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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.2414/2002

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1st May, 2015

BALVIR SINGH & ORS.

..... Petitioners

Through: Ms. Shobhana Takiar, Advocate with
Mr. Udayan Khandelwal, Advocate.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Anjana Gosain, Advocate with
Mr. Arnab Naskar, Advocate for R-2/AAI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India by a total of six petitioners. This writ petition is filed in April, 2002 seeking the relief that the petitioners from the year 1994 must be given seniority i.e effectively appointments as Assistant Executive Engineers (in short 'AEE'). Petitioners also question the Departmental Promotion Committee (DPC) which was held for

promotion to the posts of AEEs in May, 1994 for 74 posts of AEE and in which DPC petitioners did not get promotion.

2. (i) The facts of the case are that there were before the year 1993 two posts of Assistant Engineer and Executive Engineer in the respondent no.2/Airports Authority of India (in short 'AAI'). On 27.01.1993 a new cadre of Assistant Executive Engineer was introduced in between Assistant Engineer and Executive Engineer. With respect to promotion to the posts of AEE, DPC was held in May, 1994 and before the holding of DPC a clarification was issued by the management of the respondent no.2/AAI that though appointment to the posts of AEE is 50% by promotion and 50% by direct recruitment, direct recruitment will not be resorted to till all Assistant Engineers, who have five years of experience are promoted to the posts of AEEs. In the DPC of May, 1994, the petitioners, who are Scheduled Castes and Scheduled Tribes candidates (hereinafter referred to as 'SC and ST') were not successful and therefore, they question the DPC of May, 1994 and seek review thereof for being appointed as AEEs.

(ii) Petitioners to seek to reliefs claimed also seek to place reliance upon directions which were issued by the National Commission for SC and ST in its

order dated 24.06.1997 whereby certain directions were issued to the respondent no.2, and which are as under:-

- “i. Review proceedings of the DPC held in May, 1994 and hold a review DPC only for 53 regular posts of AEE [C] yearwise after considering the cut off date i.e. 15.8.1993.
- ii. Fix the responsibility for misrepresentation of the facts before the DPC as a result of which the DPC took together the promotion of 67 officers [instead of 52] which has adversely affected the interest of SCs/STs.
- iii. Change of Liaison Officer immediately because he failed to ensure proper accurate maintenance of the promotion roster as per Instructions of the Government from time to time.”

3. Certain other writ petitions were filed in this Court on the aspect of seniority pursuant to the selection of the DPC of May, 1994 in which various/certain persons claimed that the result of the DPC of May, 1994 be implemented. Persons such as the petitioners had disputed the same. In the said petitions interim orders were initially passed, but were subsequently vacated, observing the appointments will be subject to final decision in the writ petition.

4. The present writ petition, therefore, has been filed by the petitioners in April, 2002 claiming appointments as AEEs from May, 1994, and therefore, also

seniority as AEEs from May, 1994 by effectively seeking review of the DPC of May, 1994 which did not give them promotion and appointment to the posts of AEE.

5. (i) On behalf of the respondent no.2 counter affidavit has been filed stating that there is no question of review of the DPC and that the DPC was properly conducted. It is also denied that adequate posts were not reserved for SC and ST candidates and that as stated by the petitioners only 6 posts were given to SC and ST candidates instead of 12 posts, inasmuch as, 15 SC and ST candidates were promoted as AEE (Civil) and 8 SC and ST candidates were promoted as AEE (Electrical).

(ii) Respondent no. 2 also contends that the directions issued by the National Commission of SC and ST are not binding on the respondent no. 2 and for which reliance is placed upon the judgment of the Supreme Court in the case of *All India Indian Overseas Bank SC & ST Employees' Welfare Association & Ors. Vs. Union of India & Ors. (1996) 6 SCC 606.*

6. In my opinion the writ petition is without merits and liable to be dismissed for the reasons I am giving hereinafter. I may also note that out of six petitioners, two petitioners have already taken VRS way back on 31.07.2009 and therefore

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they have taken all dues which they claimed from respondent no. 2 in full and final settlement. Once VRS is taken, the umbilical cord of the relationship of employer and employee snaps and thereafter, no benefit can be claimed by an employee who has received VRS. This has been held by the Supreme Court in the judgment in the case of *A.K. Bindal and Another Vs. Union of India and Others (2003) 5 SCC 163*. In any case even if these two petitioners being Sh. Balvir Singh and Sh. Banarsi Prasad have taken VRS and assuming they are entitled to continue with the writ petition I am examining the case on merits of even these petitioners.

