He has also prayed for his reinstatement in service with all consequential benefits.

2. The facts of the case are that the petitioner was appointed as Constable in Punjab Police on 13.05.1992. He could not report for his roll call on 26.03.2000 and remained absent till 12.06.2001 i.e. for a period of 1 year, 2 months and 17 days. On this account, he was dismissed from service vide order dated 06.08.2001 by the Senior Superintendent of Police, Amritsar. Against said order, he preferred appeal before the Inspector General of Police, Amritsar, however, appeal was dismissed vide order dated 17.05.2002. He challenged the orders by way of a civil suit before the trial

Court. The trial Court, vide order dated 02.09.2004, set aside the dismissal order and directed respondents to pass a fresh punishment order, however, he was not made entitled for the arrears. He challenged that order in appeal, which was accepted vide order dated 01.12.2005 granting him the benefits of arrears as well. Against the said order, respondents approached this Court by way of RSA No.2516 of 2006, whereby vide order dated 11.03.2008, the order passed by the first Appellate Court with regard to payment of backwages and other service benefits was stayed. Petitioner was again dismissed from service by the Senior Superintendent of Police, Amritsar vide order dated 26.12.2005 on account of his earlier absence for a period of 1 year, 2 months and 17 days. He approached the DIG, Border Range, Amritsar by way of appeal which was accepted vide order dated 06.06.2006 and the punishment of dismissal was reduced to that of forfeiture of one year of approved service on permanent basis towards annual increment. It was ordered that the period from the date of his dismissal to the date of joining shall be treated as leave of the kind due and his absence period shall be treated as non-duty period. However, the said order dated 06.06.2006 was intended to be reviewed by the IGP, Border Zone, Amritsar and accordingly, he was served a show cause notice. Said show cause notice was replied to by the petitioner. Vide order dated 01.12.2006, the IGP IGP, Border Zone, Amritsar revoked the order passed by the DIG, Border Range, Amritsar and upheld the order of SSP, Amritsar. Against that order, the petitioner filed mercy petition, but it was also dismissed. Thereafter, the petitioner filed another appeal in the year 2016 before the Government of Punjab, Home Affairs and Justice Department, but it was also dismissed vide order dated

21.05.2019. Hence, the present petition.

3. Learned counsel for the petitioner has argued that once the punishment of dismissal stood set aside, the petitioner cannot be awarded the same punishment again on the very same basis. It would amount to double jeopardy. The departmental authorities have not waited for the outcome of RSA pending before this Court. He has prayed for reinstatement in service with all consequential benefits.

4. I have heard learned counsel for the petitioner and have perused the paper book which would show that against the order dated 01.12.2006, the petitioner purportedly approached the Additional Director General of Police by way of appeal-cum-mercy petition, but it was dismissed. However, the paper book is silent when it was dismissed. No such order is made part of the record. Thereafter, the petitioner approached Government of Punjab, Home Affairs and Justice Department in the year 2016. Counsel for the petitioner is unable to explain the gap between 2006 to 2016. One cannot be heard who slept over the matter for such a long time. The petitioner cannot agitate a stale claim.

5. The law is well settled that one has to be vigilant regarding his rights. The doctrine of 'Delay or Laches' is an equitable doctrine. It is based on the maxim "*Vigilantibus non dormientius aequitas subvenit*" which means equity aids the vigilant and not the ones who sleep over their rights. A 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.

6. In view of above, this Court does not find any ground for interference in the writ petition and the same is dismissed accordingly.

(JAISHREE THAKUR)
JUDGE

31.10.2022

sanjeev	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No