

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

***CWP No.14699 of 2017***

Date of Decision: 26.07.2017

Avinash Rani

....Petitioner

Versus

State of Punjab and others

....Respondents

***BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY***

Present:- Mr. Deepak Aggarwal, Advocate  
for the petitioner.

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**DAYA CHAUDHARY, J.**

Petitioner-Avinash Rani has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside the impugned order of termination dated 22.10.2009 (Annexure P-8), whereby, her services have been terminated for producing fake experience certificate at the time of selection.

Briefly, the facts of the case, as made out in the petition, are that the petitioner applied in pursuance of advertisement issued in the year 2007 for recruitment of 9998 posts of Teaching Fellows against JBT/ETT posts. Out of total posts, 450 posts were allotted to District Bathinda. As per advertisement, the selection was to be made district wise on the basis of merit prepared by considering academic, professional qualification, teaching experience and the marks prescribed for rural area for those candidates, who had passed Middle and Matric Examinations from the schools situated in the rural areas. It was also mentioned in the

advertisement that the required number of candidates possessing the essential qualification of JBT/EET or its equivalent qualifications were not available, the graduates/ the graduates along with B.Ed pass candidates were to be considered against said posts. The petitioner was possessing the qualification of MA (History) and B.Ed. She has also projected that she is residing in the rural area of Punjab Government for the last more than five years and was also having teaching experience of more than seven years. On the basis of said criteria, the merit of the petitioner was determined as 68.103. She was selected and was appointed as Teaching Fellow against the vacant post of JBT/ETT teacher and was posted at Government Elementary School, Kothe Natha Singh in District Bathinda. She joined her duties in pursuance of her selection. A public notice was issued by respondent No.2 i.e Director, Public Instructions, requiring 570 teaching Fellows for personal hearing for verification of teaching experience certificates, which was taken into consideration at the time of selection. Similarly, the petitioner was also directed to be present before respondent No.2 on 11.08.2008. After verification of the documents, the experience certificate was found to be fake and the impugned order of termination dated 22.10.2009 (Annexure P-8) was passed, which has been challenged in the present petition.

Aggrieved by said order of termination, the petitioner filed **CWP No.16434 of 2009**, which was disposed of with a direction to the respondents to consider the case of the petitioner by passing a speaking order. The claim of the petitioner was not considered. When no action was taken, the petitioner had approached this Court for quashing of impugned order dated 22.10.2009 by raising various grounds.

Learned counsel for the petitioner submits that the impugned order of termination has been passed without taking into consideration the marks, which were awarded to the petitioner by considering her merit against different heads. Petitioner was possessing qualification of M.A (History) and B.Ed. She has passed B.A degree by securing 338 marks out of total 575 marks. Even in B.Ed examination, she has secured 2<sup>nd</sup> division. Petitioner was also granted the benefit of rural area. However, it was wrongly found that the experience certificate dated 16.01.1995 issued to the petitioner by the Headmaster of the school was fake. Learned counsel also submits that all the documents attached by the petitioner with the application were duly scrutinized by the competent authority and the petitioner was found eligible to apply for the post. The merit of the petitioner was prepared in accordance with the procedure prescribed in the advertisement. She secured 68.103 marks and her name was mentioned in the selection list after which the appointment letter was issued. While appearing for personal hearing, the petitioner submitted her explanation in writing along with experience certificate. She produced the relevant record also along with other documents like group photograph with the staff and students taken at the relevant point of time. All these documents were not taken into consideration while passing the impugned order of termination. Learned counsel also submits that subsequently, the appointment of the petitioner was withdrawn and thereafter, her services were terminated only on the ground that experience certificates for the period from 16.10.1992 to 31.10.1993 and 01.04.1997 to 31.03.1999 were found to be bogus. At the end, learned counsel for the petitioner submits that the impugned order has been passed without any application of judicious mind as personal hearing

was only a formality. The action of the respondents in withdrawing the appointment order and in terminating the services is unjust, arbitrary and contrary to the principles of natural justice.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 22.10.2009 and other documents available on the file.

Admittedly, the petitioner applied to the post, in dispute, and thereafter, by considering her merit, she was selected and appointed. The mode of appointment, procedure and assessment of marks are not disputed. Vide public notice dated 07.08.2009 published in Daily Ajit, Jalandhar, it was mentioned that during the selection process initiated by Director Public Instructions (EE), Punjab at the time of filling up of the posts of Teaching Fellow, the certificates/degrees or the experience certificates of some candidates were found to be bogus as per the reports of District Education Officers. All those candidates were granted opportunity of hearing by following the principles of natural justice. The name of the petitioner was also mentioned in the list of those candidates whose experience were found bogus. After hearing the petitioner and finding her reply as unsatisfactory and by considering the report submitted by the Committee constituted by the respondents, the appointment of the petitioner was cancelled and she was removed from service. It is also not disputed that the petitioner had also filed **CWP No.16434 of 2009**, wherein, the following order was passed :-

*“ Learned counsel for the respondent-State has apprised the Court that the grievance of the petitioner has been addressed. A public notice has been given in daily newspapers (Vernacular and English) of today. The persons, such as the petitioner, are required to appear before a Committee on 12.11.2009. The*

