

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 121

Civil Writ Petition No.14763 of 2017 (O & M)
Date of Decision: August 08, 2017

Sita Budhwar

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Anupam Bhardwaj, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. By virtue of this civil writ petition, preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to consider the claim of petitioner for grant of pay scale which was prevalent at the time of her promotion i.e. August 26, 1992 vis-a-vis her juniors, who were promoted and granted higher pay scale vide office order dated October 20, 2000 whereby seven staff nurses were promoted as Nursing Sisters having been allowed the pay scale of ₹ 5800-9200 on promotion which benefit of higher scale has been denied to petitioner, and further that respondents be directed to release arrears of salary after granting benefit of higher pay scale on promotion which was prevalent at the relevant time i.e. August 26, 1992 and release the revised retiral benefits to petitioner from the date it became due.

2. The facts giving rise to instant petition are that petitioner joined as Staff Nurse at Civil Hospital, Pathankot on December 21, 1971. She superannuated on March 31, 2008. During service, she was granted selection grade of ₹ 1640-2925 w.e.f. January 01, 1986 vide Punjab government Notification dated August 21, 1990. She was promoted vide order dated August 26, 1992 as Nursing Sister on November 01, 1992 in the pay scale of ₹ 1640-2925 and she joined as such on November 12, 1992 at T.B. & Chest Hospital, Amritsar. Subsequently, vide order dated September 20, 2000 some Nursing Sisters were promoted and placed in the pay scale of ₹ 5800-9200, however, petitioner has been denied the benefit of higher pay scale on promotion. Petitioner submitted representations dated February 16, 1993, June 25, 1993 and August 05, 2014 but no decision was taken.

3. At the very outset, a query was posed to learned counsel for the petitioner to the effect that as to why petitioner did not prefer any such petition earlier claiming benefits, which have been claimed through the instant petition, but he could not give any satisfactory reply.

4. In the case in hand, petitioner has claimed the relief to consider the grant of pay scale which was prevalent at the time of her promotion i.e. August 26, 1992 vis-a-vis her juniors, who were promoted and granted higher pay scale vide office order dated October 20, 2000 whereby seven staff nurses were promoted as Nursing Sisters having been allowed the pay scale of ₹ 5800-9200 on promotion which benefit of higher scale has been denied to petitioner, and further that respondents be directed to release arrears of salary after granting benefit of higher pay scale on promotion which was prevalent at the relevant time i.e. August 26, 1992 and release the revised retiral benefits. There is a delay of almost 16 years till the

subsequent thereto in filing the petition. Thus, petitioner is guilty of long delay and laches which is suggestive of the fact that she is deemed to have acquiesced or waived off her claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay.

5. In case **Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC) : (1997) 6 SCC 538**, the Hon'ble Apex Court observed that if a person chose to sit over the matter and woke up after the decision of 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.”

In another case **Union of India & others vs. C.K. Dharagupta & others, 1992(2) SCT 117 (SC) : (1997) 3 SCC 395**, it was observed as under:-

“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.”

In **Brijesh Kumar and others vs. State of Haryana and others, 2014 (11) SCC 351**, the Hon'ble Supreme Court has laid down various principles in which law of limitation has legal maxim. While relying upon the judgment in case of **Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785**, the Hon'ble Apex Court principles

regarding delay and laches were laid down which can be summarized as under:-

“ x x x

(v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

x x x

(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

6. A glance at the aforesaid principles makes it crystal clear that increasing tendency to perceive delay as a non-serious matter and, hence, apathetic tendency can be exhibited in a nonchalant manner requires to be curbed.

7. In the light of the legal position discussed above, on the basis of various authoritative pronouncements of the Hon’ble Apex Court, it can be safely observed that instant petition suffers from delay and laches.

8. Dismissed.

August 08, 2017
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No