

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5333 of 2017
Date of decision: 28.11.2017

Kamlesh Kumari

...Petitioner

Vs.

**State of Punjab Through Principal
Secretary to Govt. of Punjab and Others**

...Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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

Mr. T.P.S. Chawla, Sr. DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner was promoted to the post of Lecturer under the Punjab State Education Department on 30.05.2008.

Challenge in the instant petition is to the order dated 24.10.2013 (Annexure P-11) passed by the Director, Public Instructions (Secondary Education) Punjab in terms of which her claim seeking ante-dated promotion as Lecturer w.e.f. the year 2001, has been rejected.

Counsel representing the petitioner submits that petitioner was appointed as Social Studies Mistress in the year 1997 and joined on such post on 10.01.1998. It is contended that the petitioner who belongs to the Scheduled Caste (R&O) category has been ignored and certain juniors in the Mistress cadre have been promoted as Lecturers in the year 2001.

Contention raised is that the petitioner possessed unblemished service record and the action of the respondent authorities in having denied to the petitioner the benefit of holding the promotional post of Lecturer and on the other hand promoting juniors is arbitrary, illegal and violative of

Articles 14 and 16 of the Constitution of India.

Per contra, learned State counsel would justify the passing of the impugned order by reiterating the very basis for rejection contained in the order itself i.e. the petitioner having raised a highly belated claim. State counsel submits that even if the contentions and submissions of the petitioner are taken to be correct, juniors have been promoted in the year 2001. Petitioner was promoted to the promotional post in the year 2008 whereas the claim for ante-dated promotion was raised in the year 2013. State counsel argues that under such circumstances there would be no scope for interference in exercise of the writ jurisdiction by this Court.

Counsel for the parties have been heard at length.

It has gone undisputed that the petitioner was promoted as Lecturer on 30.05.2008. She is staking her claim to be promoted as Lecturer w.e.f. the year 2001 instead on the ground that her juniors have been so promoted. Petitioner has earlier preferred CWP No. 12277 of 2013 before this Court and which was disposed of vide order dated 30.05.2013 Annexure P-9 with a direction to the respondent authorities to consider the claim of the petitioner by taking a final decision on a representation that had already been submitted. It is towards purported compliance of the directions issued by this Court that the impugned order of rejection dated 24.10.2013 (Annexure P-11) has been passed.

There is an inordinate delay of more than a decade on the part of the petitioner in having raised the claim for promotion to the post of Lecturer.

The Hon'ble Supreme Court of India in case of **P.S.**

Sadasivaswamyy Vs. State of Tamil Nadu, AIR 1974 SC 2271 examined

the issue of an employee invoking the extraordinary writ jurisdiction of a High Court under Article 226 of the Constitution of India at a belated stage in matters of promotion and seniority and held as under:-

“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 extra-ordinary 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. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal”.

By applying the dictum laid down by the Apex Court in **P.S. Sadasivaswamy's** case (supra) no infirmity is found in the impugned order dated 24.10.2013 (Annexure P-11) declining the claim of the petitioner on the ground of the delay and laches .

At this stage learned counsel representing the petitioner would make an attempt to over-come delay by referring to the averments raised in para 6 of the writ petition. It has been pleaded that even though some Masters/Mistresses had been promoted but no seniority number had been issued as no seniority were given in the promotion order and since the

seniority of Mistresses cadre was issued in the year 2012, it is only there upon the petitioner came in knowledge that certain juniors have been promoted. Even such submissions raised by counsel is not well founded. Petitioner has placed on record as (Annexure P-7) the seniority list of Masters/Mistresses relating to the year 2010. This very seniority list depicts a seniority position that prevailed even prior to 2012 and where the name of the petitioner existed at Sr. No. 19615 whereas the private respondents were reflected juniors to the petitioner. The contention raised by counsel that it is only the seniority position circulated in the year 2012 which gave out the position that certain juniors have been promoted is not factually correct.

It may also be observed that even though this Court in the previous writ petition i.e. CWP No. 12277 of 2013 had issued directions on 30.05.2013 to decide the representation made by the petitioner that order cannot be construed that the Coordinate Bench had condoned the aspect of delay.

Accepting the claim of the petitioner to be promoted to the post of Lecturer w.e.f. 2001 instead of 2008 and that also in pursuance to a claim raised for the first time in the year 2012 would virtually amount to unsettling settled matters. The same is not permissible in law.

For the reasons recorded above there is no merit in the instant writ petition and the same is dismissed.

November 28, 2017

Poonam (II)

**(TEJINDER SINGH DHINDSA)
JUDGE***Whether speaking/reasoned: Yes**Whether reportable: No*