

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21125 of 2015

Date of Decision: 05.10.2015

Yamini

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Kapil Kakkar, 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.

1. The many posts of Lecturers were advertised in 2009 for direct recruitment. The selection of the candidate of which the petitioner complains as wrongful was offered appointment as lecturer in the year 2011 and joined service the same year.

2. Mr. Kakkar says that the petitioner had approached this Court in 2011 in a writ petition wherein the respondents were directed to consider the case of the petitioner. The order of this Court in that case has not been placed on record. However, another order was passed in writ petition filed by the petitioner in 2014 for the same relief which was dismissed as withdrawn with liberty to approach the respondents to pursue remedy, if any. This order is on file and indicates that the Court was not inclined to interfere in writ jurisdiction on the grievance. The remedy diverted to by Court would necessarily mean outside extraordinary writ jurisdiction.

Thereby meaning to say administrative.

3. In pursuit of her remedy before the administrator, the petitioner has received as a result the impugned order dated August 05, 2015 from the office of the Director Public Instructions (Secondary Education), Punjab where the issue of discrimination raised by the petitioner qua competitor Ms Sonika has been explained to say that experience required to be earned before passing the eligibility qualification was not admissible towards weightage for experience in the criteria framed. The administrative authority has reasoned that in cases where such mistakes [weightage to experience prior to earning essential qualification] were made they would have to be deducted from the total marks scored by the candidate. Consequently, the experience earned before passing MA and M.Ed. had not been counted towards experience. None was given.

4. When the criteria laid down in the advertisement is as per rules then there is nothing remiss in the impugned order dated August 05, 2015 rejecting the case of the petitioner for appointment to the post of Lecturer in the year 2015 against the advertisement issued in the year 2009. Even assuming that a mistake was made in the case of Ms Sonika and that her experience was counted prior to earning essential qualifications, a writ of certiorari or mandamus will issue to perpetuate an illegality. In **Chandigarh Administration vs. Jagjit Singh**, (1995) 1 SCC 745 the Supreme Court held: "In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or

action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.” Though the case in *Jagjit Singh* is a property matter, the principle applies to most fields of law including in service law. Nearer home in service law the equality doctrine in Article 14 cannot be invoked to perpetuate an illegality, cf. by way of illustration the authority in **Bihar Public Service Commission & Ors v. Kamini & Ors**, (2007) 5 SCC 519.

5. Besides, the petition suffers from delay and laches. In cases of direct recruitment and appointment to public service, the Court should be approached without delay. Belated approach is often fatal in discretionary jurisdiction provided in Article 226 of the Constitution since recruitment involves third party rights which may have settled and should not be disturbed or kept fluid by those who slumber and do not ventilate their grievances within reasonable time. To cover delay, writ orders which are not final declaring rights of parties and direct representations to be decided cannot be used as stepping stones to climb the precarious stairs of delay and laches to avoid bar of limitation; in case a suit was filed on the same cause of action, unless the court directs otherwise then it would be a different matter. The petitioner misreads the two previous orders in petitions filed by her, the last of which she misreads grossly, which as a matter of fact, far from promoting the case of the petitioner seeking judicial relief, forecloses the door of the writ court. The present is also not a writ of quo warranto.

Therefore, this Court cannot make a fishing inquiry into the nature, quality and character of the appointment of Ms Sonika and base the claim of the petitioner, which is not open to be questioned by long passage of time spanning about 6 years.

6. For these reasons, I find this petition bereft of merit. No ground is made out to interfere in this petition and the same is ordered to be dismissed at the threshold.

(RAJIV NARAIN RAINA)
JUDGE

05.10.2015
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