

C.W.P. No. 22503 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 22503 of 2017

DATE OF DECISION:03.10.2017

Manjit Kaur

.....Petitioner

Versus

Punjab State Power Corporation Ltd. & Ors.

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Joginder Pal Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 22.2.2017 (Annexure P-7), whereby, the representation of the petitioner has been rejected and her seniority has not been fixed correctly.

Briefly, the facts of the case as made out in the present petition are that the petitioner is presently working as Junior Plant Attendant in the office of respondent No.5. Her seniority was fixed at Sr. No. 612 in the list of unskilled workers i.e. Coal Sampler/Water Sampler/Khalasi etc. circulated vide memo dated 1.4.1998 for the period from 1.1.1994 to 31.12.1996. On issuance of said seniority list, objections were invited regarding fixation of seniority. The petitioner also filed objections through

proper channel but the same were rejected vide order dated 22.2.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that objections filed by the petitioner were not considered properly and her claim has wrongly been rejected. The petitioner was entitled to seniority No. 487-A i.e. above seniority No. 488 of one Devi Singh S/o Ranjit Singh, which was to be allotted to the petitioner as per her date of joining i.e. 14.2.1994 on regular basis. Learned counsel further contends that the petitioner was working as skilled worker, which is of higher category than the unskilled worker and as such the seniority number of the petitioner cannot be allotted to lower category of unskilled workers i.e. Coal Sampler/Water Sampler/Khalasi etc. Learned counsel also contends that recently another seniority list of unskilled workers has been issued by respondent No.2 in which all the unskilled workers i.e. Coal Sampler/Water Sampler/Khalasi have been allotted seniority numbers by considering their date of joining. It is also the argument of learned counsel for the petitioner that when the seniority list of skilled workers was circulated, the petitioner also made representation but without mentioning any reason, her claim has been rejected. At the end, learned counsel for the petitioner contends that the impugned order of rejection of claim is not only illegal, unfair but unreasonable also due to which the petitioner has suffered a great loss as she has been made junior viz-a-viz other persons.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order dated 22.2.2017 (Annexure P-7) and other documents available on the file.

The facts relating to appointment of the petitioner and filing of

objections to the seniority list are not disputed. The petitioner was appointed on the post of officiating unskilled worker vide letter dated 10.2.1994. She was put on probation for a period of two years. It was also mentioned in the appointment letter that on completion of probation period successfully, the appointment was to be considered as provisional till she was confirmed on the said post. A tentative seniority list of unskilled workers i.e. Coal Sampler/Water Sampler/Khalasi for the period ending 1.1.1994 to 31.12.1996 was issued, to which, objections were invited from all the employees. The petitioner also made representation by way of filing objections on 14.10.2016. However, said representation of the petitioner was rejected vide order dated 22.2.2017 stating therein that vide letter dated 15.10.1998, she had already been informed regarding her seniority. It was also mentioned that the seniority list was prepared on the basis of merit and accordingly seniority number was allotted to her. However, the details regarding date of birth, category, qualification, date of joining on daily wages/work charge basis, total experience and also date of joining on the present post were mentioned. As per the details, the petitioner has been shown to have been appointed on daily wages/work charge on 7.9.1988 and total period has been shown to be 4 years, 3 months and 24 days as on 31.12.1992. The date of present posting has been shown to be 12.2.1994, meaning, thereby the petitioner was well aware about her seniority number as the same was conveyed to her vide letter dated 11.2.1997. Impugned order dated 22.2.2017 is only communication of the earlier order.

The petitioner has not been able to justify the delay in challenging the order of communication dated 15.10.1998. At present the petitioner is working as Junior Plant Attendant in the office of

Superintending Engineer (Operation) and is claiming seniority by considering the initial date of appointment on daily wages/work charge basis. Now the seniority list has been challenged on the ground that the petitioner was working as Skilled worker, which is of higher rank than the unskilled worker, without challenging the seniority list issued in the year 1998. The petitioner joined as regular unskilled worker on 14.2.1994. It is also the argument of learned counsel for the petitioner that seniority lists of unskilled workers and skilled workers have been issued and the petitioner is claiming re-fixation of her seniority only on the ground that she was skilled worker but was appointed as unskilled worker. The petitioner herself accepted her appointment and never challenged the seniority list of unskilled/skilled worker. The impugned order is only the communication, whereas, it has already been decided.