7. First reason why the writ petition is liable to be dismissed is that petitioners by filing a writ petition in the year 2002 cannot question the results of a DPC held in May, 1994 i.e around eight years back. No doubt the Limitation Act, 1963 does not apply to writ petitions but the principle of limitation will apply to writ petitions filed under Article 226 of the Constitution of India and this has been held by the Supreme Court in its recent judgment in the case of *State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436*, the relevant paragraphs of this judgment are para nos. 52 to 54 and which read as under:

“52. In the very first appeal, the respondent filed Writ Petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it

obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See *Lachhmi Sewak Sahu v. Ram Rup Sahu*: AIR 1994 PC 24 and *Kamlesh Babu v. Lajpat Rai Sharma*: (2008) 12 SCC 577.)

53. Needless to say that Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See *Rup Diamonds v. Union of India*: (1989) 2 SCC 356, *State of Karnataka v. S.M. Kotrayya*: (1996) 6 SCC 267 and *Jagdish Lal v. State of Haryana*: (1997) 6 SCC 538.)”
(underlining added)

8. The claim of the petitioners is therefore barred by limitation/doctrine of delay and *laches* and hence the petitioners are not entitled to the reliefs as prayed in the writ petition.

9. For the sake of argument let me assume that the writ petition is not to be dismissed on the ground of limitation, even then, on merits, petitioners have no case. This is because no grounds have been pleaded/given nor could have been given by the petitioners as to why the DPC allegedly wrongly did not promote the petitioners as AEEs in DPC of May, 1994. As per the averments of petitioners that they had to be promoted as AEEs from May, 1994 holds no water especially, the only entitlement of the petitioners was to be considered and they have been considered. Consideration of merits of the candidates, and which was done by DPC of May, 1994, falls within its exclusive jurisdiction and this Court cannot interfere with the result of the DPC unless the results are shown to be clearly arbitrary or violative of policy or regulations or rules of the employer/organisation. Petitioners' claim is only based on the ground that they were SC/ST candidates and they should not have been ignored, however, the counter affidavit of the respondent no.2 shows that in this very DPC of May, 1994, 15 SC/ST candidates were promoted as AEE (Civil) and 8 SC/ST candidates were promoted as AEE (Electrical) i.e petitioners' case is not correct that only 6 posts were given to SC/ST candidates instead of 12. Therefore, petitioners cannot question the results of DPC of May, 1994, much less by filing a petition only in April, 2002.

10. Respondent no. 2 has rightly relied upon the judgment of the Supreme Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association (supra)* which clearly holds that SC and ST Commission has no powers to issue directions like a court. This 1996 judgment of the Supreme Court has been followed and applied by the Supreme Court recently in the judgment in the case of *State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*. Therefore, respondent no. 2 is correct in contending that the respondent no. 2 is not bound by any directions which are issued by the National Commission for SC and ST.

11. Learned counsel for the petitioners argued that the persons junior to the petitioners have been wrongly promoted but, in law, merely because juniors have been promoted does not give cause of action, once the results of the DPC cannot be challenged. Seniority is not automatically an entitlement to promotion and DPC has only to consider all the candidates within the zone of consideration. In a DPC persons who are more suitable and have better performance are selected i.e it is not necessary that only seniors have to be promoted and juniors who have better credentials cannot be selected by the DPC for promotion. Also, such persons whose appointments have been allegedly made illegally, have not been made as respondents to the writ petition and which is another reason why this plea cannot

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be looked into. Further, there is lack of sufficient pleadings, much less being proved, that, petitioners were in fact senior to the persons who were promoted.

12. In view of the above, the writ petition has no merit because not only two petitioners have taken VRS in full and final settlement w.e.f 31.07.2009, the writ petition is also clearly barred by the doctrine of delay and *laches* by applying the principle of limitation, and, with the additional aspect that even on merits no case is made out as nothing has been pleaded much less established that the DPC of May, 1994 wrongly did not give promotions to the petitioners as AEEs bearing in mind that the counter affidavit of the respondent no.2 makes it clear that in the DPC of May, 1994, 15 SC/ST candidates were appointed as AEE (Civil) and 8 SC/ST candidates were appointed as AEE (Electrical) thus showing as false the stand of the petitioners that only 6 posts were given to SC/ST candidates instead of 12.

13. The writ petition is accordingly dismissed.

14. No costs.

MAY 01, 2015
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VALMIKI J. MEHTA, J