

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24181 of 2014
DECIDED ON: August 24, 2017

TARSEM LAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ranjivan Singh, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, the petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to grant deemed promotion as Head Master w.e.f. the date of his juniors have been promoted as such vide office order dated 25.04.2000 (P-2) in view of govt. instructions dated 21.08.2009 (P-3) and judgment dated 26.08.2009 passed by this Court in CWP No. 11574 of 2009, titled as “*Sukhdev Singh v. State of Punjab*” along with consequential benefits like re-fixation of pay/retiral benefits, arrears etc. along with interest.

2. In response to the notice of motion issued by this Court on 27.11.2014, the respondents have filed an affidavit of Mr. Lalit Kishore Ghai,

Assistant Director (S.A.-1), O/o Director Public Instructions (S.E.), Punjab Mohali on behalf of respondents wherein certain objections including the non-maintainability of writ petition on the ground of delay and laches as well as non-applicability of judgement referred to above have been taken.

3. Concededly, the petitioner joined the respondent Department as Math Master on 04.09.1971. In the year 2000, when he was posted at Govt. High School, Marauli Kalan (Ropar) his name was forwarded for consideration for promotion as Head Master. However vide order dated 25.04.2000 (Annexure P-2) number of junior Masters/Mistresses, including the juniors of the petitioner from seniority No. 5186 onward were ordered to be promoted as Head Masters/Mistresses but the said benefit of promotion was declined to the petitioner on account of six negative results, though his ACRs were upto the mark. On 31.01.2003, he stood retired on attaining the age of superannuation.

4. The contention of learned counsel for the petitioner is that the matter with regard to the promotion as Head Masters/Mistresses on the basis of positive/negative result was challenged by some aggrieved Masters/Mistress by way of CWP No.11574 of 2009, titled as ***“Sukhdev Singh vs. State of Punjab”*** on the ground that no such criteria/provision was laid down in the statutory rules namely Punjab State Education Services Class III (Service Cadre) Rules 1978 and thus, ignoring the teachers for promotions on account of negative results is contrary to the said rules.

5. During the pendency of said writ petition, the Department of Education issued memo No.1/553/09-5Edu.2/5448 dated 21.08.2009 (Annexure P-3) whereby instructions dated 09.06.2005, vide which, criteria of

negative/positive result was laid down, was withdrawn and it was decided that cases of all employees who have been ignored for promotion earlier on the said account should be reviewed. Subsequent thereto, petitioner moved representation and also served legal notice dated 30.07.2012 (Annexure P-6) upon the respondents-Department for consideration of his promotion as Head Master w.e.f. the date his juniors were promoted but it did not yield any result. Learned counsel for the petitioner further contends that after withdrawal of the instructions dated 09.06.2005, petitioner should have also been considered for promotion.

6. On the other hand, learned State counsel has controverted the various submissions made by learned counsel for the petitioner contending that firstly the instant petition suffers from delay and laches and secondly, the petitioner was not promoted as Head Master in the month of April 2000. The instructions, if any, have withdrawn vide letter dated 21.08.2009 (P-3) relates to the instructions dated 09.06.2005 whereas the petitioner stood retired on 31.01.2003 i.e. much prior to the issuance of those instructions. The withdrawal of instructions dated 09.06.2005 does not in any way affect the case of the petitioner. She accordingly, prayed for dismissal of instant petition with special cost.

7. This Court has weighed the rival contentions put forth by learned counsel for the parties and has also gone through various documents available on file. The petitioner was considered for promotion in the year 2000 and ultimately, promotion was declined whereas the other Masters and Mistresses were promoted vide order dated 25.04.2000 (P-2). Subsequent thereto,

petitioner stood retired on 31.01.2003. As far as ***Sukhdev Singh's*** case (supra) referred to above is concerned, petitioner cannot be derived any benefit therefrom. The instructions were issued in the year 2005 after the retirement of the petitioner. Moreover, when Sukhdev Singh and others were granted the promotion, there is/was no challenge to any such instructions issued by the Government prior to the retirement of the petitioner. As such, petitioner cannot claim any benefit on the basis of judgment rendered in case ***Sukhdev Singh's*** case (supra) or the withdrawal of instructions dated 09.06.2005 vide letter dated 21.08.2009 (P-3).

8. Taking the case of the petitioner from another angle, instant petition suffers from delay and laches. The petitioner was not granted the promotion while passing order dated 25.04.2000 when some of his senior/junior colleagues were promoted. He did not lay any challenge to the said order for the reasons best known to him and only relied upon the judgment passed in ***Sukhdev Singh's*** case (supra). Instant petition was preferred in the month of November 2014 i.e. after about 1½ decade from the passing of order dated 25.04.2000 which has also not been challenged through the instant petition and 12 years after his retirement. Further, instant petition was filed after 6 years from passing of order dated 26.08.2009, on which, petitioner has placed reliance. So, there is no explanation what to talk of any plausible explanation for such delay. In case ***S.S. Rathore vs. State of Madhya Pradesh, AIR 1989 Supreme Court 10***, the Full Bench of Hon'ble Apex Court has held that where a statutory remedy is provided in the service rules or other law, the aggrieved employee can approach the court for redressal of his/her grievance within a period of three years from

the date of accrual of cause of action. In the said case, civil writ petition was held to be hopelessly time barred and also suffering from the vice of delay and latches, therefore, the civil writ petition was rejected with costs. Similarly, in another case ***Chairman, U.P. Jal Nigam & another vs. Jaswant Singh & another, 2007(1) SCT 224; 2006(11) SCC 464***, it was observed that the litigant who is guilty of long delay and latches is deemed to have acquiesced or waived off his claim or right. The Hon'ble Apex Court has gone to the extent while holding that those who initiated action in time and got the relief from the court, similar orders cannot be claimed ignoring the long and unexplained delay by others also who were not vigilant enough. In another case ***Brijesh Kumar & others vs. State of Haryana & others, 2014(11) SCC 351; 2014(4) Scale 50***, while dealing with the law of limitation, especially the delay and latches, the Hon'ble Apex Court observed the following:-

“(i) The law of limitation is enshrined in the legal maxim “Interest Reipublicae Ut Sit Finis Litium” (it is for the general welfare that a period be put to litigation) – rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

(ii) A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by law. AIR 1941 PC 6, 1997 (4) RCR (Civil) 242, relied.”

9. In the light of the above narrated facts, petitioner is aggrieved of

order dated 25.04.2000 whereby he was not promoted and some of his colleagues were promoted as Head Masters/Mistresses but there is nothing on the record to suggest as to why the petitioner slept over the matter prior to the filing of the instant petition. Similarly, even after his retirement in the year January 2003, a period of 12 years has elapsed during which, he did not opt to knock the doors of this Court and a period of 6 years has elapsed from the date of issuance of instructions if any. Besides it, instructions dated 09.06.2005 were withdrawn, qua which, Sukhdev Singh etc. were aggrieved. Subsequently, they were given promotion after the withdrawal of said instructions dated 09.06.2005 vide letter dated 21.08.2003 (P-3). Moreover, when petitioner was not granted the promotion in the year 2000, instructions dated 09.06.2005 were not in operation and have been passed after his retirement. Thus, taking the case of the petitioner from any of the angles, he deserves no concession.

10. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed but with no order as to costs.

August 24, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned ***Yes***

Whether reportable ***Yes***