The Court has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether it is at a belated stage and is to be entertained or not. The petitioner has approached this Court by moving representation after a longer period, whereas, her claim had already been rejected in the year 1998 but it was never challenged. While exercising power under Article 226 of the Constitution of India, the Court is to see that the discretion must be exercised judiciously and reasonably. In a judgment rendered in case of **Rupinder Singh Vs. State of Haryana and others** 2016 (1)SCT 565, Hon'ble the Apex Court has observed that the petitioner approached the court after a long delay and a legal notice was served upon the respondents

after a period of seven years. It was held that appointment could not be claimed as a matter of right as not only delay was there but reasons for approaching the Court after a long delay were not explained.

In another judgment of this Court in ***Vironika vs State of Punjab and others 2016(2) SCT 814***, the process of selection was initiated in the year 2011 and the petitioner in that case approached the Court in the year 2015. It was held that no fresh cause of action arose in favour of the petitioner and since the petition suffered from delay and laches and the writ petition was dismissed on the ground of delay only.

Similarly, in ***Mahender Singh Malik vs State of Haryana and others 2016(2) SCT 40***, the claim of the petitioner was dismissed on the ground of delay by holding that the petitioner in that case had slept over his rights and woke up only when orders were passed in the cases filed by some other persons. It was held that the petitioner could not be allowed to ride piggyback on other employees, who were vigilant about their rights and approached the Court well within time for the vindication of their grievances.

In a judgment of Division Bench of this Court in ***Yash Paul Raheja vs Union of India and others 2016(2) SCT 821***, the petitioner approached the Court by moving representation after a delay of more than twenty years and his claim was declined on the ground of delay. It was held that the petitioner was not entitled for any relief on account of principle of delay and laches.

Hon'ble the Supreme Court in ***Chandigarh Administration vs Jagjit Singh 1995(1) SCC 745***, has held as under :-

““In other words, the High Court cannot ignore the law and

the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.”

Hon'ble the Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T. T. Murali Babu** reported as **2014 (2) S.C.T. 193** has held as under :-

*“13. First, we shall deal with the facet of delay. In **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others [AIR 1969 SC 329]** the Court referred to the principle that has been stated by Sir Barnes Peacock in **Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [1874 (5) PC 221]**, which is as follows :-*

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet

put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

In ***State of Maharashtra v. Digambar, 1995 (4) SCC 683***, while dealing with exercise of power of the High Court under Article 226 of the Constitution, Hon'ble the Apex Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

In ***State of M.P. and others etc. etc. v. Nandlal Jaiswal and***

others etc. etc., AIR 1987 SC 251, Hon'ble the Apex Court observed that it is well settled that 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 the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

The above view of the Apex Court was followed in a recent judgment rendered by this Court in ***Suraj Mal vs. State of Haryana*** reported as ***2015 (1) SCT 31***, wherein it has been held as under :-

“9. In view of the above authoritative enunciation of law by Hon'ble the Supreme Court and this Court, the present writ petition filed by the petitioner nearly after 9 years of his retirement to claim certain benefits, which may be due to him while in service, certainly deserves to be dismissed on account of delay and laches as there is no satisfactory explanation available for delay.”

The benefits of a decision rendered in the case of similarly placed persons cannot straightway be given to a person, who himself approaches the Court belatedly. For getting relief from the Court, he is required to satisfactorily explain the delay on his part in approaching the Court.

In the present case also the claim of the petitioner was already rejected way back in the year 1998. The petitioner has now challenged only the communication, which is in pursuance of earlier order dated 15.10.1998. No ground is made out to interfere at this stage and as such the petition being devoid of any merit is hereby dismissed.

October 03, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No