

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

Civil Writ Petition No.21560 of 2012

Date of decision: 31.8.2015

Harpreet Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Somesh Gupta, Advocate,
for the petitioners.

Ms.Vibha Dhiman, AAG, Haryana.

Mr.Apanjyot S. Virk, Advocate,
for respondent No.3.

Mr.Sarabjit Singh Khaira, Advocate,
for respondent No.4.

Ms.Jyoti Sarin, Advocate,
for respondent No.5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Is the petitioner a fence-sitter and therefore not entitled to relief
is the question in consideration in this petition.

2. One of the three petitioners has passed away during the
pendency of the case and the petition qua him has abated.

3. The facts are that the Department of School Education, Punjab
advertised 678 posts of JBT/ETT teachers to work in Sarv Shiksha Abhiyan

Project [SSA] vide public advertisement issued on 30th July, 2008. The petitioners applied for the post, were considered but have not been successful in obtaining appointment. On 26th December, 2012, the petitioners were supplied information under the Right to Information Act, 2005 [RTI] that instead of 678 posts, 1096 candidates were appointed as ETT teachers in excess of the advertised posts. The petitioners applied for the posts online as per instructions in the advertisement before the last date of submission of applications forms which was fixed on or before 25th August, 2008. The counselling was conducted in November, 2008. The petitioners have qualified the ETT course from J & K State Board of School Education. Prior to the advertisement, the National Council for Teacher Education, New Delhi issued a clarification vide letter dated 31st May, 2007 declaring that the persons who have obtained degrees from the institutions recognized by Government of J & K/UGC would be eligible for employment in the Central Government and other State services. However, a controversy arose whether the candidates who have passed ETT from States other than the State of Punjab be given appointment or not despite letter dated 31st May, 2007. The controversy was settled in April, 2009. After the controversy was settled, Sarv Shiksha Abhiyan Authority [SSA] issued appointment letters to the successful candidates for appointment as ETT/JBT teachers including 60 candidates who had completed their course from J & K State Board of School Education. The claim of the petitioners was ignored despite their assertion that their merit position in the selection was sufficient to secure them an appointment. The merit positions secured by petitioners No.1 to 3 in the general category are 127.63, 123.48 and 134.2 marks respectively. Private respondents No.3 and 4 are lower in merit

than the petitioners and have been appointed to service. Respondent No.5 is higher qualified with a B.Ed degree and his merit percentage higher at 135.04 marks.

4. The petitioners made efforts to impress upon the official respondents that they had a case for appointment as their merit was higher than at least two of the selected candidates. It is not disputed that the process of counselling for filling up the posts of ETT teachers continued up to June, 2009 as a large number of posts remain unfilled. Some eligible candidates who had qualified the 10+2 examination and ETT diploma were ignored. The advertisement prescribed that in case there is non-availability of ETT candidates, the candidates possessing BA/B.SC/B.Com from recognized Universities would be considered. It is urged that the persons possessing higher qualifications of Graduation plus B.Ed would be considered only when ETT candidates are unavailable. The petitioners were supplied information that several graduate candidates with B.Ed degrees have been offered appointment and have joined on the posts of ETT teachers. The merit list was not published and the petitioners have had to resort to remedy under the RTI and to obtain the list which is placed on record. It is pointed out that nine candidates at the serial numbers mentioned also possessed ETT qualifications from J & K State Board of School Education, Jammu like the petitioners and their result was declared after the last date of submitting the applications and some of them had their result declared along with the petitioners on 11th December, 2008 but they have been issued appointment letters ignoring the claim of the petitioners. There were sixty candidates possessing similar qualifications as that of the petitioners and have been appointed by destroying merit and following the

policy of pick and choose. The petitioners base their arguments on unfair discrimination and on the ground that similarly-placed persons have secured appointments of which at least two of them are lower in merit than the petitioners. When no action was taken by SSAA to address the grievance of the petitioners, they approached this Court in CWP No.1814 of 2012. The following order was passed on 1st February, 2012 : -

- “1. The writ petition has been filed on the basis that a candidate, who has secured lower marks than the petitioner, was selected. The petitioner offers no proof before the Court and wants the assertion made in the writ petition to be taken as a ground for issuing notice and the Court to secure information for the benefit of the petitioner from the respondents.
2. The petitioner cannot be acceded to his request. He will be at liberty to approach this Court with better and more particulars to substance his claim before he seeks for issuance of an appointment letter in the manner sought for.
3. The writ petition is disposed of as above.”

