

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

Civil Writ Petition No.18721 of 2015

Date of decision: 7.9.2015

Kuldeep Chand Vermani

... Petitioner

Versus

The Industrial Tribunal, Amritsar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.B.D.Sharma, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioner retired from service in the year 1999 while serving as Divisional Accountant in the office of the Punjab State Power Corporation Limited. The present petition has been filed claiming promotion as Superintendent Grade-II with retrospective effect from 1995 and thereafter as Superintendent Grade-I in the year 1998 respectively when it is claimed that persons juniors to the petitioner were promoted to the higher posts.

2. It is his case that he made representations after representations which were not attended to nor decided by the Board/Corporation. It is well settled that repeated representations do not create a cause of action and much less in promotion cases. The Court would not entertain stale and

belated claims of anti-dated promotion. The delay and laches in approaching the Court against the cause of action particularly limitation running out if a civil suit were filed for the relief. Refusal to entertain a stale claim in the discretionary remedy provided by Article 226 of the Constitution is not a rule of law but a salutary rule of procedure. It is a rule of practice designed by the Court to protect itself against belated claims made to waste its time. In a promotion cases writ petitions should not be entertained after long lapse of time. This is the view expressed by the Supreme Court in **P.S. Sadasivaswamy vs. State of Tamil Nadu**, AIR 1974 SC 227 observing that such claims should be made within six months to a year of the date when the cause of action arose and rights to promotion were ignored.

3. The argument that the claim if not granted would cause a recurring loss to the petitioner in terms of its impact on pay and pension and pensionary benefits is not accepted as a valid argument to bridge the enormous delay of 20 years in approaching court by filing the petition and that too 16 years post retirement. Counsel for the petitioner submits that his case falls within Regulation 4.14 (3) note (i) para 1 to 5 of PSEB Main Service Regulations, 1972, Part I, which is reproduced below : -

“Note : 3 (i) The following are the guiding principles for the purpose clarifying the position and for working of the convention usually known as the next below regulation.

(1) A board employee out of his regular line should not suffer by forfeiting officiating promotion which he would otherwise receive, had he remained in his regular line.

(2) The fortuitous officiating promotion of someone junior to a board employee who is out of regular line does not itself give rise to a claim under the next below regulation.

(3) Before such a claim is established, it should be necessary that all the board employees senior to the board employee who is out of the regular line have been given officiating promotion.

(4) It is also necessary that the board employee next below him should have been given promotion, unless in any case the officiating promotion is not given because of inefficiency, unsuitability or leave.”

4. I am not impressed with this argument since the above guidelines do not lay down procedure of how to deal with delay in claiming promotion as a subsisting actionable right. The rule cited is inapplicable to cases of unreasonable delay in seeking redress of grievances. Promotion is a right in *personam* and has no public law element and such rights can be overshadowed by waiver, acquiescence and the like.

5. The next argument addressed by the counsel is based on the instructions of the Punjab Government dated 8th April, 1991 which deal with procedure of regularization of services and differentiates between eligibility and availability of regular posts. The drift of the argument is that there can be confirmation in service only once. Admittedly, the petitioner was confirmed as a Divisional Accountant in the year 1984 and that was rather long back. I can make nothing of the submission or how it impacts the case in favour of the petitioner.

6. It is also argued that when juniors were promoted and cases of senior employees were pending consideration for promotion as Divisional Accountants, then the instructions dated 1st August, 1994 issued by the Board at Serial No.5 would protect the interest of the petitioner and provide him relief of back dated promotion. Rule at Serial No.5 reads as follows : -

“Sr.No.5 The promotions of employees shown at Sr.No.1 to 3 are being made on the condition that their senior employees, who have gone to the Accounts cadre, whose cases are pending before the competent authority for decision, if they get the permission from competent authority to come to the General Cadre, then these employees would not claim themselves as senior to them.”

7. These instructions were issued in 1994 and the petitioner retired in 1999. He had sufficient time even before retirement to seek redressal of his grievance in a court of law to press his case but he failed in pursuing remedy. The issue of delay and laches and claims based on rights of similarly situated persons has been recently thrashed out by the Supreme Court in **State of Uttar Pradesh & others v. Arvind Kumar Srivastava & others**, (2015) 1 SCC 347 where the following principles have been laid down to the peril of the persons like the petitioner: -

“(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.”

8. The case of the petitioner falls in the framework of the above principles.

9. However, the present petition arises out of an award of the Labour Court in which the aforesaid claim was made. The demand notice was served in 2008 on the Board and Industrial Reference was made in 2010 which has been declined by the Labour Court vide award dated July 14, 2015 where the same conclusion as above has been reached on the Labour law side and the reference has been declined. The Labour Court in para. 10 of the impugned award has also brought to bear the well accepted

view that the petitioner deserves no relief since he slept over his rights and never raised any objection till the fag end of his career. Besides, persons likely to be effected in the case the relief is granted were not joined as parties. The Labour Court has noticed that six applications had been filed requesting the respondent Board that he be called back to the original cadre of the Head Office to enable him to claim his rights as against those who secured promotions there, the first of which was dated 7th October, 1997 and last on 1st October, 1999. Having perused the award, I find that it does not suffer from any fundamental flaw or an error apparent on the face of the record.

10. No ground for interference is made out in the writ jurisdiction.
The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 7, 2015
Paritosh Kumar