

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Civil Writ Petition No.8004 of 2015
Decided on : 20.09.2017**

Harinder Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Y.P. Malik, Advocate for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J.

In the present writ petition filed under Article 226 of the Constitution of India, the petitioner challenges the order dated 14.11.2003 (Annexure P-11 colly.), whereby his request for being taken back in service and claiming regularization has been denied to the post of Punjabi Teacher in District Karnal to which he stakes claim on the ground that the principle of “first come last go” should have been adopted. It is his case that the said order was communicated only to him on 04.11.2014 (Annexure P-11 colly.) and, therefore, it is open to challenge even at this stage after a period of 12 years.

It is his pleaded case that he was an applicant against the advertisement of vacancies dated 19.08.1997 by the respondent and interviewed and selected alongwith others by the duly constituted selection committee, after considering the claim of all other eligible candidates. He was appointed against the sanctioned post as Punjabi Teacher for 89 days vide appointment letter dated 25.09.1997 (Annexure P-1) and joined on 01.10.1997. His work and conduct being satisfactory, it was extended from time to time and he was relieved on 22.05.1998 (Annexure P-2) arbitrarily

that a regular candidate has come to replace him.

It is not disputed that he filed CWP No.13276 of 1999 before this Court, wherein he sought direction of reinstatement on the said post of Punjabi Teacher, since persons appointed after him were still continuing and to pay the petitioner regular pay scale instead of consolidated salary of ₹3,500/- per month. The said relief had been claimed in view of the principle laid down by the Division Bench in **'Polu Ram and another Vs. State of Haryana and another 1998 (4) RSJ 152**. The said writ petition was admitted on account of the contest by the State. However, instead of taking it to its logical end, an application was filed by the petitioner to get it disposed of with the direction that the respondent should decide his representation dated 09.04.2003 (Annexure P-4). Resultantly, the following order was passed by this Court on 12.08.2003.

“Petitioner has filed this petition for issuance of a writ in the nature of mandamus directing the respondents to reinstate him in service on the post of Punjabi Teacher and to pay him regular pay scale.

During the pendency of the writ petition, petitioner submitted the representation dated 09.04.2003 (Annexure P-5). Petitioner has now moved the present application for a direction to the respondents to decide his representation (Annexure P-5). Notice of the application was issued to A.G. Haryana. Learned counsel for the respondents states that the service of the petitioner have been terminated.

Keeping in view the aforesaid, the respondents are directed to decide the representation of the petitioner within three months from the date of receipt of a certified copy of the order.

Disposed of”

It is his case that in compliance of direction issued by this Court, no communication was received by him. He was informed that no post of Punjabi Teacher was lying vacant as he sought information under the RTI. Resultantly, he sent a legal notice dated 03.05.2014 (Annexure P-8) and thereafter vide communication dated 04.11.2014 (Annexure P-11 colly.) he was communicated the order dated 14.11.2003 (Annexure P-11 colly.), which now he challenges that a junior to him namely Gulpawan Kaur had been appointed on 14.10.1997 and joined only on 22.10.1997 and therefore the regular appointee had joined against her, but should have been posted at the place where she has been posted and she should have been accordingly relieved.

Mr. Y.P. Malik, accordingly contended that on account of the fault of the respondent, the petitioner should not be prejudiced as such and, therefore, places reliance upon the judgments passed in **CWP No.13160 of 1998 'Tejbir Singh and others Vs. State of Haryana and others'** decided on 10.05.1999 (Annexure P-12) and **CWP No.12586 of 1999 'Raj Bir and others Vs. State of Haryana and others'** decided on 03.07.2002 (Annexure P-13). He accordingly submits that similarly situated persons appointed on contract basis have been granted the benefit of regularization and **LPA No.741 of 2016 'The State of Haryana and others Vs. Rajesh Kumar'** has also been dismissed on 26.07.2016 (Annexure P-14).

The State in its written statement has taken a very valid plea

that after more than 12 years, the order has been impugned. It has been categorically mentioned that the petitioner also remained dormant from 12.08.2003 to 04.03.2014 and, therefore, he has no locus standi to raise a stale claim. It is further also submitted that the present writ petition is barred under the principles of constructive *res judicata* under Order 2 Rule 2 CPC, in view of the earlier writ petition having been dismissed on 12.08.2003. The impugned order passed by the District Education Officer rejecting his claim had been duly endorsed to the petitioner, but he never challenged the said order within reasonable time. The factum of the engagement on contract basis has not been denied to contend that on joining of regular hand, the contract could have been terminated which has duly been done on joining of Shri Jasmer Singh on 22.05.1998. The petitioner had been engaged on contract basis for 89 days as Punjabi Teacher i.e. C&V Cadre Post and the Haryana School Education Service Rules, 1998 were applicable, but now those rules had been repealed. New Service Rules, 2012 had been notified on 11.04.2012 and it was a diminishing cadre. A Punjabi Teacher had to be a trained Graduate Teacher in Master/TGT Cadre and, therefore, no benefit of reinstatement could be granted at this stage.

