

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

**CWP No.16320 of 2011
Date of decision: 07.04.2015**

Monika Singla @ Monika Aggarwal and anr.

....Petitioners

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ashok Bhardwaj, Advocate,
for the petitioners.

Ms. Minakshi Goyal, AAG. Punjab.

Mr. G.S. Bal, Sr. Advocate, with
Mr. A.D.S. Bal, Advocate,
for respondent No.2.

Mr. Vipul Jindal, Advocate,
for respondent No.4.

DEEPAK SIBAL, J. (Oral)

Learned counsel for the petitioners seeks quashing of award dated 19.01.2011 (Annexure P-12), passed by the Educational Tribunal Punjab (hereinafter referred to as the Tribunal) through which the claim of the petitioner for payment of at least the basic pay scales to the teaching staff of affiliated schools as being paid to Government teachers on the basis of Clause 7(iii) of the Punjab School Education Board Regulations for Affiliation of institutions, 1988, was rejected on the ground of delay.

Before the above claim was made in the Tribunal, the petitioners had earlier approached this Court through CWP No.4009 of 2009 which was disposed of vide order dated 28.06.2010 which is as under:-

“In this view of the matter, the petitioner is relegated to the remedy of a petition before the Educational Tribunal. This petition is, accordingly, dismissed with liberty to the petitioner to approach the Educational Tribunal. The Tribunal shall consider the question of condonation of delay, if, the petitioner approaches the Tribunal within four weeks, in view of the pendency of this writ petition.”

This Court vide the above reproduced order had granted only four weeks time to the petitioners to file his petition before the Tribunal but the same was filed after a delay of 49 days beyond the time allowed by this Court. The Tribunal being bound by the above quoted direction by this Court felt helpless in condoning the delay which was sought to be explained on behalf of the petitioners and dismissed the petition through the impugned order the relevant portion of which reads as under:-

“After hearing learned counsel for the parties, we are of the considered view that this Tribunal cannot entertain this petition being barred by limitation. There is no dispute with the proposition of law that ends of justice are supreme and no lis should be scuttled merely on the ground of limitation and this view has also been recently expressed by the Hon'ble High Court, but every case has to be examined on its own facts. The solemnity of an order of Hon'ble High Court has to be respected by all the inferior courts including the Tribunal. While passing the order dated 28.6.2010, the Hon'ble Court was very categorical, candid and specific that “ the Tribunal shall consider the question of condonation of delay, if, the petitioner

approaches the Tribunal within four weeks, in view of the pendency of this writ petition.” The jurisdiction of the Tribunal to consider the question of limitation would only arise if the petition is filed within four weeks. First come first is the principle. While passing this order, the Hon'ble High Court has purposely fixed four weeks time because the writ petition was filed some where in the year 2009. The Tribunal was created in the year 2008 and when this matter was brought to the notice of His Lordship, the order was passed. Even after excluding the period spent by the applicants for obtaining the certified copy of the order, still there is delay of 49 days. As the present petition has not been filed within four weeks from the date of obtaining the certified copy, we will not go into the question on merits as the application is clearly barred by limitation.

We have also considered the request of learned counsel for the applicants that directions may be given to Respondent No.2 to look into the legal notice given by the applicants. We are not in a position to give this relief to the applicants in this order. They had already approached the appropriate authority. They can yet make another representation, if so advised.

The net result is that this petition must fail on the ground of limitation. We order accordingly. There shall be no order as costs. The Office will supply the copy this order free of costs to petitioner, respondents No.3 and 4 and one copy of the order shall also be sent to the Punjab school Education Board, Mohali.”

It is against the above order passed by the Tribunal that the present petition has been filed.

Once the earlier order passed by this Court in CWP No.4009 of 2009 dated 28.06.2010, has become final wherein the time period for filing

the petition before the Tribunal had been specifically laid down, the Tribunal being bound by that order could not have entertained the petition filed by the petitioners.

In the peculiar facts, as noticed above, learned counsel for the petitioner submits that all that he wanted was a decision of his case on merits and that the delay of only 49 days was due to severe pain in the spine of the counsel for the petitioners.

In view of the peculiar facts of the case, as mentioned above, counsel for the petitioners seeks withdrawal of the present writ petition to seek modification of the order dated 28.06.2010 to the extent of now permitting the petitioner to file a petition before the Educational Tribunal for a decision on merits.

Dismissed as withdrawn with liberty as prayed.

(Deepak Sibal)
Judge

07.04.2015
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