5. In their search for better particulars to found their claim to relief in the writ Court, they had to approach the State Information Commissioner [SIC] from which quarter, they were supplied information on several matters including the leave vacancy position. These proceedings were conducted by SIC in June, 2012 which yielded supply of information but which was not complete disclosure. The reply filed by the office of SSAA, Punjab in SIC was evasive and all that they were told was that the eligible candidates of general category were issued appointment letters and after those appointments, the appointment process was closed. This vague information was supplied on 23rd August, 2012. The petitioners persisted in their pursuit to get full information with respect to vacancy position which

met the same vague response on 10th September, 2012 without saying a word more than what was said on 23rd August, 2012 in the letter in response. The petitioner who has died was the sole petitioner who chased RTI requests but did not give up the pursuit and sought clarifications again as to how many posts belonged to the general category and how many of them were filled and if any vacancies remained unfilled.

6. There is another parallel litigation which needs to be adverted to which was initiated by Vijay Dhawan and others who approached this Court in CWP No.8476 of 2009 seeking a mandamus for their appointment as ETT teachers under SSAA in the State of Punjab under the same advertisement. Learned Single Judge allowed the writ petition by passing the following order : -

“ The petitioners seek a mandamus for their appointment as ETT teachers under the Sarv Shiksha Abhiyan Authority in the State of Punjab.

It is not in dispute that the last date to submit the applications was 25.08.2008. The petitioners also applied in response to the advertisement even when their result of ETT course was not declared till the last date to apply. Their result was, however, declared on 11.12.2008 though the petitioners meanwhile appeared for the counseling also on 26.11.2008. It is not in dispute that two candidates whose result was also still awaited appeared for counseling along with the petitioners and were given appointment even in the absence of a formal ETT certificate. But the petitioners were denied appointment though subsequently their result was declared. The petitioners seek a direction for their appointment on the plea that the similarly placed candidates have already been given appointment.

In order to counter the plea of discrimination taken by the petitioners, the respondents terminated the services of two candidates whose result was not declared at the time of their appointment as ETT teachers. Those two candidates

approached this Court and their writ petition is said to have been allowed and they were ordered to be reinstated. Resultantly, those two candidates are now working on contractual basis.

It would be nothing but discriminatory to deny similar treatment to the petitioners.

Consequently, the writ petition is allowed and the respondents are directed to appoint the petitioners as ETT teachers on contract basis till the expiry of current term and/or the renewal thereof, from time to time.

The needful shall be done within a period of two weeks from the date of receipt of a certified copy of this order.

Ordered accordingly. Dasti.”

7. The request of the present petitioners for material facts and particulars met a cul-de-sac which has brought them to this Court in the present joint petition praying for a mandamus to the State to offer the petitioners appointment as per their merit. It is urged that it is settled in law that right of consideration for appointment to a particular post is a statutory as well as constitutional/fundamental right derived from Articles 14 and 16 of the Constitution of India. The said right should not be curtailed merely on the ground of the meek plea of delay without considering the entire facts and the merits of the case particularly the fact that similarly situated candidates were issued appointment letters by respondent No.2 itself or in compliance of the orders of this Court. Further, the petitioners have highlighted the policy of pick and choose in the selection process as well as filling excess vacancies than advertised. The petitioners assert that the selection process never came to an end as no date has been mentioned by the competent person in the replies to the RTI requests as to exactly when the selection process came to an end. In such circumstances, it is urged that rule of delay and laches is not applicable. More so, when vacancies still

existed which fact stands confirmed from information collected under the RTI Act and placed at P-26.

