

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

CWP No.16626 of 2017 (O&M)

Date of Decision:31.07.2017

Amritpal Kaur

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. Kapil Kakkar, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

As per pleadings on record, petitioner was appointed as ETT Teacher under the Punjab State Education Department on 07.12.2001. Channel for promotion from the post of JBT/ETT Teacher is to the post of Master/Mistress under the Punjab State Education Class III (School Cadre) Service Rules, 1978. Petitioner was promoted as Hindi Mistress vide order dated 30.12.2015 and she has joined on the promoted post on 01.01.2016.

The instant writ petition has been filed seeking the writ of mandamus for directing the respondent/authorities to grant to her the benefit of ante dated promotion i.e. to promote the petitioner as Hindi Mistress from the date a person junior to her, namely, Rajni Bala/respondent No.4 has been promoted.

Counsel for the petitioner has been heard at length and the case paper book has been perused.

In the considered view of this Court, Prayer raised by the petitioner cannot be accepted as the claim is highly belated.

The order of promotion of the junior, namely, Rajni Bala to the post of Hindi Mistress dated 10.10.2013 has been placed on record and appended as Annexure P-4. Perusal of the same would reveal that respondent No.4 has been promoted notionally from the date of joining of her junior employee i.e. Smt. Renu Gureja and that such orders of promotion have been passed in pursuance to the order dated 31.10.2012 passed by this Court in CWP No.20904 of 2012.

What clearly emerges is that the present petitioner would also be senior to Smt. Renu Gureja as Rajni Bala has been shown as senior to such employee and the petitioner herself is projecting to be senior to Rajni Bala. On a specific query having been put, Mr. Kapil Kakkar, counsel representing the petitioner concedes that Renu Gureja had been promoted to the Mistress cadre in the year 2007.

In the light of such factual position, the claim of the petitioner seeking promotion to the Mistress cadre would relate back even to the year 2007. Petitioner admittedly was promoted as such in the year 2015. It is in the year 2017 that the petitioner first in point of time is raising a claim to seek ante dated benefit of promotion with effect from the date her junior has been promoted.

It is by now well settled that in matters of promotion and seniority, the aggrieved employee would be obligated to approach the writ Court expeditiously and in any case, within a period of one year from the date of cause of action having arisen. A reference in this regard may be made to the decision of the Hon'ble Supreme Court in **P.S. Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271** and wherein it had been observed as under:

“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 extra-ordinary 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. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

Even the reliance placed by counsel upon the order dated 31.10.2012 passed by this Court in CWP No.20904 of 2012 preferred by Rajni Bala is misplaced. In the writ petition preferred by Rajni Bala/ respondent No.4, directions had been sought to promote her as Hindi Mistress with effect from the date, junior to her had been promoted. This Court at the stage of preliminary hearing itself i.e. on 31.10.2012 had observed that junior to the petitioner had been promoted first in point of time on 19.04.2006 and as such, the prayer raised by the petitioner was belated and suffered from delay and laches. Confronted with such a situation, Mr. Kapil Kakkar, Advocate, who was also the counsel for Rajni Bala had contended that the petitioner was vested with a right for

consideration of promotion to the higher post, if not with effect from the date her junior was promoted but from the present date. Accordingly, in the light of the statement suffered by counsel, the writ petition was disposed of by directing the respondent/authorities to consider the claim of the petitioner for promotion to the post of Mistress in the light of the relevant statutory provisions and such claim was to be considered only prospectively and not retrospectively that is the date her alleged junior had been promoted.

It would be useful to reproduce hereunder the order dated 31.10.2012 passed by this Court while disposing of CWP No.20904 of 2012 in the case of Rajni Bala:

“The instant writ petition has been filed seeking the issuance of directions to the respondents to promote the petitioner as Hindi Mistress with effect from the date persons junior to her have been promoted. It is not a matter of dispute that a junior to the petitioner was promoted first in point of time on 19.4.2006 (Annexure P-2). Accordingly, the prayer as raised in the present writ petition is clearly belated and would suffer from delay and laches.

Faced with such a situation, learned counsel for the petitioner submits that the petitioner would certainly be vested with a right for consideration of promotion to the higher post if not with effect from the date her juniors were promoted but with effect from the present date.

Notice of motion.

On the asking of the Court, Mr. Suveer Sehgal, learned Additional Advocate General, Punjab accepts notice on behalf of all the respondents. Requisite copies of the writ paper book have been furnished to learned State counsel. In view of the order that is sought to be passed by this Court, it will not be

necessary to seek a reply on behalf of the State.

In view of the statement suffered by learned counsel for the petitioner the present writ petition is disposed of in terms of directions being issued to the respondent-authorities to consider the claim of the petitioner for promotion to the post of Head Mistress strictly in accordance with law and in the light of the statutory provisions namely the Punjab State Education Service Class III (School Cadre) Service Rules, 1978 in terms of passing a speaking order within a period of four months from the date of receipt of a certified copy of this order.

It is clarified that the claim of the petitioner for consideration of promotion to the higher post of Head Mistress would be considered only prospectively and not retrospectively i.e. from the date her alleged juniors were promoted.

Petition disposed of.”

In the present case, the petitioner has already been promoted to the Mistress cadre in the year 2015. It is two years thereafter in the year 2017 that a claim seeking ante dated promotion as Mistress is sought to be raised with effect from the date a junior had been promoted. Concededly, Smt. Renu Gureja was junior to the petitioner and had been promoted in the year 2007. Acceptance of the prayer made in the petition would virtually amount to unsettling settled matters.

In the light of dictum laid down by the Apex Court in the case of *P.S. Sadasivaswayy (supra)*, the instant petition is dismissed on the ground of delay and laches.

Petition is dismissed.

31.07.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |