

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17173 of 2015

Date of Decision: 19.08.2015

Anil Kumar Malhotra

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shashi Bhushan Nagpal, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

The petitioner is senior to Rattan Paul Sharma and Vijay Kumar Batra in the cadre of Treasury Officers and has achieved higher benchmark than Rattan Paul Sharma but stands at par with Vijay Kumar Batra. However, in the Department Promotion Committee (DPC) meeting convened to consider cases for promotion to the post of District Treasury Officer he has been ignored.

The petitioner claims in this petition filed under Art. 226 of the Constitution of India mandamus to the respondent State to accord promotion to him with effect from the date the junior was promoted on September 29, 2006. The promotion cases were considered by the DPC. But shortly before the cases of Vijay Kumar Batra and Rattan Paul Sharma were considered to the superior post of District Treasury Officer the petitioner was served with

a charge-sheet on August 09, 2006 which scuttled his chances of promotion for the time being and at least till the clouds didn't clear.

It is his say that in the domestic inquiry that followed he was exonerated of the charges levelled. This was in the year 2007. Thereafter, the petitioner was promoted as per turn as District Treasury Officer on August 29, 2008. He retired from service on August 31, 2012. The petition has been instituted in 2015 claiming retrospective promotion and consequential benefits accruing therefrom.

Heard Mr. Nagpal on his contentions in support of relief. On a consideration of all that he has said during the course of his address it is not possible to interfere in this matter on account of gross delay and laches in approaching court by raising a stale claim and the yardsticks of intervention laid down by the Supreme Court in **P.S.Sadasivaswami v. State of Tamil Nadu**, AIR 1974 SC 2271: (1975) 1 SCC 152 is appropriate to block relief in this case. This is a direct case in point of the Supreme Court on delay and laches in claiming promotion speaking through Alagiriswamy, J. over four decades ago held:-

“The conditions that were prevalent in 1957 cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellants' case as if nothing had happened after 1957. Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting

a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal."

As an aside, I would remind myself that this case is also famous for the phrase used by Supreme Court possibly for the first time and which is part of everyday service law practice and in folklore and often quoted and repeated in judgments when it describes a slumbering litigant claiming retrospective relief in cases such as for promotion and seniority that the petitioner before the writ court "In effect [he] wants to unscramble a scrambled egg."

Even against this the learned counsel for the petitioner submits that if the petitioner is not promoted from the retrospective date then he will suffer loss of pension and pensionary benefits resulting from being placed in the higher pay scale if due promotion is granted. Pension and pensionary benefits in a continuing cause of action and the monetary benefits can be confined to three years from the date of presentation of the petition.

I am not prepared to accept this argument for the reason that the petition suffers from inordinate delay and laches and if the only argument raised by learned counsel for the petitioner is that the result of CWP No.9919 of 1992 titled *Jagjit Singh and others vs. The State of Punjab and others* decided on March 13, 2014 furnishes sufficient cause and actionable ground for him to approach this court for the relief claimed then it is now too late in the day that a pregnant person can again be impregnated. This writ petition involves in its past history the concession available to fast track promotions in terms of the scheme then promulgated through the Assistant Grade Examination Rules, 1984. If it the case of the petitioner that in the 1980s he was wrongly ignored for promotion to the post of Assistant by misapplication of 1984 Rules then if this is so then I think it is far too late for a mandamus to issue based on an instance of relief granted to Jagjit Singh and others and therefore the same should also be granted to him is of no avail. I do not see the connection between the two, nor has any anchor been pulled out from the sea to set the petitioner's boat assailing.

In all the available views on the judicial side, the claim is significantly putrid and moth-eaten and should not be allowed to be resuscitated after several decades slipping by for any effective relief to be handed down when the cause of action is barred by principles of delay and laches if not by measured solely by the statute of limitations. There is no fundamental right issue involved in this case as Article 16 also suffers limitations in bringing actions in a court of law. Article 16 of the Constitution and the service law principles enshrined therein are not a constitutional issue nor can be elevated to the level of a constitutional value

as explained in **M. Nagaraj and others v. Union of India and others**, reported in (2006) 8 SCC 212.

I would not intercede for even a better reason which is explained by the Supreme Court recently in **State of Uttar Pradesh and Others v. Arvind Kumar Srivastava**, (2015) 1 SCC 347 while dealing exhaustively with rights of similarly situated persons to claim the same relief granted by court while they did not litigate in the context of delay and laches as well as acquiescence. While the ordinary rule is Article 14 based but there are exceptions. The Supreme Court speaking through A.K.Sikri, J. has harmonized past divergent dicta of the Supreme Court and evolved and laid down inter alia the following principle of law by way of an exception to the normal rule of equal treatment in relation to court orders and a distinction has been drawn on the principle whether the court direction on which parity of treatment is pleaded and claimed is a right declared in rem or in personam. If it is in personam then delay is normally fatal to the cause. The Court held in para. 22.2 of the judgment:-

“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.”

For all these reasons, the petition is not entertained and is ordered to stand dismissed in limine. No relief can be granted to the

petitioner flowing from *Jagjit Singh* case.

(RAJIV NARAIN RAINA)
JUDGE

19.08.2015
manju