

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P. No. 23278 of 2010

Date of Decision:- 30.11.2016

Jagandeep Singh and another

...Petitioners

vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. A.D.S. Jattana, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. AG, Punjab.

Mr. Gagneshwar Walia, Advocate,
for respondents No. 3 and 4.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the appointment of respondents No. 3 and 4 to the post of Art and Craft Teachers in pursuance of advertisement dated 11.12.2006. A further prayer has also been made for issuance of a writ in the nature of Mandamus directing the respondents to consider the claim of the petitioners for appointment to the post of Art and Craft Teacher.

Briefly, the facts of the case as made out in the present petition, are that an advertisement was issued in the daily newspaper 'The Tribune' dated 11.12.2006 whereby total 500 posts were to be filled up from amongst

male and female candidates. Petitioners being the paternal grandsons of freedom fighter applied for the post of Art and Craft Teachers against quota reserved for freedom fighter category. As per advertisement, the total number of posts of Art and Craft Teachers were to be filled up as per ratio of 50-50, meaning thereby 250 posts were reserved for male and 250 for female candidates. Out of total posts, 5 seats were reserved for the freedom fighter category, 2 posts were reserved for male category and 2 posts were reserved for female category and the 5th post was to go to the candidate with higher merit amongst males/females. Counseling for various categories was conducted on 19.8.2009, 20.8.2009, 22.10.2009 and 3.11.2009. The counseling for the candidates who are sons/daughters of freedom fighters was to be conducted on 23.2.2010 whereas the counseling for the candidates who were paternal grand-sons/grand-daughters, maternal grand-sons/grand-daughters of freedom fighters was conducted on 10.3.2010. Letters were sent to the candidates for counseling wherein it was specifically mentioned that the call for interview was the last call and no further opportunity shall be granted thereafter. In spite of specific mention in the letters issued to the candidates, still candidates were called for counseling. As per case of the petitioners, they came to know about this fact subsequently under the Right to Information Act.

The grievance of the petitioners in the present petition is that some of the candidates were allowed to appear in the counseling even after the last date, whereas, it was specifically mentioned that no opportunity would be given after the last date. Petitioners were not allowed after the

last date otherwise as per their merit, they would have been selected/appointed. Some of the candidates who were allowed to appear in the counseling were not having original documents and they were considered wrongly for ulterior reasons.

In response to notice of motion, separate replies on behalf of respondent-State, Punjab Subordinate Services Selection Board and private respondents No. 3 and 4 have been filed.

Learned counsel appearing on behalf of respondents No. 1 and 2 submits that the petitioners are aggrieved by the selection/appointment which has taken place much earlier in the year 2006 and the writ petition was filed in the year 2010. The petition is liable to be dismissed only on the ground of delay and laches only. Learned State counsel also submits that respondents No. 3 and 4 were appointed by considering their respective merit. The petitioners are paternal grandsons of freedom fighters whereas respondents No. 3 and 4 also belong to same category and have scored 138.64 and 136.22 marks respectively which are more than the marks obtained by petitioners No.1 and 2 as they have scored 136.9 and 134.37 marks respectively. Learned State counsel also submits that it is not the claim of the petitioners that they scored more marks vis-a-vis respondents No. 3 and 4.

Heard arguments of learned counsel for the petitioners, learned counsel for respondent-State as well as learned counsel for respondents No. 3 and 4 and have also perused the documents available on the file.

Admittedly, an advertisement was published in the newspaper 'The Tribune' inviting applications for the post of Art and Craft Teachers on

11.12.2006. Total 5 posts were reserved for the candidates belonging to freedom fighters. Petitioners as well as respondent Nos. 3 and 4 applied against category of family members/dependents of freedom fighters. Dates for counseling were fixed for various categories and candidates were required to appear with their original documents. Counseling for sons/daughters of freedom fighters was held on 23.2.2010 and counseling for grandsons/granddaughters of freedom fighters was fixed for 10.3.2010. Petitioners attended the counseling but their grievance is that respondents No. 3 and 4 were absent on the date of counseling and they were given opportunity for counseling subsequently and merit list was finalized after the last counseling held on 10.3.2010. It is also the grievance of the petitioners that respondent Nos. 3 and 4 were selected by giving them undue benefit of granting opportunity of counseling even after the last date, whereas, it should not have been given to them. They are aggrieved by action of respondents No.1 and 2 as respondents No. 3 and 4 were given opportunity to attend the counseling after 10.3.2010, which is contrary to instructions mentioned in the letter issued for counseling. However, the present petition is liable to be dismissed on the ground of delay itself as advertisement was issued in the year 2006 and the present petition was filed in the year 2010. The counseling was only for the purpose of verification of the documents. Petitioners are more meritorious vis-a-vis respondents No. 3 and 4. Petitioner No.1 scored 465 marks out of 650 marks, which comes to 71.538% in Matriculation examination and he has scored 811 marks out of 1300 marks i.e. 62.384% in Diploma in Arts and Crafts and his percentage comes to 133.92%. Petitioner No. 2 scored 485 marks out of 650 marks

