

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

Civil Writ Petition No.18942 of 2015

Date of decision: 9.9.2015

Ishwar Dutt and others

... Petitioners

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jayoti Parshad Sharma, Advocate,
for the petitioners.

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 services of the petitioners were retrenched in the year 2008 by the respondent-Nigam. They did not challenge the termination orders. The ten persons who are similarly situated and whose services have also been terminated approached this Court in CWP No.3797 of 2011 challenging the order of the Nigam dispensing with their services. The writ petition was allowed on 16th February, 2015 on a statement made by the Superintending Engineer 'OP' Uttar Haryana Bijli Vitran Nigam, Kaithal that the petitioners would be allowed to join services within a period of one week from the date of the order. After the decision of the case, the petitioners for the first time applied to the Nigam to give them the same benefit as had been given to the ten petitioners in CWP No.3797 of 2011.

When no action was taken by the Nigam, they approached this Court through CWP No.10536 of 2015 which was disposed of on 25th May, 2015 by the learned Single Judge directing the 2nd respondent amongst the respondents to decide the legal notice of the petitioners within a period of 2 months from the date of receipt of a certified copy of the order in accordance with law by passing a speaking order thereon.

In compliance of the order of this Court, the Nigam passed the impugned order dated 6th August, 2015 declining the request of the petitioners to reinstate them to service as Assistant Linemen in the Nigam as the benefit granted to the ten petitioners in CWP No.3797 of 2011 and in the same fashion. The Nigam was not prepared to dole out. The competent authority has rejected the request for two reasons; one the policy for engaging Assistant Linemen on contract basis at DC rates in terms of the Haryana Government policy dated 1.9.2006 adopted by the Nigam vide memo dated 12.3.2009 has been superseded under which the cases of the petitioners in the aforesaid writ petition were considered. The 2009 policy has replaced the 2006 policy of the Haryana Government under which their cases cannot be considered.

The second reason for rejecting the prayer of the petitioners is that the claim is belated and suffers from delay and laches. I express no opinion on the first ground of rejection as to what would be the effect of policy of 2006 being superseded by the policy of 2009 but would uphold the order of the competent authority when it rejects the prayer on the ground of delay and laches.

The reason for this is not far too see. The petitioners did not litigate after their services were terminated in 2008 and have approached the

administrative authority for the first time by representations made one week after the date of decision in CWP No.3797 of 2011. Therefore, it matters little if they approached this Court in the writ petition in which the directions were issued on 25.5.2015 to consider and decide the representations. Such orders passed by this Court are not intended to bypass limitation where its rigor mortis has set in. Such orders also do not create a fresh cause of action and are only intended to know the views of the Administrator if the representations or legal notices were decided. It is open to the Court then to examine the correctness of the order passed from all angles applicable to grant of relief in the discretionary jurisdiction of this Court provided under article 226 of the Constitution of India. In the matter of grant of relief to similarly situated persons, the Supreme Court has recently authoritatively delineated the legal position after harmonizing past dicta of the Supreme Court in **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others**; (2015) 1 SCC 347 in which the following principles have been culled out in para. 23 :-

“(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.”

The case of the petitioners is pre-eminently covered by the above second principle and therefore the petitioners qualify as fence-sitters and their claims made after an inordinately long time suffers from the vice of delay and laches and for these reasons the equitable jurisdiction of this Court cannot be invoked in favour of the petitioners after 7 years of hypersomnia.

The petition is consequently dismissed in view of ratio in
Arvind Kumar Srivastava's case.

(RAJIV NARAIN RAINA)
JUDGE

September 9, 2015
Paritosh Kumar