8. Even during the pendency of this petition, the petitioners have relentlessly pursued their right to seek information but not wholly with success since SSAA is hiding more than is revealed. They have placed further correspondence between them and SSAA on record through CM No.1597 of 2014 which they interpret in their favour. They were informed that three teachers as per record have resigned from their posts. They were also informed that ETT teachers are appointed only in primary schools and it was miss-information that more posts than advertised were filled up.

9. It was explained by SSAA in the memo dated 20th September, 2013 [P-25] that the appointment letters were issued to a large number of candidates than the posts advertised because all the candidates who were issued appointment letters did not join the posts and as a result, the appointment letters were issued to the candidates from the next lot. In this way, though the appointment letters were issued in excess of the candidates to be appointed but only the required number of posts were filled. The information supplied was not complete.

10. SSAA/State in its reply informs that the counselling process continued till June, 2009 while the writ petition has been field after a delay of almost three years and four months in October, 2012 after their first round of litigation ended on 17th February, 2012 with the passing of the order reproduced above. In para. 2 of the preliminary objections, the State has referred to two cases being CWP No.24328 of 2011 titled **Gurwinder Singh and others v. State of Punjab and others** and CWP No.21707 of 2011 titled **Rajwant Kaur and others v. State of Punjab and another**

filed by similarly situated candidates. The relief of appointment was declined in these cases by this Court only on account of delay and laches in approaching the Court. The orders passed in both the aforesaid writ petitions have been placed on record as R-1 and R-2. This Court referred to the order passed by the learned Single Judge in CWP No.8476 of 2009 reproduced above and has been distinguished on the ground that the petitioners in that writ petition had approached the Court during the period of counselling and were not allowed to be counselled and therefore lost their opportunity of consideration for appointment. The Court formulated a view that after much delay it would not be expedient to issue directions which might disturb selection which has already taken place. In Gurwinder Singh's case, the petitioners failed to state or establish that the posts were still lying vacant during the passage of time. The orders passed in CWP No.8476 of 2009 were distinguished by the learned Single Judge applying the principles laid down in **Banda Development Authority, Banda v. Moti Lal Agarwal and others**; (2011) 5 SCC 394. The relevant observations read as under : -

“it is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

11. The principles of delay and laches and the numbing result of limitation prescribed for filing the suit expiring in relation to writ proceedings instituted after expiry of limitation for a suit have been

enunciated by the Supreme Court in the Constitution Bench decision in **State of Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006 holding that though there are no limitations in jurisdiction under Article 226 but ordinarily where the limitation for filing a suit has run out, it would be prudent for the High Court not to interfere in exercise of writ jurisdiction. CWP No.24328 of 2011 was dismissed on 23.12.2011 by differentiating the order in CWP No.8476 of 2009. The other case relied upon by the State in CWP No.21707 of 2011 titled **Rajwant Kaur and others v. State of Punjab and another** decided on 24th August, 2012 is on the same lines and led to its dismissal. Learned Single Judge has held that the approach to the writ court after 3 years of the declaration of the result seeking appointment is sufficient ground to warrant rejection of the writ petition on the rule of delay and laches. The Court noticed the earlier decisions of this Court filed by similarly placed persons in Gurwinder Singh and others and Vijay Dhawan and others cases. The petition filed in 2012 by Rajwant Kaur and others was dismissed. These are hurdles in the way of the petitioners from seeking relief. Therefore, the liberty granted to the petitioners on 17.1.2012 in the first round of litigation will not come in aid of the petitioners or rescue them from the vice of delay and laches. In any case, the issue of rights of similarly situated persons has been explained by the Supreme Court in **State of Uttar Pradesh & others v. Arvind Kumar Srivastava & others** (2015) 1 SCC 347. Though ordinarily the rule is against unfair discrimination and that similarly situated persons should be granted similar relief but the fence-sitters can have no place in the scheme of things when visited by delay and laches. The argument raised by the petitioners that they are not at fault and were diligently searching for information by exercising

