

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

CWP No.25942 of 2014 (O&M)

Date of Decision: 10.10.2017

Kirandip Singh & another

... Petitioners

Versus

State of Punjab & others

... Respondents

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

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Sunil Garg, Advocate for the petitioners.

Mr. Avinit Avasthi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

Petitioners seek issuance of a writ of mandamus for directing the respondent/Education Department, State of Punjab to consider them eligible and to appoint them to the post of PTIs against the posts advertised on 28.03.2001.

Brief facts are that the Education Department, State of Punjab issued advertisement dated 28.03.2001 inviting applications for recruitment to various posts including 175 posts of PTIs (male) and 175 posts of PTIs (female). The essential educational qualifications prescribed in the advertisement was “matric along with certificate in physical education” recognized by the Government of Punjab. The petitioners having applied for the post in question were excluded from consideration on the basis that they possess Bachelors Degree in Physical Education whereas the educational qualifications prescribed as per advertisement was matriculation with

certificate course in physical education.

Counsel would contend that the petitioners were having higher qualifications than prescribed in the advertisement in the same line and as such, could not have been denied consideration for appointment to the post in the light of the Full Bench judgment of this Court dated 02.02.2010 passed in **CWP No.451 of 2008 tiled as Manjit Singh Vs. State of Punjab & others**. Mileage is sought to be drawn from the order dated 12.03.2013 passed by a Division Bench of this Court in **LPA No.1214 of 2012 (Amardeep Singh & others Vs. State of Punjab & others)**, wherein directions had been issued to consider the candidature of the appellants therein to the post of Physical Training Instructors, in case, they are otherwise suitable for appointment and against available post.

Senior counsel would vehemently contend that the appellants in LPA No.1214 of 2012 were identically situated as the petitioners herein, inasmuch as, they also possessed higher qualifications in the same line i.e. Bachelors and Masters in Physical Education and had also applied for the post of PTIs in response to the same very advertisement dated 28.03.2001. It is urged that posts in relation to advertisement dated 28.03.2001 are still lying vacant and as such, on the touchstone of Articles 14 and 16 of the Constitution of India, the present petitioners are vested with a right to be considered for appointment as PTIs in terms of the directions issued by the Letters' Patent Bench in LPA No.1214 of 2012. Further contended that the order and judgment dated 12.03.2013 passed in LPA No.1214 of 2012 had furnished a cause to the petitioners and on the basis of which, a legal notice dated 04.03.2014 (Annexure P-2) had been served but which has evoked a

negative response vide communication dated 12.08.2014 (Annexure P-3).

Per contra, learned State counsel would contend that the advertisement for the post was issued in the year 2001 and the recruitment process had been completed long back and as such, the writ petition deserves to be dismissed on account of delay and laches.

Having heard counsel for the parties at length, this Court is of the considered view that the petitioners are setting up a highly belated claim and as such, the prayer raised in the instant petition cannot be accepted.

There is no justification coming forth as regards the inordinate delay in having approached the writ Court. There is also no explanation put forth by the petitioners as to why the prayer and claim raised in the instant petition was not agitated by the petitioners at the very threshold i.e. in the year 2001 itself when they were excluded from consideration to the post in question in response to the advertisement dated 28.03.2001. The entire thrust of the submissions advanced by counsel is that the similarly situated employees having approached this Court have been granted relief.

The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464**. In such case, certain employees raised the issue that they were not liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated,

filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356**; **“Jagdish Lal v. State of Haryana, (1997)6 SCC 538** and **Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347**, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-

“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of

years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others."

The issue of delay was also dealt with by this Court in **Tarsem**

Pal vs. Punjab State Power Corporation Limited and others, 2013

(3)SLR 314. In the case of Tarsem Pal(supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005.

Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as

per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action. 13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”

Adverting back to the facts of the present case, the present

petitioners cannot be permitted to gain any impetus from the order and judgment dated 12.03.2013 in LPA No.1214 of 2012. In this regard, it may be observed that the appellants therein had approached this Court in the year 2001 itself in terms of filing CWP No.11456 of 2001. The writ petition finally matured for hearing in the year 2012 and was dismissed by the learned Single Judge vide order dated 20.04.2012. Resultantly, LPA No.1214 of 2012 arose and while issuing certain directions in favour of the appellants therein, it was specifically noticed by the Letters' Patent Bench that the petitioners/appellants had challenged the action of the respondents in rejecting their candidature by filing the writ petition in the year 2001 itself.

The appellants therein were vigilant as regards their rights. Petitioners herein have slept over the matter. It is only after passing of order dated 12.03.2013 in LPA No.1214 of 2012 that the petitioners woke up and served a legal notice dated 04.03.2014. This Court would have no hesitation in terming the present petitioners as fence-sitters. The petitioners do not deserve to be treated at par with the appellants in LPA No.1214 of 2012 in relation to a recruitment process initiated vide advertisement dated 28.03.2001. The petitioners having been excluded from consideration for appointment to the post of PTIs in the year 2001 itself have chosen to agitate the matter by filing the instant writ petition in the year 2014. The instant petition suffers from vice of delay and laches.

That apart, a Coordinate Bench of this Court in **CWP No.14700 of 2016 (Gurmeet Rani & another Vs. State of Punjab & another)** had examined precisely the same very prayer and dismissed the petition on the ground of delay and laches. Facts of the case in **Gurmeet Rani's case**

(supra) were that the petitioners therein had also applied for the post of PTIs in response to the advertisement dated 28.03.2001 and possessed higher qualifications in the same line. They had also approached the writ Court at a belated stage i.e. in the year 2016 by placing reliance upon the Full Bench judgment of this Court in **Manjit Singh's case (supra)** and also upon the order dated 12.03.2013 passed in LPA No.1214 of 2016. The petitioners therein had served a legal notice upon the respondent/department first in point of time on 04.06.2016. By referring to a number of judicial precedents, their claim for appointment to the post of PTIs was negated on the ground of delay.

The instant writ petition, as such, is dismissed on the ground of delay and laches in view of the reasons recorded in this order as also in view of the judgment dated 25.07.2016 passed by a Coordinate Bench in **Gurmeet Rani's case (supra)**.

Petition is dismissed.

10.10.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

(i) Whether speaking/reasoned?	Yes
(ii) Whether Reportable?	Yes