

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3488 of 2013

Date of Decision: 08.09.2016

Jai Chand

... Petitioner

Versus

District Rural Development Agency and others

... Respondents

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

Present: Mr. N.R. Dahia, Advocate,
for the petitioner.

Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Kannan Malik, Advocate,
for respondents No.1 to 5.

Mr. R.K. Malik, Sr. Advocate,
with Ms. Rimple Kadyan, Advocate,
for respondents No.6 to 8.

RAJIV NARAIN RAINA, J.

1. This case can be decided on the basis of the objection raised by the official and the private respondents without going into any detail of narration of facts in the writ petition. Suffice it to say that in this petition brought in the year 2013 challenging two administrative orders passed and a seniority list issued in 1995. Besides those three, two further orders dated July 30, 2010 and November 08, 2011 have also been impugned.

2. The first order dated March 02, 1995 endorsed on March 31, 1995 (Annex P-12) regularizes the services of six employees, the first of whom is the petitioner, Clerks, Helpers and Sweepers w.e.f. March 02, 1995. The order has been passed by the Additional Deputy Commissioner-

cum-Chief Executive Officer, DRDA, Rewari. The official respondent is the DRDA. The period of ad hoc service rendered by the petitioner as a Clerk is from December 06, 1989 to March 02, 1995. The final seniority list of DRDA staff as on August 30, 1995 is at P-13. Of the three Clerks in the list, the petitioner's name falls at Sr. No.2 below Smt. Pushpa Sharma and above Sh. Jai Parkash. The second order impugned is an office order dated April 05, 1995 (Annex P-18A) which has no reference to the petitioner. The office order allows a Steno Typist by name Sh. Arjun Lal to clear probation period after six months of service and his services have been regularized from the date of appointment. The order has been passed by the same authority as the one that passed the first order (Annex P-12). The third order impugned is dated July 29, 2010 endorsed on July 30, 2010 passed by the Deputy Commissioner-cum-Chairman, DRDA, Rewari. This order withdraws the order dated April 23, 2004 endorsed on May 06, 2004 which regularized the services of the petitioner as Clerk from the date of appointment. On review, the previous order has been withdrawn and the petitioner's date of regularization has been ordered to be treated as March 02, 1995 endorsed on March 31, 1995 which is the first impugned order. The last order which is impugned is at Annex P-21 dated November 08, 2011 also passed by the Deputy Commissioner-cum-Chairman, DRDA, Rewari. This order does not deal with the petitioner. It reveals only that Jai Prakash, Pushpa Sharma and Arjun Lal were reverted to the lower post. Jai Prakash challenged his reversion order in this Court by CWP No.5382 of 1998 in which an order was passed that Jai Prakash could not be reverted back till further orders. Though Pushpa Sharma and Arjun Lal had not

approached Court against their reversion orders but were fairly treated at par with Jai Prakash and their reversion orders were ordered to be kept in abeyance, while the order passed by the Court in the case of Jai Prakash was implemented ad interim in deference to the Court orders to await final outcome of the petition.

3. This is the factual position with respect to the orders impugned in this petition.

4. The second prayer in the petition seeks a writ of mandamus directing the respondents to treat the services of petitioner regularized w.e.f. December 06, 1989, that is, from the date he was appointed as a Clerk on ad hoc basis. The consequential prayer is that he be promoted to the post of Assistant by counting his ad hoc service towards seniority. Apparently, the prayer for re-fixation of seniority by counting ad hoc service is claimed after 18 years in this petition.

5. The contention of the respondents in their preliminary objections in the separate replies filed by the official private respondents No.6 to 8 namely, Jai Parkash, Pushpa Sharma and Arjun Lal. They have raised several defences to the action which are dealt with hereafter.

6. In more than one word, the petitioner vehemently claims regularization w.e.f. December 06, 1989 by seeking revival of the order dated May 06, 2004 which was reviewed by the competent authority as mentioned earlier and reversed. In his 33 page petition, the petitioner has not mentioned that he filed a civil suit. In formal para.37 he avers that he has not filed any such or similar petition in this Court or in the Supreme

Court of India conveniently mulling over the civil suit that he filed. The

filing of the civil suit has been suppressed and this is where the objection raised by the respondent becomes significant.

