

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14144 of 1997

Date of Decision: 12.04.2016

Gursharan Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. I.D. Singla, Advocate,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Right to seniority is a personal right in a communal setting. Seniority is not a fundamental right and the right can be waived as it is addressed in the interest of an employee which he can part away with as broadly explained by the Supreme Court in State Bank of Patiala v. S.K. Sharma, AIR 1996 SC 1669 as not involving public interest. Though the authority was not in the matter of seniority but in arose out of departmental proceedings and disciplinary action, nevertheless, the salutary principles evolved by the Supreme Court therein would apply to this case as would the general law. Besides, the other reason for shying away from granting relief is for the reason that the writ petition was filed in August 1997 against an impugned order passed in May 1994 by which time if a suit were filed on the same cause of action it would certainly have been dismissed as barred by

time. If a suit was barred then the writ court would not interfere in exercise of its discretionary jurisdiction on principles of delay and laches in view of Constitution Bench authority in State of M.P. v. Bhailal Bhai and others, AIR 1964 SC 1006. Though the operating reason in the impugned order may be suspect or covered by the ratio of the decision of the Division Bench in CWP No.3613 of 1995 titled *Modan Singh v. State of Punjab and others* decided on November 08, 1995 but that decision is in personam and the petitioner guilty of delay in approaching court. See State of Uttar Pradesh v. Arvind Kumar Shrivastava, (2015) 1 SCC 347

2. The petitioner left military service at his own request and joined civil service the following year. It may be settled that in case, the operating reason of an administrative order is found to be bad, the order deservedly should fall but then even adverse orders are good till they are not set aside. Even if the order is void it has to be challenged within the prescribed time and if it is not, then the limitations in residuary Article 113 of the Limitation Act, 1963 would run out. See State of Punjab and others vs. Gurdev Singh, (1991) 4 SCC 1.

3. The other argument put forth is that representations were made to the higher authorities for removal of the grouse, which it is argued amply cover the ground of delay, laches and limitation. It is however well settled proposition of law that representations or repeated representations do not extend the cause of action. For this, see State of Uttaranchal & Anr. v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179.

4. In arguendo even if the petitioner has a right to seniority with right to sue even then the remedy is taken away.

5. Effort to unsettling a settled seniority after many decades is not prudent exercise of discretionary jurisdiction provided by Article 226 of our Constitution as it would cause administrative chaos and needless disturbance to the vertebral column of the seniority list upon which many promotions may have been based occurring from time to time. Non-interference is the better option legally available especially when the petitioner and the others have retired from service meanwhile.

6. Examined from all these angles, I would not think it fit or proper to interfere in this matter after long lapse of time for the reasons recorded above and would thus commend the dismissal of the petition. Hence, the petition is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

12.04.2016
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