

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 114

Civil Writ Petition No.17989 of 2017 (O & M)
Date of Decision: August 16, 2017

Kewal Krishan Bharl

..... PETITIONER

VERSUS

The Principal Secretary, Department of Higher Education, Government of Punjab & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Sunil Parti, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. By virtue of instant civil writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari, quashing inaction of respondents in not granting the benefit of senior scale, selection grade and placement as per 4th pay commission as well as issuance of a writ in the nature of Mandamus, directing the respondents to immediately release the benefit of senior scale, selection grade and placement in 4th pay band during pendency of present writ petition.

2. Petitioner was selected and joined as Librarian on January 18, 1983 in Dayanand Ayurvedic College, Jalandhar, affiliated to respondent No.5 – Guru Nanak Dev University, Amritsar, in the pay scale of ₹ 350-

Government granted pay scale of ₹ 700-1600/- to Librarians and Physical Education Professionals at par with Lecturers w.e.f. April 01, 1980 subject to fulfillment of conditions laid down therein. On March 16, 1984, services of petitioner were confirmed by respondent No.3 after completion of probation period w.e.f. February 01, 1984. On October 28, 1984, petitioner was transferred to KRM DAV College, Nakodar by respondent No.3 – DAV Colleges Managing Committee where he joined on November 29, 1984 under respondent No.4. On April 06, 1984, Notification dated February 18, 1983 was adopted by respondent No.2 but despite that, petitioner was not given due benefit of pay revision whereas his junior employee namely K.S. Dhillon was granted the said benefit from back date. Petitioner represented the authorities claiming benefit of aforesaid notification but to no avail. He also served a legal notice dated June 10, 2016. Constrained with these circumstances, he preferred the instant writ petition.

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 claiming benefits, which have been claimed through the instant petition at an early stage, but he could not give any satisfactory reply. There is an inordinate delay of more than 2 decades in making representations, serving legal notice as well as in filing the petition. Thus, petitioner is guilty of long delay and laches which is suggestive of the fact that he is deemed to have acquiesced or waived off his claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay.

4. 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

“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.”

5. 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.

6. Adverting to the case in hand, petitioner has claimed benefit of senior scale, selection grade and placement as per 4th pay commission from the due date as per Notification dated February 18, 1983 which was adopted by respondent No.2 – Director Public Instructions (Colleges), Punjab on April 06, 1989. The representation for grant of aforesaid benefit was made on October 22, 2005 i.e. after a period of approximately 15 years and the instant petition has been filed on May 03, 2017 i.e. after approximately 12 years of filing of aforesaid representation. In view 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.

7. Dismissed.

August 16, 2017
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No