7. Mr. D.S. Patwalia, learned Senior counsel appearing with Mr. Kannan Malik is counsel for DRDA, Rewari which has put in written statement in 2013 in the petition representing respondents No.1 to 5. It is DRDA's objection that the petitioner filed civil suit in the Court at Rewari titled *Jai Chand v. Haryana State and others* wherein he claimed fixation of pay on the basis of services rendered by him on ad hoc basis w.e.f. December 06, 1989. It is also the prayer in the instant petition inversely put to claim regularization with effect from the said date. The civil suit was dismissed by the learned Civil Judge (Senior Division), Rewari by judgment and decree dated January 15, 2010, the text of which has been placed at Annex R-1 by DRDA. In Civil Suit No.33 of 2007 instituted on January 24, 2007 he did not array private respondents in the memo of parties and claimed relief from the official respondents behind their back.

8. It is the contention of Mr. Patwalia that prayer in the instant petition flows substantially from the same relief claimed in the civil suit and thus the present petition is not only hopelessly barred by time prescribed in the Limitation Act, 1963 but is barred by principles of constructive res judicata. The petitioner did not file an appeal against the judgment of the trial Court which attained finality. It is his further contention that this petition is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure when all the relief which could be claimed in the suit which was available to the plaintiff was not made in the suit and the underlying principles of relief of pay fixation and regularization were inherent in the

prayers in the suit.

9. Mr. R.K. Malik, learned Senior counsel appearing for the private respondents relies on the principles of constructive res judicata in his written statement. He has pointed out in his written statement that in the civil suit the petitioner claim salary at par with Jai Parkash-respondent No.6 but his suit was dismissed by observing that Jai Parkash held the degree of B.Sc. Agriculture, B.Ed. and possessed the qualification of Field Investigator on July 02, 1996 and thus the petitioner was rightly ignored being only Matriculate qualified. The judgment of the trial Court has attained finality. Applying the principles of the bar of constructive res judicata the petition is liable to be dismissed. The petitioner's services were regularized w.e.f. March 02, 1995 and he has no right to claim regularization prior to the said date. The petitioner has not challenged the order dated March 02, 1995 except in this petition brought in 2013 claiming multiple reliefs overlapping each other when he did not specifically claim each of the reliefs which he could have in his suit. Likewise, Mr. Patwalia's arguments, he submits that the petition is barred by principles of Order 2 Rule 2 CPC which apply to writ jurisdiction in view of the settled law by the Full Bench of this Court in Teja Singh vs. The Union of Territory of Chandigarh and others, AIR 1982 Punjab 169.

10. Mr. Malik would also refer to the provisions of the Haryana State District Rural Development Agency Employees Service Rules, 1991 to contend that the petitioner was rightly ignored since he did not possess the requisite qualification for the post of Field Investigator. Although, respondent No.6 was ordered to be reverted but he filed CWP No.5382 of

1998 in which the reversion was stayed and the writ petition admitted. The present petitioner was the respondent in the aforesaid writ petition. So, the petitioner has no case qua respondent No.6.

11. Mr. Malik while appearing for respondent No.7 as well in the same written statement states that respondent No.7 was regularized as Clerk w.e.f. April 01, 1990 vide order Annex R-6/3 and was regularized from even date, while the petitioner was regularized w.e.f. March 02, 1995. So, the petitioner has no case qua respondent No.7 too. Besides, respondent No.7 was promoted as an Accountant on October 10, 1995 and was ordered to be reverted on April 02, 1998 with Jai Parkash and her orders were kept in abeyance as above. It is mentioned that respondent No.7 filed a civil suit which was dismissed and so was appeal but she filed Regular Second Appeal No.389 of 2003 which was admitted and ordered to be heard along with CWP No.5382 of 1982 which is listed along with the present writ petition i.e. 3488 of 2013 together with RSA No.199 and 389 of 2003 and posted for today i.e. September 08, 2016. Similarly, Mr. Malik has explained the case of Arjun Lal, Steno Typist appointed on regular basis on October 07, 1994 before the services of the petitioner were regularized w.e.f. March 02, 1995 and respondent No.8 was rightly promoted as Senior Stenographer on May 17, 1996 although he was also ordered to be reverted vide order dated April 02, 1998, and he, like respondent No.7 Pushpa Devi filed a civil suit which was decreed and DRDA field an appeal which was allowed and the judgment of the trial Court was reversed but respondent No.8 filed RSA No.199 of 2003 which was admitted and is still pending.

This is a factual background of the case.

12. In summary of the facts presented in the background of the civil suit filed by the petitioner, it can well be said that the petitioner remained silent and did not impugn the orders for almost two decades. It is the contention of Mr. Patwalia and I think he is right in saying so, that the passing of the order dated July 30, 2010 (Annex P-19) vide which the earlier order dated April 23, 2004 (Annex P-16) was withdrawn would not grant to the petitioner a fresh cause or postpone for him the period of limitation to impugn the order. The order dated July 30, 2010 only withdraws the earlier order which on demonstrated facts had been passed without affording any opportunity of hearing to the affected parties and on an erroneous interpretation of the provisions of law and this would not have a binding effect on the rights of the private respondents. Nevertheless, even from the year 1995 till the year 2004 when the order was passed the petitioner chose to remain silent and did not agitate his claims. He, therefore, for all intents and purposes accepted his dates of regularization as envisaged in the order dated March 31, 1995. The limitations to call in question the order dated March 31, 1995 expired in 1998 and are not open to be revived. The petitioner is transfixed on his date of regularization without counting the period of ad hoc service for purposes of pay fixation, seniority and further promotion.

13. Even the final seniority list circulated on August 30, 1995 is challenged in this petition brought in 2013. Mr. Patwalia is within his rights to contend that for almost 20 years the petitioner has remained silent when he did not impugn the seniority list. It is now too well settled a proposition of law that the seniority list, if drawn, has to be challenged within some

reasonable period, which by no stretch of imagination should extend more than a period of 6 months or at best a year. This proposition of law has been laid down by this Court as well as by the Supreme Court in innumerable decisions that once a seniority is framed and finalized, vested rights accrue to persons can not be taken away or abridged after a considerable delay of time. In the instant case however, the petitioner chose to impugn the seniority list of the year 1995 belatedly. The writ petition is, therefore, liable to be dismissed on this short ground alone. See the rule formulated in P.S. Sadasivaswamy vs. State of Tamil Nadu, AIR 1974 SC 227.

14. Lastly, Mr. Patwalia submits that even assuming arguendo that the petitioner has a legitimate right to come to this Court at this stage even then the last cause of action accrued to the petitioner on passing of the impugned order dated 30.07.2010 (Annex P-19). Even challenge to the said order has been made almost 2 ½ years after the same was issued. Therefore, even by this the petitioner has absolutely no right to approach this Court for the redressal of his grievance by reason of delay and unexplained laches. Therefore, the petition is liable to be dismissed as the same is hopelessly barred either by law of limitation on all claims or by reason of delay and laches which are procedural limitations in exercise of writ jurisdiction when fundamental rights are not involved.

15. Mr. N.R. Dahia, learned counsel appearing for the petitioner has not been able to cut any ice in attempting to surmount the barriers placed before him in the preliminary objections raised by DRDA and the private respondents. The rights of the private respondents cannot be trampled upon by giving undue benefit to the petitioner who managed to

secure an illegal order in 2004 which was rightly reviewed and withdrawn by the competent authority for sound reasons. Albeit passed on July 30, 2010 and within limitation to bring a suit. The delay of two and half years as pointed out by Mr. Patwalia that laying challenge to this order is also a belated approach in a matter involving seniority and promotion where third party rights have settled by passage of time which are not open to be disturbed except for the finest of reasons to prevent injustice, which is not the case in the present matter.

16. I have no reason to accept any argument of Mr. Dahia pressed in favour of his client who actively suppressed the material fact of filing of the civil suit in the body of the writ petition in what appears to be a clear case of judicial overreach and I would, therefore, hereby dismiss this petition as devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

08.09.2016
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Whether speaking/reasoned Yes

Whether reportable No