their right under the RTI. That may be correct but it is well to remember that the writ jurisdiction is itself the greatest instrument for summoning the record from the Government offices to check on judicial review if any errors have been committed by the Department of the Government in making decisions or by acts of omission. The information supplied by the Public Information Officer under the RTI Act is not an acknowledgement of right to sue or maintainability of the petition when the question arises if the rule of delay and laches or limitation is to be applied to a given case. The RTI Act is not designed to ward off limitation and the crippling effect of delay and laches. At first flush the argument appears to be attractive but on closer examination of the rights of the petitioners against an advertisement issued in the year 2008 to fill up the posts of ETT teachers and that too when the selection process has come to a dead end with the counselling process ending in June, 2009 is a dissuading factor in issuing a writ belatedly for securing an appointment. The writ petition having been filed on 30th September, 2012, the right to sue had expired. Even if the right subsists, the remedy is taken away, both on account of delay and laches and the expiry of the period of limitation in case of a suit was filed. The right to appointment is a right of consideration and is not in that sense a fundamental right as argued by the learned counsel for the petitioners. Even in cases of similarly situated persons there are boundaries beyond which the Writ Court would not interfere on the well recognized principles of delay and laches. The rule of delay and laches is not a rule of law; it is a rule of procedure and practice of the writ Court. Merely because some teachers resigned from the posts after joining is not a ground for directing filling up of those posts by the next lot. The vacancies created by resignation cannot be operated from the

waiting list and have to go to the next recruitment process. The process for selection and selection for the purpose of recruitment against existing or anticipated vacancies, does not create a right to be appointed to the post which can be enforced by a mandamus. This legal position is settled in **J & K Public Service Commission v. Dr. Narinder Mohan** and many other judgments to which reference is not necessary. In the face of dismissal of two of the aforesaid writ petitions distinguishing the case in *Vijay Dhawan and others* leaves hardly any discretion except to dismiss the writ petition.

12. The selection of judgments relied upon by the learned counsel for the petitioners may be noted: **K. Lakshmi v. State of Kerala**; 2012 (2) RSJ 301, **Hoshiar Singh v. State of Haryana**; 1993 Supp (4) SCC 377, **Kuldeep Singh v. G.M. Instrument Design Development and Facilities Centre & another**; AIR 2011 SC 455, **Basanti Prasad v. The Chairman, Bihar School Examination Board**; 2010 (I) SLR 503, **State of Karnataka v. C.Lalitha**; 2006 (1) SCT 596, **Lt. Governor of Delhi v. Const. Dharampal**; 1991 (3) SLR 1, **Union of India v. ITC Limited**; AIR 1993 SC 2135 and **Mohd. Ismail (dead) by LRs v. State of U.P.**; (2005) 12 SCC 158.

13. The case **C.Lalitha's** [supra] has been considered by the Supreme Court in **Arvind Kumar Srivastava** [supra]. **K.Lakshmi** [supra] cannot be applied to the present case on facts in view of the information supplied that there was no case pending to activate similar relief. Therefore, the principles in **Hoshiar Singh's** case [supra] would also not apply with respect to filling vacancies in excess of the posts advertised. **Kuldeep Singh's** case [supra] is a labour matter which is governed by Labour Law principles where there are no limitations prescribed in Section 10 of the

Industrial Disputes Act, 1947 in seeking reference of disputes. **Basanti Prasad's** case [supra] is clearly inapposite since the widow could not have questioned termination order of her husband till the employee was acquitted of the criminal charge by the appellate Court and therefore she would not be entitled to only the monetary benefits flowing from setting aside of the dismissal order after the death of the employee. **Dharampal's** case [supra] and **Mohd Ismail's** case [supra] are precedents on the proposition where the issue was kept alive in Court and therefore there was occasion for the Court to remove unfair discrimination and grant similar relief to similarly situated persons. The case in **ITC Limited's** case [supra] is on its own facts which have no bearing on the facts of the present case. This court is of the considered view that a mandamus would not issue in this case.

14. For the foregoing reasons, I find no merit in this petition and it is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

August 31, 2015
Paritosh Kumar