

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

Civil Writ Petition No.21549 of 2015

Date of decision: 8.10.2015

Sukhcharan Kaur

... 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.

The petitioner has filed this petition on 6th October, 2015. The petitioner retired from service on 30th November, 2010. She claimed that her junior Rajinder Kaur respondent No.4 was promoted on 15th February, 2010 to the post of Principal falling in the Punjab Educational Service [School & Inspection] Group-A, Service Rules, 2004. It is her say that after her retirement, she continued filing representations for redressal of her grievance but to no avail. She claims that she is senior to Rajinder Kaur. They were both promoted as Head Mistresses on 31st March, 2000. The next promotional post after Headmaster/Headmistresses is of Principal which falls in Appendix-B of the above cited Rules, 2004. 30% of the total posts of

Principals are to be filled by way of promotion from amongst the Head

Masters/ Head Mistresses borne on the school cadre.

2. The petitioner joined service on 11th February, 1976 as a Science Mistress in school cadre. Rajinder Kaur joined service on 14th February, 1976. They were assigned seniority positions 3552 and 3553 respectively. Respondent No.4-Rajinder Kaur has admittedly remained senior to the petitioner since the year 1976. There is not a word said in the writ petition as to how that had happened and on what principle. If both were recruited together in the same selection process, which appears most likely, and both joined as a Science Mistresses, then their inter se merit position in the selection will determine their seniority and not the dates of joining. The difference of 3 days between them can only be explained by this factual phenomenon since the petitioner has not enlightened this Court as to the real reason for assigning seniority as it has been making respondent No.4-Rajinder Kumar senior to the petitioner in the year 1976 for the Court to consider the question of seniority and consequential promotions in all possible ways.

3. I asked petitioner's counsel as to how he could get out of the bind alley of delay and laches in approaching the Court after 39 years of the cause of action accruing and over 15 years after both the teachers were promoted as Head Mistresses on 31st March, 2000 on the old seniority position which had not been disturbed and the petitioner may be seen as having acquiesced for all these intervening years, he has no credible answer to ward off delay caused by fence-sitting with hardly any explanation to cover laches.

4. It is well settled that disputes as to promotion should be raised without delay and preferably within six months to one year as third party right set in rapidly which are not ordinarily open to be disturbed. In this case disputed promotion was made in 2000. For scope of interference see ruling in **P.S.Sadasivaswamy v. State of Tamilnadu** 1976 (1) SLR 53 : AIR 1974 SC 2271. Seniority disputes also suffer attrition by reason of long delay and laches so as not to allow stale claims to be raked up after years together and it neither prudent nor wise to divert the attention of the writ court already burdened with good cases requiring immediate remedy. If the position in 1976 is disturbed *inter se* the petitioner and Rajinder Kaur [both retired] it is no argument that Rajinder Kaur will not be affected financially even if relief is granted as it would be personal to the petitioner. The State cannot be jolted with a monetary burden which is not priorly budgeted, The question of delay, as pointed out by Hon. Hidayatullah, CJI., in **Tilokchand Motichand v. H.B.Munshi**, AIR 1970 SC 898: "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose." And further, "The party claiming fundamental rights must move the court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

5. Seniority is not a fundamental right it is a civil right, for an elaborate discussion on the point I would refer to my judgment rendered in

Kulwant Kumar Kalson v. State of Haryana, 2015 (2) RSJ 359 though it

is appeal but on different points. Seniority is not a fundamental right or a constitutional issue and is merely a civil right where delay and laches may be viewed inhibitors in upsetting remote transactions determining disputes founded on fundamental right principles in Article 14 and 16 where valuable rights may not be defeated on the jejune grounds of delay and laches.

6. The Constitution Bench of the Supreme Court in **Ramchandra Shanker Deodhar & ors.v. State of Maharashtra & ors.**, AIR 1974 SC 259, considered the effect of delay in challenging the seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. If relief is granted in the present case to would lead to reopening stale and dead claims.

7. In **B.S. Bajwa v. State of Punjab & ors.**, (1998) 2 SCC 523, the Supreme Court observed: "It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This along was sufficient to decline interference under Article 226 and to reject the writ petition."

8. Had the petitioner filed a suit on the same cause/s of action it would have, without doubt, been dismissed as barred by limitation counted both from 1976 or the year 2000. See **State of Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006 (CB) on the point.

9. It is thus too late in the day to exercise discretionary jurisdiction provided under Article 226 of the Constitution of India in favour of the petitioner to grant her any monetary relief as claimed in this petition. The petition suffers from gross delay and laches for which reason it is dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

October 8, 2015
Paritosh Kumar