

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 18310 of 2008

Reserved On : December 03, 2015

Pronounced On : 19.12.2015

Paras Ram Petitioner

vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Harish Nain, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks setting aside of order dated 24.07.2007, through which his claim, for ante-dating his date of appointment from 01.10.1997 to 20.12.1993, was rejected.

On perusal of the record of the case and after hearing counsel for the parties, the relevant facts, which have emerged are that on 10.12.1993, the petitioner, along with others, was selected as a Science

Master. In pursuance to such selection, the candidates, who were lower in merit than the petitioner, joined service on 20.12.1993, but the petitioner did not since according to him, no appointment letter was issued to him.

Other persons, like the petitioner, who had not been issued appointment letters, filed a petition in this Court and under orders passed on their petitions, appointment letters dated 01.10.1997 were issued not only to them but also to the petitioner. In pursuance to the appointment letter so issued, the petitioner joined his services on 24.10.1997. On 29.09.2006 i.e. after about nine years, the petitioner served upon the respondents a legal notice seeking to ante-date his date of appointment from 01.10.1997 to 20.12.1993. When his legal notice went unanswered, he approached this Court through **C. W. P. No. 18646 of 2006**, which was disposed of directing the respondents to take a decision on the aforesaid legal notice sent on behalf of the petitioner. In compliance with the order of this Court, through order dated 24.07.2007, representation made by the petitioner through his legal notice was rejected. It is such rejection that is challenged through the present petition.

Appointment letter dated 01.10.1997 clearly stipulated that the offer of appointment was with immediate effect i.e. from the date of issue of the order. Through the present petition, the petitioner seeks to challenge the afore-referred part of the appointment letter by seeking a direction that the appointment offered to him on 01.10.1997 should not be effective from the date of its issuance but should relate back to 20.12.1993. Thus, the

petitioner's cause of action accrued on 01.10.1997, which was questioned by him for the first time only on 29.09.2006, when he got issued a legal notice to the respondents i.e. after about nine years. This inordinate delay of nine years is not explained.

Further, at the time of joining his service in pursuance to the appointment order dated 01.10.1997, the petitioner was made well aware of the fact that the appointment being offered to him was with effect from 01.10.1997, which he accepted with open eyes as admittedly, at that time and for even about nine years thereafter, no protest was raised by him. Thus, the petitioner would clearly be estopped by his conduct from raising a plea to the contrary and that too, after a long period of nine years.

The delay on the part of the petitioner has acted to prejudice of others because if the plea raised by him is to be accepted, at this stage, then he would rank senior to all the persons appointed between 20.12.1993 till 01.10.1997. For the delay on the part of the petitioner, only he can be put to blame and for his own fault, he cannot be allowed to prejudice the rights of others, which have crystalized, especially when in the present petition, no challenge is made to the seniority list and has been filed without even impleading the parties, over whom the petitioner would steal a march in seniority in case his plea is to be accepted.

The aforesaid views of mine, on the issue of denying of relief qua belated claims, get support from a recent judgment of this Court in the

case of **Satyabir and others vs. State of Haryana and others – C. W. P.**

No. 225 of 2015, decided on 08.01.2015, which was delivered after considering the entire law on the subject, by holding as under :-

“After hearing learned counsel for the petitioners and perusing the paper book, I do not find any merit in the submissions made. It is not in dispute that the services of the petitioners were regularised with effect from 29.7.2011 vide order dated 25.10.2011. As their services were regularised in the year 2011, they felt satisfied. However, after more than three years of regularisation of their services, they filed the present writ petition on 7.1.2015, claiming regularisation in terms of policies dated 28.7.1994 or 1.10.2003, which is highly belated.

The issue regarding delay in invoking extra-ordinary jurisdiction was considered by Hon'ble the Supreme Court in U. P. Jal Nigam and another v. Jaswant Singh and another. (2006) 11 SCC 464. It was a case in which certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. They were still in

service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon that judgment, some of the employees, who already stood retired, filed writ petitions claiming same benefit. The writ petitions were allowed by the High Court in terms of its earlier judgment. The judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in *Rup Diamonds v. Union of India*, (1989) 2 SCC 356; *State of Karnataka v. S. M. Kotrayya*, (1996) 6 SCC 267; *Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538 and *Government of West Bengal v. Tarun K. Roy*, (2004) 1 SCC 347, it was opined that the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. [Emphasis supplied]

“In a recent judgment in *State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others*, 2013(6) SLR 629, Hon'ble

the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Such an order promoting a

junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. [Emphasis supplied]”

The plea raised on behalf of the petitioner, seeking parity with one Ram Jura Rana, is to be considered only to be rejected. A perusal of the record shows that Ram Jura Rana had filed a petition in this Court in the year 2003, which was disposed of by directing the respondents to decide his representation and while deciding the same, he was granted relief. Ram Jura Rana had approached this Court in the year 2003 and the order in his case was passed in April 2004. The legal notice sent by the petitioner was after about three years and about 2½ years after the writ petition filed by

Ram Jura Rana and the order passed in his case respectively. In any case,

the order passed in Ram Jura Rana's case cannot explain the delay in the case of the petitioner and that the order passed in the case of Ram Jura Rana, giving him a deemed date of appointment, was passed prior to the finalization of the seniority list, which the Court is informed, was finalized in the year 2006.

In view of the above, the petitioner cannot be granted relief in view of the delay of about nine years on his part, on the principle of estoppel as he accepted his appointment with effect from 01.10.1997, for not having challenged the seniority list and in the absence of necessary parties.

Dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 19.12.2015

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