*petitioner would be at liberty to approach the Committee with material or evidence indicating that the certificate that has been termed as bogus in the impugned order, was in fact, genuine. The Committee would address the issue and pass a speaking and reasoned order, in accordance with law.*

*Learned counsel for the respondent-State has further informed the Court that earlier a public notice was given in newspaper dated 31.10.2009. The persons were required to appear on 4/5.11.2009. In case, the petitioner has already appeared and submitted the documents, the same would be considered. After inquiry, a speaking and reasoned order would be passed.*

*In view of the above, learned counsel for the petitioner states that the matter be disposed of as infructuous.*

*Disposed of as infructuous.”*

In pursuance of aforesaid order, the petitioner appeared before the Committee but her reply was not found to be satisfactory. By considering the stand of the respondent-State, the said writ petition was disposed of as infructuous as all such like persons were required to appear before the Committee along with their documents as mentioned in the public notice.

Admittedly, the impugned order was passed on 22.10.2009 and thereafter, the petitioner appeared before the Committee but her reply was not found to be satisfactory. Even FIR No.73 dated 24.08.2010 was also registered under Sections 420/465/467/468/471 and 120-B IPC at Police Station Civil Lines, Bathinda. The petitioner was appointed in the year 2008 on contractual basis. Subsequently, by finding her experience certificate to be bogus, her appointment was cancelled and thereafter, she was removed

from service.

The present petition has been filed after an un-explained delay to challenge the order of termination passed on 22.10.2009. The petitioner has slept over the matter for a very long period and as such, she cannot take advantage by approaching this Court.

It is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. There is an inordinate delay on the part of the petitioner in filing a petition and no explanation has come forward by her in the averments made in the petition as well as in the arguments.

Hon'ble the Apex Court in *State of M.P and others etc. etc. v. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251* has held that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court is to bear in mind this aspect of delay while exercising its extraordinary and equitable jurisdiction. The Court has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure and pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. The delay comes in the way of equity. Under certain circumstances, delay and laches may not be fatal but in most circumstances, inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. It has also been observed in the said judgment that delay

reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix.

In another judgment of Hon'ble the Apex Court titled as ***Chairman, U.P. Jal Nigam and another vs Jaswant Singh and another*** reported as **2006(11) SCC 464**, the following observations have been made :-

*“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 & 2006 much after their retirement. Whether such person should be granted the same relief or not?*

*7. Learned senior counsel for the appellants has invited our attention to various decisions to impress upon that persons who are guilty of such laches and acquiesced with the situation should not be granted any relief*

*because it is going to cost the Nigam a heavy financial burden to the tune of Rs. 17,80,43,108/-. Therefore, relief should be confined to those persons who were continuing in service and filed their writ petitions in time but not to all and sundry who woke up to file the writ petitions much after their retirement. In this connection, our attention was invited to a decision of this Court in the case of **M/s. Rup Diamonds & Ors. v. Union of India & Ors., reported in (1989) 2 SCC 356**, wherein their Lordships observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, their Lordships held as follows :*

*"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were' not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal. "*

8. Our attention was also invited to a decision of this Court in the case of **State of Karnataka & Ors. v. S.M. Kotrayya & Ors., reported in 1997(1) SCT 359 (SC) : (1996) 6 SCC 267**. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under: "Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under subsection (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in the case of **Jagdish Lal & Ors. v. State of Harvana & ors., reported in 1998(1) SCT 26 (SC) : (1997) 6 SCC 538**, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows : "The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and

*woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."*

**10. In the case of *Union of India & Ors. v. C. K. Dharagupta & Ors.*, reported in 1997(2) SCT 117 (SC) : (1997) 3 SCC 395, it was observed as follows:**

*"We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."*

**11. In the case of *Government of W.B. v. Tarun K. Roy & Ors.*, reported in 2004(1) SCT 78 (SC) : (2004) 1 SCC 347, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows :**

*"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no*

*order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."*

*12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are :*

*(i) acquiescence on the claimant's part; and*  
*(ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."*

*13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in*

*granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”[Emphasis supplied by me”*

It has also been held by Hon'ble the Apex Court in case ***R. Vishwantha Pillai vs State of Kerala and others 2004(2) SCC 105*** that recruitment in service on the basis of fake certificate is no appointment in the eyes of law. The candidate cannot claim any right to the post to which he was appointed on the basis of false/fake certificate as he would not be entitled to the protection provided under Article 311 of the Constitution of India.

Similar view was taken by Division Bench of Patna High Court in case ***Ishwar Dayal Sah vs State of Bihar 1987 Lab. I.C. 390*** as well as in Full Bench judgment of Patna High Court in case ***Rita Mishra vs. Director, Primary Education Bihar, AIR 1988 Patna 26***. The following observation was made in ***Ishwar Dayal's case (supra):-***

*“ If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would*

*necessarily follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned s at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art. 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Art. 311 is not attracted.”*

Similar view was taken in **Rita Mishra's case** (supra), which is as under :-

*“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it.”*

In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition is hereby dismissed not only on the ground of delay but on merits as well.

**(DAYA CHAUDHARY)**  
**JUDGE**

26.07.2017  
**gurpreet**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No