

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 5491/2012**

% **25th February, 2015**

SH.V.K. JAIN Petitioner
Through: Mr. Divyakant Lahoti, Mr. Anish
Gupta and Mr. Tanuj, Advocates

versus

DELHI POLLUTION CONTROL COMMITTEE Respondent
Through: Ms. Avnish Ahlawat, Advocate

AND

+ **W.P.(C) No. 5524/2012**

SANJAY VATS Petitioner
Through: Mr. Divyakant Lahoti, Mr. Anish
Gupta and Mr. Tanuj, Advocates

versus

DELHI POLLUTION CONTROL COMMITTEE Respondent
Through: Ms. Avnish Ahlawat, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 5491/2012

1. This writ petition has been remanded for decision by the Division Bench of this Court by the order dated 18.2.2015 observing that the learned

Single Judge of this Court who decided the writ petition on 17.7.2014 should have decided all the aspects in the writ petition and not decided the writ petition only with respect to one aspect of fresh promotions to be made as per the fresh recruitment rules. The learned Single Judge of this Court had disposed of the writ petition vide order dated 17.7.2014 and which order was set aside by the Division Bench of this Court on 18.2.2015 and therefore, the matter is listed for today in terms of the order of the Division Bench of this Court.

2. Petitioner, by means of this writ petition filed under Article 226 of the Constitution of India, claims two promotions. First promotion is claimed by the petitioner to the post of Assistant Environmental Engineer (for short, 'AEE') with effect from 16.3.1999. The second promotion which the petitioner claims is to the post of Environmental Engineer (for short, 'EE') with effect from 16.3.2004. It may be noted that the petitioner was promoted as AEE w.e.f 02.12.2005 originally on *ad hoc* basis but thereafter, was regularized on permanent basis w.e.f the same date *viz.* 02.12.2005.

3. By the writ petition, the petitioner effectively challenges the decision dated 02.12.2005 in promoting him to the post of AEE only from 2005 and not from 16.3.1999 as claimed in the writ petition. It also needs to be noted

that surely the second step promotion to the post of EE w.e.f 16.03.2004 would only be granted if the petitioner is successful in getting the promotion to the post of AEE from 16.3.1999 inasmuch as his second promotion to the post of EE can only be if the petitioner had been appointed as AEE w.e.f 16.3.1999 and had also complied with other requirements for being appointed to the post of EE w.e.f 16.3.2004.

4. Firstly, the writ petition is liable to be dismissed *in limine* on the ground of delay and *laches* on two counts. The first count is that the entitlement to promotion by seeking holding of a Departmental Promotion Committee (DPC) w.e.f 16.3.1999 cannot be claimed by means of filing a writ petition in the year 2012 viz about 13 years later. Entitlement to promotion from a specific date gives rise to the cause of action on that specific date and if there is no promotion on that specific date, then, in and around the period of limitation thereafter, such a petitioner must come to the Court for seeking relief but this however cannot be done by a petition which is filed about 13 years later.

5. The second count for dismissing the writ petition on the ground of delay and *laches* is that the petitioner by filing a writ petition in the year 2012 has in effect challenged his order of appointment as AEE on and w.e.f

02.12.2005 since petitioner pleads that the order must in fact operate retrospectively from 16.3.1999 and not from 02.12.2005 which is the date as per the order. The petitioner therefore had a cause of action to approach this Court on and from 02.12.2005, and which right had necessarily to be exercised within a period of three years or so of the arising of the cause of action inasmuch as the writ petitions are not meant to be filed when for seeking the selfsame reliefs the suit cannot be filed because the suit has become time barred. The limitation period applicable against a government cannot be overlooked by filing writ petitions beyond the period of limitation which is provided under the Limitation Act, 1963 for filing of a suit seeking same reliefs. It is only where there are reasons showing that the employer is considering a representation, and therefore the writ petition was not filed within the limitation period, then only the Courts can overlook the doctrine of delay and *laches* because in certain cases the cause of action may not have arisen till the representation remains pending or till it is rejected. However, there are no such facts in this case to allow condonation of the doctrine of delay and *laches*.

6. Therefore, in my opinion, the writ petition is liable to be dismissed on the ground of delay and *laches* itself.

7. For equity and justice however even examining the case on merits, the petitioner has no case on merits. The case of the petitioner is for claim of promotion to the post of AEE w.e.f 16.3.1999 i.e not from 02.12.2005 when it was given and petitioner seeks a retrospective promotion given on 02.12.2005 so as to be effective from 16.3.1999. The pleadings in the writ petition, however I find are totally bereft of the necessary averments which are required to be made for constituting a legal cause of action for promotion to the post of AEE.

8. In the writ petition, the petitioner has only stated the eligibility criteria for the post of AEE, however, it is not disputed before this Court that besides complying with the eligibility criteria there can be a promotion to a promotion post only after and by means of consideration of the ACRs of the candidates by a DPC. The DPC will *inter alia* examine the ACRs of a candidate for five preceding years and this is so stated in the Office Memorandum dated 08.9.1998 relied upon by the petitioner and filed as Annexure P-6. The writ petition, however, does not even remotely mention as to what are the benchmarks which a candidate has to meet in the preceding five years and how the petitioner meets those benchmarks for

being considered by the DPC, assuming the DPC was to be held today for an event which would be about 16 years old as of today.

9. Not only the benchmarks for promotion have not been given by the petitioner, the petitioner had to further give the seniority list of Junior Environmental Engineers (for short 'JEE') as on 16.3.1999, the feeding cadre for the post of AEE, and state that the petitioner in terms of the seniority list would have been the senior most JEE on 16.3.1999 and therefore the petitioner on complying with the requisite benchmarks was otherwise fit for being considered by the DPC. These averments which had to be made for the petitioner seeking promotion to the post of AEE w.e.f 16.3.1999, have however not been made.

10. Thus, the petitioner has neither given the requisite benchmarks nor the petitioner has given the seniority list and his position in the seniority of JEEs as on 16.3.1999 before this Court and hence the petitioner is not entitled to claim consideration by the DPC for being promoted to the post of AEE as on 16.3.1999.

11. I am making the aforesaid observations on the basis that a requisite number of posts of AEEs would have been available for promotion of the petitioner to the post of AEE w.e.f 16.3.1999, however, there is no requisite

clarity on this aspect in the writ petition, though of course I am not dismissing the petition on this ground alone because some averments are there with respect to existence of posts and vacancies, but, the crux of the matter in the present writ petition is existence of vacancies as on the specified date being 16.3.1999 alongwith the applicable seniority list as on 16.3.1999 and which is not stated.

12. Once the petitioner is not entitled to the promotion to the post of AEE w.e.f 16.3.1999, the petitioner surely will not be entitled to the second step promotion to EE which is claimed by him. At the cost of repetition, both the posts are not automatic promotional posts like grant of pay scale in terms of the Assured Career Progression (ACP) Scheme and promotional posts are only for promotion after being considered for appointment by the DPC which has to consider the necessary requirements including the eligibility criteria, compliance of benchmarks, position of the petitioner in the seniority list etc and all those aspects which are missing in the present writ petition.

13. In view of the above, the writ petition is dismissed.

W.P.(C) No. 5524/2012

14. The present writ petition is dismissed in terms of the order passed above in W.P. (C) No. 5491/2012.

FEBRUARY 25, 2015
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VALMIKI J. MEHTA, J