

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

CWP No.11000 of 2012(O&M)

Date of Decision: 27-01-2015

Gurmel Singh

...Petitioner

Versus

Punjab State Agricultural Marketing Board and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.J.S. Mannipur, Advocate
for the petitioner.

Mr. Aman Chaudhary, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

The petitioner joined as a Record Keeper with respondent No.2- Market Committee, Jagraon on 30.03.1983. One Shri Tirath Singh had joined as Care Taker in March 1983. The petitioner was promoted as Auction Recorder on 3.2.1989 alongwith the aforesaid Shri Tirath Singh. Petitioner was further promoted as Mandi Supervisor vide Resolution No.14 dated 16.05.2012.

It is averred that vide memo No.221 dated 11.11.1983 issued by respondent No.1 it was decided that

the pay scales of Clerks, Village Supervisor, Moharrir, Care Taker, Rest House Attendant and other categories of employees, whose unrevised scale was equivalent to the pay scale of Auction Recorders of Rs.110-250 and who were in service as on 1.1.1978 and also those who were recruited after 3.7.1980 but before revision of the grade may be granted the scale of Rs.450-800 equivalent to that of Auction Recorders. It was also decided that such employees recruited after 3.7.1980 be given the scale of Rs.400-600 and posts of Auction Recorders may be filled by promoting such employees.

Though the aforesaid memo / order required the filling up of the post of Auction Recorders by promotion, however, the respondents recruited some Auction Recorders, namely, Shri Darshan Singh, Surjit Singh, Kulwant Singh, Mewa Singh and Jagjit Singh through direct recruitment. In order to by pass instructions dated 11.11.1983, they were given ante-dated appointment from 5.10.1983.

The petitioner challenged those appointments by filing CWP No. 9165 of 1987. His colleague Shri Tirath Singh also challenged the said appointments by filing CWP No.9229 of 1987. The writ petition filed by the petitioner was dismissed in default on 1.5.1996. The petitioner

claims that he was not aware of the dismissal and was informed by his Counsel time and again that the writ petition was pending.

The writ petition filed by Tirath Singh i.e. CWP No.9229 of 1987 came to be decided on 18.11.2011 . It was held that as per instruction dated 11.11.1983 appointment to the post of Auction Recorders could be only by promotion. It was directed that the petitioner must be taken to have been promoted on the day he completed one year of probation. Considering the fact that the petitioner Tirath Singh was appointed as Care Taker in March 1983, it was directed that he shall be taken as promoted to the post of Auction Recorder from April 1984 on completion of one year of probation. The benefits of deemed promotion and all consequential benefits were directed to be paid to Shri Tirath Singh within a period of 12 weeks.

In the year 2012, the petitioner filed an application for restoration of CWP No.9165 of 1987 which had been dismissed in default in 1996. It was submitted that the petitioner had not been informed about the dismissal in default of the said writ petition. This application was dismissed vide order dated January 12, 2012 holding that the application for restoration appears to

have been filed because the writ petition of another employee claiming similar relief had been allowed by the Court and that was no reason to restore the writ petition after a delay of 15 years. However, the petitioner was given liberty to file fresh writ petition if it is so maintainable and if so advised.

After the decision in CWP No.9229 of 1987 the petitioner served justice demand notice dated 2.3.2012 (Annexure P-5) calling upon the respondents to extend the benefit of the decision dated 18.11.2011 rendered in the case of Tirath Singh to him and that he be similarly promoted. The respondents sent a reply dated 17.04.2012 (Annexure P-6) stating that as the case of the petitioner had been dismissed in default, so he could not be entitled to any promotion on parity with said Tirath Singh, whose writ petition was allowed by this Court.

The petitioner has filed the instant writ petition challenging the denial of relief to him and states that he is entitled to the same benefits as granted to Mr. Tirath Singh.

Learned counsel for the petitioner contends that the petitioner had filed writ petition in 1987 claiming promotion as Auction Recorder with effect from 1984. But unfortunately the said writ petition was dismissed in

default. The petitioner was not aware of this fact and was under the impression that the said writ petition was pending. It is only after the decision in CWP No. 9229 of 1987 that the true facts about the dismissal of his writ petition in default came to his knowledge. Thereafter he immediately filed application for restoration of the writ petition. Though the application was dismissed but the petitioner was given liberty to file a fresh writ petition if it is so maintainable. He further states that it is well settled that similarly situated person should be treated similarly and if relief has been granted to one person, it should be extended to all similarly situated persons without each having to approach the Court for the same relief. He further contended that as in CWP No. 9229 of 1987, this Court had stated that the post of Auction Recorders were required to be filled up on promotion basis only and not by way of direct recruitment, the petitioner's case for promotion as Auction Recorder was required to be considered in terms of the instructions dated 11.11.1983 and he be treated as promoted after completion of one year probation like in the case of said Tirath Singh.

