

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.2389 of 2016

Date of decision: 5.2.2016

Nishinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

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

G.S.SANDHAWALIA, J, (Oral)

The petitioner seeks consideration for appointment on the post of Teaching Fellow against advertisement dated 5.9.2007 (Annexure P/1).

It is case of the petitioner that after counselling she was placed at serial number 3 as per merit list of backward class category for the post of Teaching Fellows for JBT/ETT posts for which four posts were vacant for Barnala District. Reliance has been placed upon representation dated 15.2.2014 (Annexure P/6) to submit that the petitioner had approached the respondents for issuance of appointment letter on account of merit. Further reliance has been placed upon communication dated 4.1.2013 (Annexure P/5) to justify that the respondents had supplied information that no appointment orders were issued in December, 2011 and therefore, the petitioner had not been able to agitate for her rights. Similarly reliance has also been placed upon communication dated 22.1.2014 (Annexure P/10) to show that appointments were made in December, 2011 which would belie the earlier stand taken by the respondents in communication dated 4.1.2013. Reliance has accordingly been placed upon the judgment passed by this Court on 10.11.2014 (Annexure P/7) in CWP No.21090 of 2013-Naresh Kumari Vs. State of Punjab and another and judgment dated

12.10.2015 (Annexure P/8) in CWP No.19944 of 2013-Yogita Vs. State of Punjab and others to hold out that once there was a vacancy, the respondents were under an obligation to fill up the post.

A perusal of the judgment dated 12.10.2015 (Annexure P/8) would go on to show that the State has already taken a decision to close down the recruitment process on 26.7.2013 in relation to the advertisement in question in which the petitioner seeks consideration at this belated stage.

This Court is of the opinion that communications Annexures P/5 and P/10 sought to be relied upon are of no help to the petitioner as they were never addressed to the petitioner and have been attached only to justify the delay and laches on account of the petitioner. The only representation the petitioner has filed was of 15.2.2014 which is almost 2-1/2 years later from the date appointment orders were issued. It is settled principle of law that the petitioner has right of consideration only and has no right of appointment. The petitioner has chosen not to approach this Court at the earliest. The selection process has already been closed down 2-1/2 years ago regarding which the petitioner is seeking relief.

It is settled principle that law protects the ones who are vigilant and do not sleep over their rights. The selection process is of the year 2011. The curtains have to come down on the selection and the same cannot be left open for times to come.

A similar issue came up for consideration before the Division Bench in **LPA No. 1781 of 2014, Loveleen Kaur vs. State of Punjab and others** decided on 03.11.2014. It was held that the selection process cannot be kept pending till eternity so as to confer right on the applicants. The relevant observations read thus:-

“We find that the appellant cannot claim any direction for

further counseling having failed to appear for the counseling on 7.7.2011. In response to a public notice, many candidates, including some of juniors to the appellant, have appeared for counseling. Once the appellant has failed to appear on a specific date, no grievance can be entertained so as to direct the respondent to hold another counseling. Learned Single Judge has rightly declined to interfere in the order passed by the respondents declining the representation of the petitioner.

Another argument raised by learned counsel for the appellant is that if in future it is decided to hold counseling again, the appellant should be called for counseling.

We do not find that any such direction can be given. The publication to conduct counseling was done through a public notice. The second counseling was conducted in the year 2011 i.e. more than 3 years earlier. The selection process once concluded, cannot be kept pending till eternity so as to confer right on the applicants for appointment. However, as and when any fresh advertisement seeking appointment is issued, it shall be open to the appellant to apply in accordance with law.

We do not find any merit in the appeal and the same is hereby dismissed.”

The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by LRs. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128**

on the issue of delay has observed as under:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'

xxx

xxx

xxx

xxx

xxx

18. Shri Mohta, learned senior counsel relying on the decision of this court in **N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123]**

submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

In view of the facts and circumstances noted above, this Court is not inclined to issue any direction in exercise of jurisdiction under Article 226 of the Constitution of India.

Accordingly, the present writ petition is dismissed in limine.

February 05, 2015
Pka

(G.S.SANDHAWALIA)
Judge