

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

**CWP No.14700 of 2016
Date of decision: 25.07.2016**

Gurmeet Rani and another

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sunil K. Garg, Advocate
for the petitioners.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to take action on the representation/legal notice by considering the petitioners being qualified and eligible for the post of P.T.Is against advertisement dated 28.03.2001 in view of Full Bench judgment of this Court in *CWP Nos.451 of 2008, 3077 of 2008 and 1804 of 2009* titled as *Manjit Singh vs. State of Punjab and others*, decided on **05.02.2010**. A prayer has also been made to call the petitioners for interview by entertaining their applications for the said posts.

Briefly, the facts of the case are that an advertisement was published in the newspaper dated 28.03.2001 inviting applications for various posts in the Education Department. Total 175 posts of P.T.Is. were there for men and 175 posts were for women. The necessary qualification for the said post was Matric with certificate in Physical Education recognised by the Punjab Government. As per advertisement, the candidates including petitioners having qualification of B.P.Ed., D.P. Ed. and M.P. Ed.

applied for the said posts.

Learned counsel for the petitioners submits that both the petitioners were possessing the higher qualification i.e., B.P.Ed. and Certificate in Physical Education of nine months duration course, which was the minimum qualification as required in the advertisement but inspite of that they were not considered. The petitioners were not interviewed because of their higher qualification whereas there was no reason to deny them the opportunity of being interviewed for the purpose of selection. Learned counsel also submits that the action of the respondents is not only arbitrary and discriminatory but also violative of Articles 14 and 16 of the Constitution of India. The controversy in the case in hand is squarely covered by the Full Bench judgment of this Court in **Manjit Singh's case (supra)**. Even LPA No.1214 of 2012 filed by some of the respondents relying upon the same Full Bench judgment, was allowed and the respondents were directed to consider the candidature of the candidates against the post of Physical Training Instructors. The petitioners served a legal notice but still they were not considered.

Heard arguments of learned counsel for the petitioners and have also perused the documents available on the file.

Admittedly, an advertisement was published on 28.03.2001 and the qualification for the post of Physical Training Instructor was Matric with Certificate in Physical Education recognised by the Punjab Government. The petitioners were having qualification of B.P.Ed. and applied for said post but they were not considered on the ground that they did not possess the Certificate in Physical Education. When the case of the petitioners was

not considered, they served a legal notice on 04.06.2016.

While arguing the case, learned counsel for the petitioners submits that legal notice has not been decided by the respondents and direction be issued to decide the same.

Admittedly, the posts were advertised in the year 2001 whereas the petitioners served legal notice upon the respondents on 04.06.2016 i.e., after decision in LPA and the delay has not been explained. Prior to serving the legal notice, even the representation has not been shown to have been filed. Simply saying that the controversy in case in hand is squarely covered by the Full Bench judgment of this Court in **Manjit Singh's case (supra)**, is not sufficient. The candidates, who filed writ petition approached this Court well in time and thereafter, LPA No.1214 of 2012 was filed which was also allowed by this Court on 12.03.2013. The petitioners were neither a party in the writ petition nor in the LPA and they cannot take benefit of the decision passed in LPA after long lapse of time. The claim of the petitioners cannot be considered as it is hopelessly time barred.

In a decision of this Court in ***Rupinder Singh vs. State of Haryana and others, 2016(1) SCT 565***, the candidates approached the Court after a long delay and legal notice was served upon the respondents after a period of seven years. It was held that the appointment cannot be claimed as a matter of right as not only delay was there but reasons for approaching the Court after a long delay was not explained.

In another judgment of this Court in ***Vironika vs. State of Punjab and others, 2016(2) SCT 814***, the process of selection was initiated in the year 2011 and the petitioner in that case approached the Court in the year 2015. It was held that no fresh cause of action arose in favour of the

dismissed on the ground of delay itself.

Similarly in ***Mahender Singh Malik vs. State of Haryana and others, 2016(2) SCT 40***, the claim of the petitioner was dismissed on the ground of delay by holding that the petitioner in that case slept over his rights and woke up only when orders were passed in other cases. It was held that the petitioner cannot be allowed to ride piggyback on other employees, who were vigilant about their rights and approached the Court well within time for the vindication of their grievances.

In a judgment of Division Bench of this Court in ***Yash Paul Raheja vs. Union of India and others, 2016(2) SCT 821***, the petitioner approached the Court by moving representation after a delay of more than twenty years and his claim was declined on the ground of delay. It was held that the petitioner was not entitled for any relief on account of principle of delay and laches.

Hon'ble the Supreme Court in ***Chandigarh Administration vs. Jagjit Singh, (1995) 1 SCC 745*** held as under: -

“In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be

equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.”

Though the dispute in Jagjit Singh is a property matter, the principle applies to most fields of law including in service law. Nearer home in service law the equality doctrine in Article 14 cannot be invoked to perpetuate an illegality, cf. by way of illustrating the authority in ***Bihar Public Service Commission and others vs. Kamini and others, (2007) 5 SCC 519.***

On the issue of rejection of stale claims, Hon'ble the Apex Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and others vs. T. T. Murali Babu*** reported as ***2014 (2) S.C.T. 193*** has held as under :-

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [1874 (5) PC 221], which is as follows :-

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a

waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

In ***State of Maharashtra v. Digambar, 1995 (4) SCC 683***, while dealing with exercise of power of the High Court under Article 226 of the Constitution, Hon'ble the Apex Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the

person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

In *State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.*, AIR 1987 SC 251, Hon'ble the Apex Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may

disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in *Suraj Mal vs. State of Haryana* reported as **2015 (1) SCT 31**, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

The benefits of a decision rendered in the case of similarly placed persons cannot straightway be given to a person, who himself approaches the Court belatedly. For getting relief from the Court, he is required to satisfactorily explain the delay on his part in approaching the Court.

In this regard, it would be useful to refer to the following observations made by the Apex Court in the case of ***Chairman, U. P. Jal Nigam and another vs. Jaswant Singh and another*** reported as **2006 (11) SCC 464 :-**

“6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted

to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such person should be granted the same relief or not?

7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our

attention was invited to a decision of this Court in the case of M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows :

"Pet itioners are re-agitating claims which they had not pursued for several years. Petitioners were' not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the

remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal. "

*8. Our attention was also invited to a decision of this Court in the case of **State of Karnataka & Ors. v. S.M. Kotrayya & Ors., reported in 1997(1) SCT 359 (SC) : (1996) 6 SCC 267**. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: "Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the*

petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under subsection (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in the case of Jagdish Lal & Ors. v. State of Harvana & ors., reported in 1998(1) SCT 26 (SC) : (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows :

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. In the case of Union of India & Ors. v. C. K. Dharagupta & Ors., reported in 1997(2) SCT 117 (SC) : (1997) 3 SCC 395, it was observed as follows:

"We, however, clarify that in view of our finding that

the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

*11. In the case of **Government of W.B. v. Tarun K. Roy & Ors., reported in 2004(1) SCT 78 (SC) : (2004) 1 SCC 347**, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :*

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents.

Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it.

It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in

which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two

years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”[Emphasis supplied by me].

In the present case also, the claim of the petitioners is hopelessly time barred as they have been sleeping over the matter for years together. The advertisement was published in the year 2001 and the legal notice was served upon the respondents in the year 2016. Thereafter, the present writ petition has been filed and no explanation whatsoever has been given as to how the delay of years together can be condoned.

In view of the facts and law position as discussed above, I find no justification to interfere in the matter as there is unexplained delay of more than 15 years in approaching this Court. Accordingly, the present writ petition being devoid of any merit is dismissed.

25.07.2016
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No