

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

CWP No.21542 of 2016

Date of decision : February 01, 2017

Bharti Prasher

....Petitioner

Versus

The State of Punjab and others

....Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present : Mr. Vijay Rana, Advocate
for the petitioner.

Jaishree Thakur, J.

The petitioner herein has preferred the instant writ petition seeking quashing of the advertisement dated 23.10.2006 (Annexure P-6) and the Corrigendum dated 08.11.2006 (Annexure P-7) with an alternate prayer seeking a writ in the nature of mandamus directing the respondents to invite fresh applications to fill up the left out vacancies.

In brief the facts are that the petitioner had obtained a degree of Bachelor Physical Education from Punjabi University, Patiala in 2003 and also obtained a degree in MA in Physical Education from the same University. In 2006, the respondents advertised 175 posts of PTIs in Regular Pay Scale which number of posts subsequently increased from 175 to 849 by issuing a Corrigendum thereto. The petitioner being desirous of applying for the said post, submitted her application which was not accepted as the qualifications prescribed thereunder for the post in sports quota was that the candidate should possess two years diploma certificate in Physical Education after 10+2 examination. The petitioners application was rejected

on account of the fact that she had a higher qualification. Certain candidates who were aggrieved by non-acceptance of their application forms on account of having a higher qualification, approached this Court and ultimately the matter was heard before a Full Bench of this Court in ***Civil Writ Petition No.451 of 2008 (Manjeet Singh Vs. State of Punjab and others)***. The Full Bench was seized of a question “*as to whether a candidate possessing a higher qualification than the one prescribed and advertised for an appointment to the posts is eligible for such selection/appointment*”. After hearing the matter at great length, the Full Bench held that a candidate possessing higher qualification in the same line cannot be excluded from consideration for selection. It was also held that denying consideration to a candidate having better and higher qualification in the same line and discipline would definitely result in breach of Article 14 and 16 of the Constitution of India. It was on the basis of this judgment that certain persons having higher qualification came to be appointed by the Department.

The petitioner herein has made a two fold prayer, one is for quashing of the advertisement issued in 2006 or in the alternate that a direction be issued to fill up the vacancies/consider the case of those candidates with higher qualification in the same line for the post of PTI.

I have heard counsel for the petitioner and I am of the opinion that argument raised for setting aside and quashing the advertisement issued in the year 2006 is not tenable. It is to be noted that pursuant to the advertisement issued in the year 2006, the selection process was initiated and rights have accrued to the selected candidates who have not been

impleaded as necessary party. Even otherwise , no ground is made out to quash and set aside the selection by quashing the advertisement.

As far as the second ground is concerned, it is found that there is substantial delay in filling of the instant writ petition. The Full Bench came to be decided in the year 2010 which held that a candidate possessing higher qualification could not be excluded from the zone of consideration. The petitioner at that time had an opportunity of asking the Department to consider her case but kept quite over the said matter. She addressed a representation dated 23.11.2012 to the Department asking for consideration of her application form in terms of the judgment referred in *Manjeet Singh's* case (*supra*) and ultimately sent a legal notice on 16.11.2015.

Learned counsel for the petitioner has not been able to inform this Court as to why there has been an inordinate delay in filing of this writ petition. A cause of action accrued to the petitioner immediately after the Division Bench judgment which was passed in the year 2010 and it is not enough reason to state that the delay should be condoned on account of the fact that the petitioner had represented and was awaiting the decision on the representation. There are a catena of judgments which hold that aggrieved persons must approach the Courts within a reasonable time. Even though there is no period of limitation prescribed for the Courts to exercise their powers under Article 226 of the Constitution of India nor is it that a Court can never exercise such power or interfere in a matter after a passage in time, but the Court should refuse to exercise the extraordinary jurisdiction in cases where persons do not approach expeditiously and try to put forwarded stale claims. It has been held in **State of M.P. Vs. Nandlal**

Jaiswal, AIR 1987 SC 251 that the 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 indolent, by further holding that if an inordinate delay on the part of the petitioner in filing a petition is not explained satisfactorily, the High Court may decline to intervene and grant relief. It is held in “**Shankara Cooperative Housing Society vs. M. Prabhakar and others reported in (2011) 5 SCC 605**” that mere filing of representation would be no ground to cover the delay.

Therefore, this Court is of the view that petitioner has slept over the matter for over 6 ½ years and, therefore, there is no ground made out to interfere in the selection process that was initiated in the year 2006.

The writ petition stands dismissed accordingly.

(JAISHREE THAKUR)
JUDGE

February 01, 2017

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No