

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

CWP No. 11320 of 2013
Date of decision: 27.07.2017

Harbhajan Singh

....Petitioner(s)

Versus

Haryana Vidyut Prasaran Nigam Ltd., Panchkula and others

...Respondent(s)

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

Present: Mr. Karan Bhardwaj, Advocate,
for the petitioner.

Mr. Rahul Sharma, Advocate,
for Mr. P.S. Poonia, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 18.05.2012 (Annexure P-11) whereby, the respondents have rejected his request for regularization on the ground that he had not been sponsored by the Employment Exchange and nor had been recommended by the Departmental Selection Committee by inviting application through advertisement against duly sanctioned post. Resultantly, it was held that he cannot be given fresh appointment and, therefore, neither his case fell in the area of old as well as new policy for the purpose of regularization.

It is not disputed that the petitioner's services were utilized for the post of part time *Mali* by the respondent-Nigam way back on 10.11.1995. It is his case that his services were dispensed with in the year 2001 and he was not given extension on 31.03.2001. It is further the admitted position that the petitioner at no time sought to raise any industrial

dispute and challenge his retrenchment even though he had worked for more than 240 days which might have given him some protection under the Industrial Disputes Act, 1947. It is his case that one CWP No. 3472 of 1998 was filed by one Satyadev whereby, some directions were given for framing of policy and thereafter CWP No. 13529 of 1999 was filed challenging the policy of regularization whereby, the services of Satyadev were directed to be regularized on 08.12.2000 (Annexure P-1). It is further his case that one Baldev Singh had also filed CWP No. 8559 of 2001 which was also disposed of on 28.08.2002 (Annexure P-3) in the same terms as in CWP No. 11288 of 2002, Surjit Singh and others vs. Haryana Vidyut Prasaran Nigam Ltd. and others decided on 22.08.2002 (Annexure P-4) which followed the view in CWP No. 17998 of 1999, Sh. Prem Singh and others vs. Haryana Vidyut Prasaran Nigam Ltd. and others, decided on 22.08.2002 (Annexure P-5). Resultantly, directions had been given to consider the case of the petitioners therein for regularization of the services in their respective cadres. It is on same basis parity is sought with the said employees who were allegedly serving alongwith the petitioner.

In the interim period also, the petitioner took no action and is only in the year 2010 for the first time he filed CWP No. 1541 of 2010 whereby, he sought directions for deciding his representation dated 06.11.2009 (Annexure P-7) and accordingly, it was directed to pass a speaking order. His claim was rejected at the first instance on 25.02.2011 (Annexure P-9) on account of the delay on the ground that the policy of regularization had been withdrawn vide notification dated 25.04.2007. Thereafter, he filed CWP No. 24264 of 2011 wherein, he challenged the said order on the basis of which now a fresh cause of action is sought to be

raised. Counsel for the petitioner had, at that stage, made a concession that he would not claim any benefit for the intervening period from 12.03.2001 and his claim be considered. A direction was issued by this Court without calling upon the other side and by setting aside the earlier order to reconsider the case in view of the fact that he was willing to forego all service benefits for the period for which he had not approached this Court by way of filing writ petition, as has been done by identically situated employees. Resultantly, the impugned order has been passed which is now subject matter of the writ petition.

Counsel for the petitioner has vehemently submitted that the petitioner was identically placed with the other set of employees and, therefore, he should also be given the same benefits and, therefore, the order is not liable to be sustained and the said persons have been given the benefits of regularization whereas, the petitioner's case has not been considered.

The argument raised by counsel for the petitioner is not liable to be accepted. The Apex Court in ***State of Uttranchal and another vs. Shiv Charan Singh Bhandari, 2013 (12) SCC 179*** has held that by mere serving a legal notice and getting a direction from this Court, a fresh cause of action as such would not come up to initiate litigation on the said basis. As noticed, the services of the petitioner were dispensed with in the year 2001. He chose not to raise any dispute agitating for his right. Merely because some of the colleagues had approached this Court in the year 2001 and got directions issued would not as such put him on the same platform and he cannot as such seek parity with them. The relevant portion reads as

under:-

“14.....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.

15. 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. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another, 2006 (2) SCT 417 : (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. [In State of Orissa v. Pyarimohan Samantaray, \(1977\) 3 SCC 396](#) it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in [State of Orissa v. Arun Kumar Patnaik, \(1976\) 3 SCC 579.](#)

17. [In Bharat Sanchar Nigam Limited v. Ghanshyam Dass](#) (2) and others, 2011 (2) S.C.T. 712 : (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in [Jagdish Lal v. State of Haryana, 1998 \(1\) SCT 26 : \(1997\) 6 SCC 538,](#) and

proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. *In State of T.N. v. Seshachalam, 2007 (4) SCT 472 : (2007) 10 SCC 137*, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. *There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another, 2010 (1) SCT 169 : (2009) 15 SCC 321.*

20. *In New Delhi Municipal Council v. Pan Singh and others, 2007 (2) SCT 601 : (2007) 9 SCC 278*, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and

set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. *Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in [P.S. Sadasivasway v. State of Tamil Nadu, \(1975\) 1 SCC 152](#), wherein it has been laid down that 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 there 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 extraordinary 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.*

22. *We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is*

contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

The Apex Court in ***State of Uttar Pradesh vs. Arvind Kumar Srivastava and others, 2015 (1) SCC 347*** has held that fence sitters cannot be permitted to seek relief once they have chosen to slumber over their rights. The relevant observations read thus:-

“The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to

discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the

Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

In such circumstances, keeping in view the law laid down by the Apex Court, this Court is of the opinion that the orders passed by the Authorities are not liable to be interfered with. The petitioner cannot, as a matter of right, claim regularization of his services once he never even chose to challenge the order whereby, his services were dispensed with wayback in the year 2001.

Accordingly, the present writ petition is dismissed.

27.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No