After hearing counsel for the parties, this Court is of the opinion that the petitioner may have had a valid legal right at the time of being relieved on 22.05.1998 (Annexure P-2) as there is an admission as such by the State in the impugned order that the regular appointee had not joined at the place where Gulpawan Kaur was posted, but joined another

place after getting the change of place from the DSE Haryana. It was on this account that instead of Gulpawan Kaur, the petitioner was relieved, but however it was on that account he had filed CWP No.13276 of 1999 seeking reinstatement. The prayer clause in the said writ petition was as under:-

“Civil Writ Petition Under Articles 226/227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to reinstate the petitioner in service on the post of Punjabi Teacher since persons appointed after the petitioner are still continuing and to pay the petitioner regular pay scale instead of consolidated salary of ₹3,500/- P.M. from the date of his initial appointment, in view of the law laid down by this Hon'ble Court in CWP No.18835/97 decided on 17.4.98 from the date of his initial appointment. And to issue any other appropriate writ, order or directions, as this Hon'ble High Court may deem fit and proper under the peculiar facts and circumstances of this case.”

From the above, it would be clear that persons appointed after him were still continuing and in such circumstances he challenged the relieving order dated 22.05.1998. For reasons best known to him he chose consideration of his representation dated 09.04.2003 (Annexure P-4) and therefore now cannot turn around and say that the order as such relieving him was wrong, once he had given up the challenge to the relieving order. After directions were issued by this Court to decide his representation vide order dated 12.08.2003, copy of impugned order had been duly endorsed to him.

He never approached this Court at that stage saying that the

order had not been complied with. Even the legal notice dated 03.05.2014 (Annexure P-8) does not talk about any non compliance. It is only on 29.08.2014 (Annexure P-10) a legal notice was served that no steps had been taken to comply with the orders of this Court. A photocopy of the postal receipt would go on to show that notice was issued on 29.09.2014 which was accordingly duly replied on 04.11.2014 (Annexure P-11 colly.), whereby the impugned order was communicated to the petitioner. A perusal of the same would go on to show that it was earlier endorsed to the petitioner, which was the specific stand of the State.

It is, thus, apparent that the petitioner was well aware of his claim having been rejected in the year 2003, but never objected within a reasonable time. Reliance can also be placed upon the judgment of the Apex Court in **State of Uttaranchal & another Vs. Sri Shiv Charan Singh Bhandari & others 2013 (9) SCR 609** wherein it has been held that non-challenge of ground of promotion, as such, for 6 years, would debar the employees to seek consideration afresh and thereafter, to claim seniority, having accepted the position. Reliance upon the judgments in **C.Jacob Vs. Director of Geology & Mining (2008) 10 SCC 115** and **Union of India Vs. M.K.Sarkar (2010) 2 SCC 59**, apart from other judgments was accordingly made. Relevant observations read as under:

“The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s

direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another, 2006 (2) S.C.T. 417 : (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. [In State of Orissa v. Pyarimohan Samantaray](#) (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in [State of Orissa v. Arun Kumar Patnaik](#), (1976) 3 SCC 579.

17. [In Bharat Sanchar Nigam Limited v. Ghanshyam Dass](#) (2) and others, 2011 (2) S.C.T. 712 : (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in [Jagdish Lal v. State of Haryana](#), 1998 (1) S.C.T. 26 : (1997) 6 SCC 538, and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. [In State of T.N. v. Seshachalam](#), 2007 (4) S.C.T. 472 : (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service

benefit, has ruled thus: -

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. [Article 14](#) of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in [Ghulam Rasool Lone v. State of Jammu and Kashmir and another](#), 2010 (1) S.C.T. 169 : (2009) 15 SCC 321.

20. [In New Delhi Municipal Council v. Pan Singh and others](#), 2007 (2) S.C.T. 601 : (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under [Article 226](#) of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in [P.S. Sadasivasway v. State of Tamil Nadu](#), (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there

can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh

Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

In **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu 2014 (4) SCC 108**, the order of dismissal challenged successfully before the High Court, was set aside on the ground of delay and laches, by holding that it does not foster the cause of justice, but brings injustice as it is likely to effect others precious ripened rights.

As noticed the petitioner's cadre is also a diminishing cadre and at this stage directions for the petitioner to be taken back in service cannot be issued and Gurpawan Kaur has not even been impleaded as party. Merely because similarly situated persons in CWP Nos.13160 of 1998 and 12586 of 1999 had chosen to take their litigation to its logical end and get positive orders in their favour on the principle of “first come last go” not being adhered to, the petitioner cannot seek the said benefit and that also for the second time at this belated stage.

Accordingly, there is no merit in the present writ petition and the same is accordingly dismissed.

SEPTEMBER 20, 2017

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No