

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18353 of 2015

Date of Decision: 04.09.2015

Seema and another

... Petitioners

Versus

State of Punjab and another

... Respondents

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

Present: Mr. Madhav Pokhrel, Advocate,
for the petitioners.

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.

This writ has been filed to claim appointment as an Educational Service Provider (English) in the Education Department, Punjab. The qualifications for appointment to the post of ESP is Graduation with English as an Elective or Compulsory subject.

The petitioner-1 has obtained the B.A. degree from a college in Himachal Pradesh University with English as one of the subjects obtaining 42 out of 100 marks in the English paper which is the subject she wishes to teach by securing a job. On the other hand, Petitioner-2 has graduated with General English as one of the subjects from a college affiliated to Gorakhpur University, Uttar Pradesh. Besides, she holds the higher qualification of degree of Master of Arts in English. However, there was no provision in the advertisement that preference will be given to higher qualifications.

Mr. Pokhrel argues that in Himachal Pradesh University the nomenclature of Elective and Compulsory subjects are not followed as in Punjab and, therefore, an interpretation should be placed that English should be considered as equivalent to English language taken as an Elective subject or as a Compulsory subject. But the learned counsel forgets that matters involving equivalence of qualifications are not within the domain of this Court as these are matters which can be assessed by experts in the field of Education. If the advertisement was specific in its qualifications calling applications only from those who had taken English as an Elective or Compulsory subject, the petitioners were ineligible to start with and even if their applications were considered they could not have been offered appointment when the testimonials were checked by the office.

It may be mentioned that the petitioners had earlier approached this Court in CWP No.9540 of 2014 along with another co-petitioner Balwinder Kumar claiming the same relief against the grievance of not being offered appointment which was disposed of on August 19, 2014 with a direction to the respondents to decide the legal notice served by the petitioners on the Government by passing a speaking order within a period of two months from the receipt of certified copy of the order. This order did not declare any right vesting in the petitioners and neither would such orders passed to decide representations be read to serve as acknowledgment or postponement of the cause of action if it had accrued prior thereto and limitations had expired or by the rigour mortis of delay and laches having set in barring the right to sue. The impugned order has been passed pursuant to the directions issued to the respondents to consider and decide the legal

notice in accordance with law.

In the present case, the advertisement was issued as long back as on August 29, 2007 where the following qualifications were published for the post which read as follows:-

- “A. *Basic Qualification and Professional Qualification*
1. *English Master/Mistress*
- (i) *Graduate from a recognized University with English as an Elective Subject in all the three years of graduation.*
- (ii) *With teaching of English in B.Ed.”*

The Director of Public Instructions (SE), Punjab, Ajitgarh has rejected the claim of the petitioners on the ground that the qualifications of the petitioners do not conform to the advertised qualifications. He has held them down to their admission that they have not passed the English language examination as an Elective or Compulsory subject. Hence, the petitioners are not eligible for the post of ESP (Masters/Mistresses).

So far as petitioner-2 is concerned her claim is somewhat different as it is based on a Master degree in English which may have fallen within the corrigendum issued on August 31, 2007 in respect of posts published in the Daily Ajit newspaper in its issue dated 29.08.2007 but then it appears too late to re-activate the claim, if any, arising from an advertisement of 2007 when that selection process has become Law 23 in the rules of cricket which entails a dead ball and such a stale claim in direct recruitment is apparently barred by delay and laches by long lapse of time without sufficient cause shown to the satisfaction of the Court in the petition. Direct recruitment is a time sensitive matter which by nature of things cannot brook delay as that would be against public interest. In the

matter of appointments remedies should be taken recourse to without delay and normally within 6 months or at best a year. This is the view expressed by the Supreme Court though in a promotion matters in **P.S. Sadasivaswamy vs. State of Tamil Nadu**, AIR 1974 SC 227 when it observed that delay cannot unscramble a scrambled egg. This ruling was rendered in a promotion case but the principle can be applied with greater vigour in a case of appointments by direct recruitment. Delay disentitles a party to discretionary relief under Article 226 of the Constitution by lapse of time. If it is unexplained then the delay is almost inevitably fatal to the cause unless fundamental rights are involved which may not usually be of the kind protected by Article 16 without any element of Article 14 present. Laches is unexplained delay. Delay means lapse of time. That is how the two work together more often than not in tandem to take away the remedy without effecting the right which may remain unenforceable in a court of law in the wake of party ceasing to be being vigilant and overwhelmed by the “Land of Counterpane”. Refusal of court to entertain stale and belated claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion.

I have no reason to take a view different from the one taken by the competent authority and would dismiss the petition.

Accordingly, the petition is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

04.09.2015
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