which comes to 74.62% in Matriculation examination and he has scored 584 marks out of 950 marks i.e. 61.47% marks in Diploma in Arts and Crafts and his percentage comes to 136.09%, whereas respondents No. 3 and 4 scored 138.64% and 136.22% respectively, which is higher to the marks obtained by petitioners No. 1 and 2. The selection has been made on the basis of percentage of marks obtained in Matriculation and Diploma in Arts and Crafts.

The argument of learned counsel for the petitioners does not have any force that respondents No. 3 and 4 were allowed to participate in the counseling after the last date. Respondent No.4 filed CWP No. 12667 of 2009 for permitting his brother Manjinder Singh to submit the documents for verification on his behalf as he was away to Australia. In said petition, an interim order dated 20.8.2009 was passed and his brother was permitted to submit the documents and certificate before the Counseling Committee on 20.8.2009. Relevant portion of said interim order is reproduced as under:-

“Notice of motion for 8.9.2009.

In the meanwhile-, the petitioner is permitted (if he is duly authorized to do so by Manjinder Singh, the selected candidate) to submit the original documents/certificates as required by the counseling committee, for verification.”

Similarly, respondent No.4 also appeared in said counseling which was held in pursuance of order passed in CWP No.12667 of 2009.

Both respondents No. 3 and 4 were allowed to participate in view of

direction issued by this Court in CWP No. 12667 of 2009 which was disposed of as having become infructuous as respondent No. 4 was appointed to the post. It is also relevant to mention here that another candidate also filed CWP No. 5568 of 2009 before this Court for issuance of direction to the respondents to appoint him as Art and Craft Teacher against quota fixed for Freedom fighters. It was his specific case that he was called for interview and was directed to produce the original certificates for verification before the Selection Committee on 20.8.2009 and 30.11.2009. Though the respondents were satisfied regarding the eligibility of the petitioner, yet the respondents, in order to prolong the issue, again called him for interview on 23.2.2010. The respondents were directed by this Court to verify the documents on 23.2.2010 and declare the result. Said person Mandeep Singh, is the real brother of respondents No.3 and 4 and was within the zone of consideration. Accordingly, respondents No. 3 and 4 were appointed under the directions of the Court. The relevant order passed in case of Mandeep Singh is reproduced as under:-

“After notice of motion, it appears that the respondents have reconsidered the matter and pursuant thereto, the petitioner was called for interview and was directed to produce the original certificates for verification before the Selection Committee firstly on 20.8.2009 and then on 30.11.2009. The petitioner is said to have produced the original certificates for verification by the Authorities. Though the respondents were

claimed to have been satisfied regarding the eligibility of the petitioner, yet as alleged by learned counsel for the petitioner that in order to prolong the issue(s), the respondents have again called the petitioner for interview on 23.2.2010.

Having heard learned counsel for the parties and keeping in view the facts noticed above, the writ petition is disposed of with a direction to the respondents that the original certificates to be produced by the petitioner may be verified on 23.2.2010 only and thereafter, subject to the petitioner's eligibility his result be declared. Suffice it to observe that if the petitioner makes in overall merit, the consequential action regarding his appointment shall also be follow.”

It is well settled principle that while dealing with exercise of powers of this Court under article 226 of the Constitution of India, the extraordinary and discretionary powers are to be exercised but not to those persons who are tardy, indolent or lethargic. This Court may decline to intervene and grant relief in view of principle of delay and laches as has been held in the judgments of Hon'ble the Apex Court rendered in cases **State of Madhya Pradesh and others vs. Nandlal Jaiswal and others,** AIR 1987 SC 251 and **State of Maharashtra vs. Digambar,** 1995 (4) SCC 683. The judgments rendered by Hon'ble the Apex Court in **Suraj Mal vs. State of Haryana,** 2015 (1) SCT 31, **Chairman U.P. Jal Nigam and**

another vs. Jaswant Singh and another, 2006 (11) SCC 464 also support the view that the discretion should not be exercised in favour of those persons who do not approach the Court within reasonable time.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioners and the present petition is not only dismissed on the ground of delay and laches but on merits as well.

November 30, 2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes