

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 4613 of 2013

Date of decision: 27.01.2017

E/ASI Permanand

...Petitioner

Vs.

The State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Aditya Yadav, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. BAJANTHRI, J.(ORAL)

In the instant writ petition, the petitioner has questioned the validity of the order dated 22.01.2012 (Annexure P-5) by which petitioner's claim for deem date seniority over and above his junior, has been rejected.

Learned counsel for the petitioner submits that vide order dated 22.01.2012, the petitioner's claim for deem date of seniority has been rejected by assigning two reasons one is that the petitioner owing to his chequered service record and benchmark was fixed in the year 2007 by means of instructions the petitioner's grievance is alleged back to 2002, 2003, 2004 and 2005 for the purpose of enlistment in List B under 35% category.

Learned counsel for the petitioner submitted that in an identical matters, Division Bench of this Court on 22.10.2008 while disposing of CWP No. 19965 of 2006 considered the delay issue stating that each and every person need not approach this Court. It is for the State to rectify the mistake when the claim of the employees are identical with any other similar situated persons whoever obtained order in favour of them on judicial side. Therefore, learned counsel for

the petitioner submitted that question of delay and laches do not arise in the present case. On the other hand learned counsel for the respondent submitted that the petitioner claim for enlistment in List B under 35% category was considered in 2002, 2003, 2004 and 2005 and he was not selected. Therefore, cause of action accrued to the petitioner at the best in the year 2005-06 whereas for the first time he has approached the authorities in the year 2012 after disposal of CWP No. 13020 of 2001. Thus, there is an enormous delay and laches on the part of the petitioner who is not entitled for relief sought in the present petition. In fact respondents have passed the order dated 22.02.2012 and they have taken note of the grievance of the petitioner that it is highly barred by time.

Heard learned counsel for the parties.

Question for consideration in the petition whether the petitioner is entitled for deem date of eligibility and seniority during the period from 2002 to 2005 or 2007. The petitioner's name was considered and rejected for the purpose of enlistment in list B under 35% category for the year 2002, 2003, 2004 and 2005. Therefore, cause of action accrued to the petitioner in the year 2005 and 2006. Merely because some orders were passed in identical cases the petitioner opened his eyes in the year 2012 and seeking for deem date of seniority from the date of juniors. The petitioner has failed to implead his juniors who have been granted the benefit of enlistment in list B under 35% category whose names have been considered way back in the year 2002, 2003, 2004 and 2005. At this stage if the petitioner's claim is considered and given the effect, the juniors service would be affected who were not parties to the present proceedings. In so far as the decision cited by the petitioner in the case of Balraj Singh and Others Vs. State of Haryana and Others in CWP No. 19965 of 2006 disposed of on 22.10.2008

wherein this Court had held that there is no delay and laches on the score that identical persons whoever approach this Court and obtained orders similar benefit is required to be extended. In the said case the Division Bench has not considered the issue relating to the rights of the third party would be affected if the petition is allowed and the petitioner is granted benefit of deem date of seniority from the date of juniors. Junior's right have been already accrued during the period from 2002 to 2007 and they have not been added as party and without hearing them their right to seniority cannot be taken away. Hence, the cited decision is distinguishable to the extent that non impleading the concerned respondents whose rights would be affected.

Petition stands Dismissed.

At this stage learned counsel submitted that petitioner had added one of his junior namely Constable Chandgi Ram as 5th respondent. Perusal of the zimni order dated 26.01.2014 his name has been deleted.

January 27, 2017

Poonam (II)

(P.B.BAJANTHRI)
JUDGE

Whether speaking/ reasoned: Yes

Whether Reportable: No