

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11597 of 2016

Date of Decision: 02.06.2016

Parminder Kaur and others

... Petitioners

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Kapil Kakkar, Advocate,  
for the petitioners.

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 common factor in the case of the petitioners and Mamta Thakur is that both attended counselling on December 13, 2011 in a recruitment drive for appointment of 9998 Teaching Fellows for a tenure of three and a half years on consolidated pay against the post of JBT/ETT lying vacant in the Department of School Education (Primary Wing), Punjab which included 945 posts for District Gurdaspur where the *lis* lies territorially. The advertisement was issued on September 05, 2007. But what is not common between the two cases is that Mamta Thakur was offered appointment on November 08, 2012 but was not allotted place of posting. It is their common case that the petitioners were not offered appointment while they were placed in merit positions at Sr. No.26, 49, 52, 53, 60 and 67. They plead that they were hopeful that appointment letters will be issued

to them but they kept waiting for them. They say that appointment letters were withheld when they were told [not in writing] that Government had put a hold on appointments due to litigation pending in the High Court. This fact is pleaded in para.7 of the petition. The litigation was settled by the Full Bench in Abhishek Rishi v. State of Punjab, 2013 (5) SLR 359; 2013 (3) RSJ 464; 2013 (3) SCT 1. The judgment in *Abhishek Rishi* was pronounced on April 03, 2013.

2. Mamta Thakur approached this Court in CWP No.9197 of 2014. It was decided on December 09, 2014 in her favour with requisite directions issued to the respondents to offer her appointment. Feeling aggrieved, the State of Punjab carried an appeal to the Division Bench in LPA No.560 of 2015. The Division Bench opined on May 19, 2015 that the moot point debated was whether the judgment in *Abhishek Rishi* was prospective in application. The Division Bench held that Mamta Thakur deserves to be offered appointment since similarly situated persons who were selected and appointed in pursuance to the advertisement dated September 05, 2007 were still working and none of them has been removed on the basis of judgment in *Abhishek Rishi*. On point of fact it was held that since Mamta Thakur was selected and appointed before the pronouncement of the judgment in *Abhishek Rishi* therefore she cannot be denied posting, on the ground that subsequently the aforesaid judgment had been rendered by the Full Bench overturning the Division Bench judgment in Sudesh Rani v. State of Punjab, 2010 (5) SLR 768 which had upheld grant of bonus marks to candidates from rural areas to be added to the merit of the candidates etc. It was specifically held in appeal against *Mamta Rani* that

“the aforesaid judgment [Abhishek Rishi] is not applicable to the persons already selected and appointed”. The State appeal was dismissed. The rights were hauled all the way from selection and appointment. But this is not the case of the petitioners as they were never offered appointment since on their own admission in the petition they were only “hopeful” to get appointment.

3. The petitioners claim the same relief as in Mamta Thakur and two other decisions are cited by the petitioners rendered by me in CWP No.21619 of 2013, *Jaspreet Kaur and others v. State of Punjab and others* and five connected writ petitions decided on February 17, 2016 and another decision rendered by me in CWP No.14125 of 2013 in case titled *Jagjit Singh v. State of Punjab and others* decided on August 17, 2015. Both the writ petitions were filed close at heels after the pronouncement in *Abhishek Rishi*.

4. In *Jaspreet Kaur* case this Court was confronted with the situation where the petitioners' services had been terminated after having been appointed in view of misinterpretation of *Abhishek Rishi* case. The decision in Letters Patent Appeal in Mamta Thakur's case was cited before me to urge that the Full Bench had prospective effect and right acquired before the judgment was pronounced were not open to be disturbed. In *Jagjit Singh* I dealt with the case of a physically challenged person. His appointment had been denied. Clause 6 of Government letter dated May 02, 1997 had been pressed in service entitling the petitioner to be considered against unfilled vacancies. As a fact it was found that 19 vacancies were to be filled in the recruitment process 2007 and only eight posts were filled and 11 vacancies were still available for offer. This Court found the

petitioner within the zone of consideration against the physically handicapped quota. The distinguishing feature from the present case is that Jagjit Singh had first approached the Court in CWP No.14125 of 2013 which was allowed and the Court held that the petitioner's case is squarely covered by the ratio of the judgment in *Jagjit Kaur* case (CWP No.12886 of 2010) which dealt with Clause 6 of the Government letter dated May 02, 1997. A direction was issued that case of the petitioners in *Jagjit Kaur's* case would be considered for appointment in the case of Jagjit Singh, if any vacancy is available subject to the merit and rank determined in the selection process and fulfillment of other eligibility criteria. The District Education Officer (DEO), Ludhiana had passed an order on the administrative side on December 12, 2012 in the case of Jagjit Singh that in case a candidate with higher merit did not join the post and the post remained vacant in the physically handicapped category then the name of the petitioner will be considered for issuance of offer letter. The petitioner was not supplied information as to the status of the case which he received through information supplied under the Right to Information Act, 2005 that posts were still available. It was on these premises that I allowed the writ petition and issued directions in favour of Jagjit Singh.

