
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.6425 of 2016

Date of decision: 5.4.2016

Gurjant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. Hemen Aggarwal, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges resolution dated 27.10.2005 (Annexure P/3) whereby the name of Kulwinder Singh-respondent no.5 was recommended to be promoted to the post of Mandi Supervisor.

A perusal of the same would go on to show that vide the said resolution, Chairman, Market Committee, Barnala had recommended for promotion of the said respondent against reserved category post for Backward class. It is not disputed that the petitioner at any stage did not opt to challenge the said recommendation/promotion made more than decade earlier. A justification is sought to be given that since respondent no.4 had challenged the said resolution successfully and the same was annulled on 13/24.5.2010 (Annexure P/7) and thereafter the revision of Kulwinder Singh was also dismissed on 10.9.2010 (Annexure P/8). It is further case of the petitioner that in the meantime Satwinder Singh-respondent no.4 had been promoted as Mandi Supervisor in the year 2012 and therefore, in Civil Writ Petition No.18808 of 2010 wherein Kulwinder Singh challenged the orders dated 13/24.5.2010 and 10.9.2010 (Annexures P/7 and P/8 respectively) a compromise was arrived at inter-se between the private respondents with the consent of respondent-Board and

the said writ petition was disposed on 15.1.2016 (Annexure P/14) by continuing with the interim order which had been passed in favour of Kulwinder Singh. Respondent no.4-Satwinder Singh who was respondent in the said writ petition was also satisfied with the promotion granted to him in the year 2012. The order passed in the above said writ petition on 15.1.2016 reads as under:-

“Learned counsel appearing for the respondent-Board has no objection that this writ petition be brought to an end and the interim order passed in favour of the petitioner be made absolute. On the other hand, the private respondents will not claim promotion from the year 2005 and will remain satisfied with his promotion granted to him in the year 2012.

In view of this satisfactory arrangement, the petition is disposed of as no further orders are required to be passed by this Court. The arrangement will hold good given that all things are equal. As a result, the impugned orders (Annexures P-5 & P-7) will be treated as set aside in view of the arrangement and in view of ad idem.”

The petitioner thereafter sought to get the aforesaid order reviewed by filing Review Application which was disposed of on 21.3.2016 (Annexure P/15) by granting him liberty to take recourse in accordance with law. Resultantly the present writ petition has been filed.

This is the justification which the petitioner has given on the ground that litigation was pending and therefore, there was no need to challenge the said promotion order at an earlier point of time. It is further pointed out that legal notice/representations dated 7.4.2012, 25.11.2012 and 11.12.2012 (Annexures P/9, P/10 and P/11 respectively) were pending and therefore, the delay should be condoned.

The said argument cannot be accepted. A perusal of the said

legal notice/representations would go on to show that no grouse has been raised against the promotion of Kulwinder Singh-respondent no.5 and there was only grouse against the proposed promotion of Satwinder Singh-respondent no.4. It is settled principle that in matters of promotion the challenge is to be raised at the outset. The Apex Court in **P.S.Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152** has laid down outer limit of six months for challenging the promotion. The relevant portion reads as under:-

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed *in limine*. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

In the present case, 11 years have elapsed since the resolution was passed. At this belated stage, the same issue cannot be raised.

It is settled principle that law protects the ones who are vigilant and do not sleep over their rights. The Hon'ble Apex Court in **Pundlik**

Jalam Patil (D) by LR. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128 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.'

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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 does not feel that it is fit case where any interference can be made in

exercise of jurisdiction under Article 226 of the Constitution of India in such a stale issue after over a decade.

Accordingly, the present writ petition is dismissed.

April 05, 2016
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(G.S.SANDHAWALIA)
Judge