

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

CWP No.13943 of 2013

Date of Decision:21.07.2017

Pawan Kumar

... Petitioner

Vs.

Bhakra Beas Management Board and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Manish Dadwal, Advocate for the petitioner.

Mr. Karan Nehra, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has prayed for the following relief:

“i) Appropriate writ, order or direction especially in the nature of mandamus directing the respondents to grant regularization from the date his junior was promoted, if any and further to issue a writ in the nature of certiorari for quashing the reply dated 1.4.2010 (Annexure P-6) whereby the claim of the petitioner was virtually rejected by respondent No.3 without application of mind and further a writ in the nature of mandamus directing to consider and promote the petitioner to the post of clerk from the date when the juniors to the petitioner have been promoted and further to give all consequential benefits to the petitioner keeping in view the peculiar facts and circumstances of the case set out in the writ petition.”

Petitioner was appointed as a daily wager in the month of November, 1986 to the post of Chowkidar. His services were terminated on 31.7.1989. Consequently, he raised industrial dispute. During the pendency

of the Industrial Dispute, respondents have taken back the petitioner for duty on 11.4.1991. On 22.2.1994 award passed by the Labour Court was in favour of the petitioner in respect of reinstatement with back wages and consequential benefits which was subject matter of writ petition before this Court. On 15.5.2009, this Court was pleased to deny the back wages granted by the Labour Court. In the meanwhile, the petitioner's services were regularized on 3.4.1992 w.e.f. 31.3.1992. In this background, the petitioner is challenging the date of regularization from 3.4.1992 to earlier date and further sought for issuance of direction to the respondents to promote him to the post of clerk from the date of junior's promotion which was granted in the year 2009.

Learned counsel for the petitioner submitted that on the ground of delay if the date of regularization cannot be altered from 3.4.1992 with reference to the regularization order dated 31.3.1992, in that event, he is entitled for promotion on par with his junior w.e.f. 6.1.2009. It was further contended that for no reason, petitioner's name has been over looked for promotion. Even though he is senior with reference to the date of regularization on 3.4.1992, in the year 2009. The respondents have issued a circular whereby petitioner's chances of promotion from Chowkidar to Clerk has been denied. Therefore, he is entitled for direction to consider his name for promotion to the post of clerk while following the 1995 circular since the vacancies accrued for promotion in the year 2009 were required to be filled up with reference to 1995 circular.

Per contra, learned counsel for the respondents submitted that petitioner's grievance relating to alteration of date of regularization from 3.4.1992 to any earlier date is highly belated on the ground of delay and

laches. He is not entitled insofar as promotion to the post of clerk is concerned as petitioner has failed to challenge the order of promotion granted to the juniors to the petitioner on 6.1.2009. Even to this day, he has not challenged the order of promotion. Therefore, petitioner is not entitled for promotion to the post of clerk from 6.1.2009 on which date petitioner's junior were promoted.

Heard learned counsel for the parties.

Crux of the matter is whether the petitioner is entitled for alteration of date of regularization from 3.4.1992 in the year 2013 or 2014 or not?

Perusal of the date of regularization order dated 31.3.1992, it is evident that there is a delay and laches on the part of the petitioner. Petitioner had cause of action in the month of March 1992 or at the best he had cause of action as and when award is passed by the Labour Court on 22.2.1994. Thus, the petitioner slept over the matter. Therefore, alteration of date of regularization from 3.4.1992 is rejected.

Insofar as promotion to the cadre of clerk from Chowkidar post is concerned, it is evident on record that the petitioner's junior were promoted on 6.1.2009 and he has not challenged their promotion even to this day. For the purpose of seniority and promotion, Supreme Court in the case of P.S.Sadasivaswami v. State of Tamil Nadu; 1975 SCC (1) 152; has held that one must approach the Court within a reasonable period of six month or one year.

In the present case, the petitioner has not challenged the order of promotion. That apart, he has approached this Court only in the year 2013. Therefore, there is a delay of four years insofar as seeking relief. As

long as junior's promotion is not challenged within the reasonable time.

Petitioner is not entitled for promotion w.e.f. 6.1.2009.

Insofar as old vacancies are required to be filled up for the purpose of promotion to the post of clerk from Chowkidar is concerned, petitioner has not made out a case for the reasons that he has not made any representation before the competent authority so as to issue a direction that the vacancies which were accrued as on 24.3.2009 were required to be filled up as per the 1995 instructions. Therefore, contention of the learned counsel for the petitioner that petitioner is entitled for direction to consider his name for promotion to the post of clerk while following the 1995 circular since the vacancies accrued for promotion prior to 2009 circular were required to be filled up with reference to 1995 circular is not tenable.

Accordingly, petition stands dismissed.

21.07.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No