

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.22145 of 2012(O&M)

Date of Decision: 01.11.2017

Rajiv Bhatia & another

--Petitioners

Versus

State of Punjab and another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Gaurav Sharma, Advocate for the petitioners.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Petitioners herein were appointed as Supervisors under the scheme sponsored by the Govt. of India known as Census of Small Scale Industrial Units under the aegis of Industries Department, State of Punjab. Upon abolition of the scheme petitioners were retrenched from service on 31.7.1990. A policy decision was taken by the State of Punjab to adjust all the staff, who were retrenched from the Census Scheme of the Industries Department keeping in view the qualifications possessed by them. In the light of such policy decision having been taken, both the petitioners were adjusted on the post of Masters carrying pay scale of Rs.1640-2925 vide orders dated 24.12.1991 (Annexure P-6). Subsequently, on the basis of seniority-cum-merit in the cadre of Masters, petitioner no.1 was promoted as Lecturer vide order dated 16.5.2012. In so far as petitioner no.2 is concerned, he subjected himself to a process of selection against the post of Lecturer that was advertised and was duly selected on the post and appointed as a Lecturer vide order dated 12.12.1995.

The instant petition has been filed seeking the issuance of a Writ of Mandamus for directing the respondent State to grant to them the deemed date of appointment on the higher post of Lecturer from the date they were adjusted and appointed as Masters i.e. 24.12.1991 (Annexure P-6).

The entire case set up on behalf of the petitioners is that certain other employees who were also retrenched along with the petitioners had filed writ petitions in this Court seeking directions to the authorities to adjust them on suitable posts commensurate to the qualifications possessed. The instance of one Satnam Singh who was working as a Supervisor under the same very scheme under the Industries Department, has been cited. It is contended that Satnam Singh filed CWP No.1170 of 1998 which was allowed on 16.4.1998 with a direction to the respondents to consider his claim for absorption on a suitable post as per qualifications possessed by him. Satnam Singh, who had earlier been adjusted as an S.S. Master on 24.12.1991, accordingly, was offered the post of Senior Assistant carrying the pay scale of Rs.1800-3200. Such employee then preferred CWP No.19934 of 2001 raising a claim that he ought to have been absorbed as Lecturer in school cadre in the light of the qualifications of B.A B.Ed that he possessed and further raising a plea that the post of Lecturer in school cadre was carrying the same pay scale as the post of Senior Assistant. Even such writ petition was allowed vide judgement dated 29.2.2012, passed by a Coordinate Bench of this Court at Annexure P-9 and the respondents were directed to adjust the petitioner therein i.e. Satnam Singh as Lecturer (school cadre) from the date he had acquired the requisite qualifications.

On behalf of the petitioners herein it is submitted that both of them possessed the qualifications of M.A. B.Ed on the date of their adjustment and appointment as Masters i.e. 24.12.1991 and accordingly they be given a deemed date of appointment as Lecturer w.e.f. 24.12.1991 along with all consequential benefits. In a nutshell parity in treatment with Satnam Singh is being sought.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the prayer in the instant petition cannot be accepted as a highly belated claim is being set up.

There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. Petitioners having been retrenched from the Industries Department were adjusted and appointed as Masters on 24.12.1991. Even on such date both the petitioners possessed the qualifications of B.A B.Ed. Be that as it may, they accepted their appointment in the Master cadre. Petitioner no.1 by virtue of seniority in the Master cadre was even promoted as Lecturer on 16.5.2012 and petitioner no.2 was appointed as a Lecturer on 12.12.1995 as a fresh recruit. At no stage did the petitioners choose to agitate their claim. It is only after the decision in CWP No.19934 of 2001 dated 29.2.2012 in the case of Satnam Singh that the petitioners have woken up to agitate their claim.

The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India at the hands of an employee by raising a claim that similarly situated employees have already been granted relief, was considered by the Hon'ble Apex Court in

Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another

(2006)11 SCC 464. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in ***Rup Diamonds v. Union of India, (1989)2 SCC 356;*** ***“Jagdish Lal v. State of Haryana, (1997)6 SCC 538 and Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347,*** it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-

“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their reitirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-

retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who

have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.” [Emphasis supplied]

The issue of delay was also dealt with by this Court in **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3) SLR 314**. In the case of Tarsem Pal(supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up,

which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action. 13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”

In the light of such clear enunciation, petitioners cannot be permitted to gain any impetus from the judgement delivered in the case of Satnam Singh, who otherwise was similarly situated but had approached this Court first in point of time by filing CWP No.1170 of 1998 and followed by CWP No.19934 of 2001 decided on 29.2.2012 (Annexure P-9).

The reliance placed by counsel appearing for the petitioners upon a Full Bench judgement of this Court in ***Saroj Kumari Vs. State of Punjab, 1998(3) S.C.T, 664*** to overcome the hurdle of delay is also misplaced. The issue in ***Saroj Kumari's*** case (supra) was as regards pay fixation and it was held that such matters involve a recurring cause of action and as such, writ petitions for such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred. Even such observations as regards aspect of delay in ***Saroj Kumari's*** case (supra) were in the light of the judgement of the Hon'ble Apex Court in ***M.R. Gupta Vs.***

Union of India and others, 1995(4) R.S.J., 502 and wherein it had been categorically held that so long as an employee is in service a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. The judgement in **Saroj Kumari's** case (supra), as such, would have no applicability to the facts of the present case.

Considering the dictum of law as laid down in **Chairman, U.P. Jal Nigam's** case (supra), the petitioners herein are not entitled to the relief as prayed for and the petition is dismissed on the ground of delay and laches.

Ordered accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

01.11.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No