

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11759 of 2016

DATE OF DECISION: August 10,2016

Dalip Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Sh. Arun Yadav, Advocate for the petitioner.

RAJIV NARAIN RAINA, J.(ORAL)

The petitioner approached this Court in CWP No.3149 of 2011 which was disposed of on 4.3.2015. Since all the benefits as claimed in the writ petition had been released to the petitioner meanwhile, the writ petition was rendered infructuous and was dismissed as such. However, liberty was granted to the petitioner to make a representation with the authorities concerned regarding his claim for promotion from the back date.

The petitioner has returned to Court to avail the illusory liberty granted by filing the present writ petition in which the same prayer is made for directions to the respondents to grant promotion to the petitioner as Inspector, Cooperative Societies, Haryana with effect retrospective effect from 1981 when his alleged juniors were promoted as Inspectors, with all consequential benefits, instead of 29.12.1992 from which date it was granted. The petitioner is a pensioner.

Briefly, the facts are that the petitioner joined as Sub Inspector, Co-operative Societies on 10.12.1961. He was convicted of a criminal offence under Section 408 IPC on 16.2.1987. He was acquitted by the Appellate Court vide judgment and order dated 3.11.1987 and was resultantly reinstated in service on 5.10.1988. He was promoted as Inspector on 29.12.1992. When this Court granted liberty to the petitioner vide order dated 4.3.2015 to represent for grant of relief of ante-dated promotion, the order did not effectively erase the question or objection of delay, laches and limitation in suing for a cause of action which accrued in 1981. Nor was an opinion expressed on the point or the delay pardoned. The petition is thus highly belated and suffers from inordinate delay and unexplained laches in respect of a stale and dead claim/issue/dispute as far as the petitioner is concerned trying to stake a claim to promotion from the anterior date when his so called juniors were promoted to the higher post complaining that his case was ignored.

In the main, I would remain guided by the decision of the Supreme Court in Union of India and another v. M.M. Sarkar, (2010) 2 SCC 1126 for restraining myself in granting relief inversely by issuing directions to the respondents to dispose of the representation, as urged by

counsel, by passing an order thereon as it would send a wrong message to the Government that Court has interfered in some measure and has perceived the lis as alive for remedy. The legal position stands explained on the point by the Supreme Court in *Sarkar* with respect to belated representations, cautioning 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 cannot 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."

There is another judgment of the Supreme Court on the point which also has to be kept in mind while dealing with cases of representations made to Government or its departments with requests for their disposal made in Court belatedly, once or repeatedly, to thwart belated attempts to revive dead disputes and in their wake to create an impression of fresh cause of action as explained in C. Jacob v. Director of Geology & Mining of Ministry and Anr., (2009)

10 SCC 115. The Supreme Court observing that:-

"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."

In any case, and it not disputed that the challenge to non-promotion was brought for the first time in 2011 in the earlier writ petition and thereafter in the present writ

petition which is found a highly belated approach and the prayer suffers from the vice of delay and laches. In matters of promotion, the approach to the Court should be within reasonable time of six months to one year, after which the Court may refuse to entertain the petition [see, P.S. Sadasivaswamy v. State of Tamil Nadu, (1975) 1 SCC 152]the Supreme Court warning litigants of the fate of their cases in these words:-

"A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 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. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

The petitioner instituted the writ petition for the first time in 2011 to challenge the order promoting persons junior in 1981 by claiming promotion as Inspector from the date junior was promoted, and on due reflection the action would seem to be patently barred by time, what to speak of delay and laches in writ jurisdiction which is summary in character and equity based. If it is so, then it is prudent for the writ court not to interfere, on the principle that if a suit would be barred by limitation on expiry of time prescribed in the Limitation Act, 1963 as against the original cause of action. And for this proposition, see how it was settled in the Constitution Bench decision of the Supreme Court in State of Madhya Pradesh v. Bhailal Bhaj, AIR 1964 SC 1006 which sheds light forever on the point settled for the guidance of

Courts thereafter. If a suit does not lie then the writ would ordinarily not issue under Article 226 of our Constitution.

The petition without doubt relates to a defunct claim which cannot be revived by mandamus after the enormous delay in leisurely approaching court and the same is hereby dismissed in limine without costs, the petitioner being an old pensioner who may be a victim of ill advice.

August 10, 2016
KD

(RAJIV NARAIN RAINA)
JUDGE