5. Counsel for the petitioners relies on the aforesaid cases in the index to the petition and presses them at the time of hearing without culling out their ratio gathered from facts and prays that this matter be tagged on to pending writ petitions Nos. 6462 and 9500 of 2016 in which notice of motion has been issued for July 26, 2016. There are no materially common factors in the case of Mamta Thakur and the case of the petitioners

sufficient disparate to prevent bringing the same relief to the petitioners as was found necessary in the aforesaid two cases. Dissimilarity between the case of Mamta Thakur and the two cases decided by me relied upon is that the petitioners have never approached the Court of law except for the first time in the present petition filed on May 31, 2016. They have approached this Court after submitting a representation on May 11, 2016 to the department for seeking favourable orders on the principle that they are similarly placed in all circumstances. They couldn't be further from the truth and have no case.

6. The reasons why I would not issue a mandamus to the respondent-State on the representation dated May 11, 2016 directing them in an offhand manner to decide it, is firstly for the reason that the representation is non statutory with no fixed time prescribed by law. Secondly, the petition is belated and suffers from inordinate delay and unexplained laches in regard to a stale and dead claim/issue/dispute as far as the petitioners are concerned. I would remain guided but the decision of the Supreme Court in Union of India and another v. M.M. Sarkar, (2010) 2 SCC 1126 not to blindly issue directions to dispose of the representation directing the State to pass an order thereon as it would send a wrong message to the Government that Court has interfered in some manner as is the legal position explained by the Supreme Court with respect to belated representations holding as follows:-

*“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of*

*limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."*

7. There is another judgment of the Supreme Court on the point which has to be kept in mind while dealing with representation made to Government or its departments delivered in C. Jacob v. Director of Geology & Mining of Ministry and Anr., (2009) 10 SCC 115. The Supreme Court observed:-

*"6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the*

*employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”*

8. This takes care of the representations. The other reason why I would decline relief based on the specious plea that similarly situated persons have obtained relief and, therefore, relief to petitioners follows sequitur and as a matter of right is based on the comprehensive and authoritative judgment of the Supreme Court while dealing with the rights of persons similarly situated/placed claiming relief on the basis of judgments rendered by Courts in other cases of a similar or identical nature prior to the claim laid by the late comers, in State of U.P. and others vs. Arvind Kumar Srivastava and others, 2015(1) SCC 347 where the Supreme

Court considered rights of fence-sitters who approached Court riding on the back of previous litigation to which they not party but came after judgments were pronounced. However, to understand the full flow of the normal rule and the exceptions carved out in paras. 22, 22.1, 22.2 and 22.3 are reproduced below:-

*“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.*

*22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

*22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.*

*22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can*

*occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India<sup>3</sup>). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

9. The case of the petitioners is barred by rule enunciated in subparagraph 22.2 supra.

10. The petitioners are faced with these insuperable hurdles in their quest for appointment from a selection process of sufficiently remote past made after enormous delay not just belatedly from the date their counterparts were offered appointment or were appointed and then terminated. Though, the principles in *Sarkar* and *Jacob* cases dealt with different fact situations such as claim for belated promotion which would disturb seniority etc. but those principles are of universal application and would apply by analogy to the present case while dealing with belated representations attempting to revive stale and dead claims. It is not that there is any period of limitation for the courts to exercise power under Article 226 of the Constitution of India and to borrow words of the Supreme Court it would be a sound and wise exercise of discretion for the courts to refuse their extraordinary powers under Article 226 of the Constitution in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters, [see, P.S.

Sadasivaswamy v. State of Tamil Nadu, (1975) 1 SCC 152]. There is still

another turbulent river to cross with neither horses nor bridge. If a suit were filed in a civil court claiming the same relief and on the cause of action it would definitely be barred by limitation. Where suit is barred, a writ would ordinarily not lie, see Constitution Bench decision of the Supreme Court in State of Madhya Pradesh v. Bhailal Bhaj, AIR 1964 SC 1006. In the face of these insurmountable obstacles to relief interference is most certainly not called for or warranted in the delicately balanced discretionary power provided by Article 226 when and when not to permit party to ignite its jurisdiction and this is eminently not a fit case to strike the match as was made out to be by the counsel for the petitioners as simple as an open-and-shut case which cried for judicial intervention. The Court does not run a Naukri portal as a recruiter to public service or a Human Resource Development Agency. Its role is to review administrative action or culpable inaction in appropriate cases where facts demand justice.

11. The petitioners appear to be devotees of the fictional protagonist, Rip Van Winkle. It is rather late to wake them from slumber. If they have not been able to reorganise their lives after surrender of rights, waiver and acquiescence for five to nine years, the Court will not come to their rescue. Their rights, if any, have become unenforceable in law. Their remedy taken away by passage of time. These are the axioms of direct recruitment precesses which has become a dead ball and where everyday's delay matters since the rights of candidates becoming eligible meanwhile cannot be ignored by virtue of mandates in Articles 14 and 16 of our Constitution which is just as much for them, if not more, as anyone elses.

12. The petition relates to a defunct claim and is hereby dismissed

at the threshold as not meriting admission for any further consideration.

(RAJIV NARAIN RAINA)  
JUDGE

02.06.2016  
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