

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

**CWP No. 15112 of 2016
Date of Decision:- 08.12.2016**

Karamjit Kaur

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Premjit Kalia, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing public notice dated 29.7.2013 (Annexure P-10) whereby the counseling for filling up the vacant posts of teaching fellows in pursuance of advertisement issued in the year 2007 was cancelled. A further writ in the nature of mandamus has also been sought for issuance of direction to the respondents to grant 5 marks to the petitioner prescribed for the candidates who have done their Middle and Matriculation examination from rural area.

Briefly the facts of the case, as made out in the present petition, are that an advertisement was published in the newspaper on 5.9.2007 inviting applications for appointment of 9998 teaching fellows for 3-1/2 years on a consolidated pay against JBT/ETT posts in the Department of

School Education (Primary Wing), Punjab. The last date of submission of application forms was 30.9.2007. In response to said advertisement, the petitioner applied in category of rural candidates as she has passed her Middle and Matriculation examination from the village school (rural area). As per terms and conditions of the advertisement, 5 marks were to be given to the candidates, who have passed Middle and Matriculation examination from rural schools. The petitioner was not selected as she was not granted 5 marks in spite of the fact that she has passed middle and matriculation examination from rural area. Being aggrieved, she made a representation along with a certificate issued by the Headmaster in support of her claim, still, she was not granted the benefit of 5 marks. She contends, had the five marks been given to her, she would have been selected. Subsequently, she sought information under the Right to Information Act and came to know that her merit was shown as 60.449% and the last selected candidate was having 62.216%. In case, the benefit of 5 marks was awarded, then her merit could have been more than the last selected candidate. Thereafter, the petitioner was informed by the respondent-Department that vide public notice dated 29.7.2013, the selection and posting of the candidates has been canceled in pursuance of directions issued by this Court in case titled as **Abhishek Rani vs. State of Punjab**, reported as **2013 (3) RCR (Civil) 239**. The petitioner remained silent because of said judgment but subsequently she came to know that it was held in **Abhishek Rani's case** (supra) that it was not retrospective and will not operate for the selection of the candidates of the year 2007. At the end, learned counsel for the petitioner submits that action of the respondents is not only unlawful and

unjust but also violative of Articles 14 and 16 of the Constitution of India.

Moreover, the representation moved by the petitioner was also not decided.

Heard arguments of learned counsel for the petitioner and have also perused the impugned notice as well as other documents available on the file.

Admittedly, the petitioner applied in pursuance of advertisement published on 5.9.2007. Her name did not figure in the merit list as she was not granted 5 marks for passing Middle and Matriculation examination from rural area. Her grievance is that had she been granted benefit of passing of middle and matriculation examinations from rural area school, she would have scored more marks than the last selected candidate. The posts were to be filled up for a period of 3-1/2 years and the representation was filed by the petitioner on 17.9.2010. This petition has been filed in the year 2016 when the tenure of the post had already expired as it was only for a period of 3-1/2 years. Even the petitioner did not make any effort immediately after making representation in the month of September, 2010 after getting certain information under RTI. The public notice dated 29.7.2013 is under challenge in the present petition but in case, the present petition is allowed, even then also, petitioner is not entitled for any relief as the duration of the post has already expired. Not only on merit, the present petition is liable to be dismissed on the ground of delay also.

In a judgment of this Court in *Rupinder Singh vs State of Haryana and others 2016(1) SCT 565*, the petitioner approached the Court after a long delay and a legal notice was served upon the respondents after a

period of seven years. It was held that the appointment could not be claimed as a matter of right as not only the 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 petitioner and the petition suffered from delay and laches and the writ petition was dismissed on the ground of delay only.

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 the cases filed by some other persons. It was held that the petitioner could not 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, has 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.”

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. Prosser 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.

In the present case, the advertisement was published in the year 2007 and impugned notice was published on 29.7.2013, whereas, the present petition has been filed in the year 2016. Neither the delay has been explained nor any reasons whatsoever have been mentioned. Even the

tenure for the post was 3-1/2 years only which has already expired. Accordingly, keeping in view the tenure of the post and delay in approaching this Court, the petitioner does not deserve any concession by exercising extraordinary jurisdiction provided under Article 226 of the Constitution of India.

Hence, the present petition being devoid of any merit is dismissed not only on merits but on the ground of delay also.

December 08, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes