

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.105

CWP No.4825 of 2016

Date of decision: 26.04.2016

Raj Kumari

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Kavita Sharma, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition, the petitioner seeks counting of her service rendered by her between the years 1979 to 1990 as Supervisor in the Education Department working in connection with the Adult Education and non-formal Education Schemes, towards her pensionable service.

After hearing learned counsel for the petitioner and going through the record of the case the relevant facts which have emerged are that from the year 1979 to 1990, the petitioner served as a Supervisor in the Education Department working in connection with the Adult Education and non-formal Education Schemes floated by the State of Haryana. Through notification dated 28.02.1990, these schemes were abolished and as a consequence thereof the services of the petitioner were terminated. Laying a challenge to the termination of her services and in the alternate seeking absorption in any other service of the State, the petitioner along with other similarly situated persons approached the Apex Court.

On the statement made by the learned counsel appearing on behalf of the State of Haryana that the State was prepared to absorb the petitioners therein (including the petitioner herein) in the State-Services as and when vacancies in the cadre of Social Studies teachers and masters were available, the petition was disposed of and as per such statement on the existence of a vacancy through order dated 13.07.1993, the petitioner was offered appointment as a Mistress, which she accepted. In pursuance to the order dated 13.07.1993, the petitioner joined as a Mistress and on attaining the age of superannuation, she retired from service on 29.02.2004. Before that, the petitioner had represented to the respondents to count the service rendered by her during the period 1979 to 1990 as a Supervisor in the Education Department working in connection with the Adult Education and non-formal Education Schemes towards pensionable service but her request was rejected through order dated 01.08.2006.

The present petition has been filed after about 10 years of the rejection of the petitioner's claim, without showing any justifiable cause for the delay on her part. The only explanation of her is that between this period the petitioner had made representations to the respondent-authorities. Such an explanation has been found unacceptable by the Apex Court for condonation of delay in the case of 'State of Uttranchal and another versus Shiv Charan Singh Bhandari', (2013)12 SCC 179, wherein it has been held as under:-

“16. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in

deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983 .

17. In *C.Jacob v. Director of Geology and Mining and another*, (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: (SCC P.123, Para 10)

“10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

“18. In *Union of India and others v. M. K. Sarkar*, (2010) 2SCC 59, this Court, after referring to *C. Jacob* (supra) has ruled that when a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh

cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”[emphasis supplied]

In view of the above, the present petition having been filed after a decade of the final rejection of the case of the petitioner is grossly belated.

Even otherwise, the order dated 01.08.2006 through which petitioner's request had been rejected is not under challenge in the present petition. In fact, the petitioner has not even appended therewith a copy of the rejection order dated 01.08.2016.

In view of the above, the present petition is grossly belated and is ordered to be dismissed on that ground alone.

No costs.

(DEEPAK SIBAL)
JUDGE

April 26, 2016
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