To the contrary, learned counsel for the respondents has contended that the present writ petition is barred by delay and laches. The application of the

petitioner for restoration of his writ petition was dismissed on the ground of having been filed after 15 years. It was specifically recorded therein that the writ petition cannot be restored merely because relief had been granted to another employee by the Court. It is thereby contended that the petitioner cannot get the benefit of filing the writ petition in 1987 . While dismissing the application of restoration, the Court has not accepted his plea that he was wrongly kept in dark by his Counsel about the pendency of his writ petition. It is not open to the petitioner to urge the same ground as justification for the delay . He has further contended that this petition has to be treated as a fresh petition and examined from the point of limitation disregarding the fact that he had earlier filed the writ petition in the year 1987. He has further contended that merely because relief has been granted to Mr. Tirath Singh would be no ground to extend the same benefit to the petitioner in these circumstances.

I have heard learned counsel for the parties and gone through the record.

While the petitioner states that he is entitled to the same relief as given to Tirath Singh, he also explains the delay in the background of the fact that he had filed the writ petition in 1987 which was dismissed in default in

1996, which fact was not in his knowledge, the respondents contend that this is not a valid justification to condone the delay and hence the petitioner is not entitled to the same relief as in the case of Tirath Singh.

In a recent case of ***State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava 2014 (4) SCT 648*** the Hon'ble Supreme Court on a consideration of the entire case law, laid down the principles and considerations on the basis of which the benefit of earlier judgment can be extended to those approaching the court for similar relief :

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be

treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (**see K.C. Sharma & Ors. v. Union of India** (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties

before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

The Hon'ble Court has emphatically laid down that as a normal rule in service law when a particular set of employees is given relief by the court, all other identically situated persons should be extended the same benefit even though they may not have approached the courts earlier(hereinafter referred to as `the first principle”). But this principle has been made subject to the exception of delay and laches and acquiescence (hereinafter referred to as 'the second principle'). However, the exception of delay and laches would not be material in cases where the judgment pronounced by the Court is a judgment in rem with an intention to extend the benefit to all similarly situated persons, whether they approached the Court or not (hereinafter referred to as 'the third principle').

The question of delay and laches has been dilated upon by the Hon'ble Supreme Court in a number of cases and guidelines have also been laid down. But it has been also stressed that no hard and fast rules can be laid

down and each case has to be decided on its own facts as there may be mitigating circumstances and delay may be non-deliberate. Stressing this, the Hon'ble Supreme Court observed in ***Royal Orchid Hotels v. G. Jayarama Reddy, (2011) 10 SCC 608, at page 626*** as under:

“25. Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of

third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.”

As the claim of the petitioner is sought to be resisted on the ground of delay and laches, the same needs to be examined in the facts and circumstances of this case. The petitioner was appointed as Record Keeper on 28.03.1983. He claims a right to be promoted as Auction Recorder in April 1984 in terms of the instructions of 11.11.1983 and was aggrieved of the action of the respondents in appointing candidates to the post of Auction Recorder by direct recruitment pursuant to advertisement dated 10.11.1983. Thus the cause of action accrued to him in April 1984. He filed CWP No. 9165 of 1987. This writ petition was dismissed in default vide order dated 1.5.1996. CWP No. 9229 of 1987 filed by a similarly situated employee was allowed on 18.11.2011. The petitioner moved application for restoration of his writ petition, but the restoration application was dismissed on

January 12, 2012. The petitioner was however given liberty to file a fresh writ petition, if so maintainable. He immediately moved representations to the respondents to give him the same benefit as given to Sh. Tirath Singh. His prayer having been declined he immediately filed the present writ petition.

Undeniably, without taking note of the aforementioned background, if the present writ petition is taken to be the first action of the petitioner in seeking legal redress, then this writ petition being filed in 2012 in respect of a cause of action which arose in 1984, the petitioner would most certainly be liable to be non suited for the long and unexplained delay of about 28 years unless excepted by the third principle.

But this is not so. The question is do the facts of this case constitute sufficient explanation and mitigation of the delay. The petitioner filed his first writ petition in 1987. His bad luck was that the case was dismissed in default in 1996 because of non appearance of his counsel. A writ petition filed by a colleague on the same issue remained pending and was allowed in 2011. Petitioner filed an application for restoration in 2011 after 15 years of the dismissal of his case in default, however without success. It appears that but for the petitioner's petition having been

dismissed in default it would also have been allowed in the same terms as that of his colleague Sh. Tirath Singh. He has suffered because his Counsel did not appear. The question is should this be treated as the end of the road for the petitioner, should he be made to suffer for the lapse of his advocate ?

The Hon'ble Supreme Court had an occasion to consider such a question and answered it in the negative in ***Rafiq v. Munshilal, (1981) 2 SCC 788, at page 790 :***

“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as

to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we

cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself..... ”

In view of the aforesaid, the present petition deserves to be allowed. Ordered accordingly.

As I have not held the instant case to be excluded on the ground of delay and laches ('the second principle') there is no need to examine the issue in the context of the third principle enunciated by the Hon'ble Supreme Court.

It is directed that the petitioner be taken to be promoted to the post of Auction Recorder from April 1984 like in the case of Tirath Singh. He would be entitled to the benefits attendant on such deemed promotion and all

consequential benefits which shall be paid to him within a period of 3 months from the date of receipt of certified copy of this order.

27-01-2015

Atul

(HARINDER SINGH SIDHU)
JUDGE