

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 116

Civil Writ Petition No.5776 of 2017 (O & M)
Date of Decision: September 11, 2017

Ram Paul

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. M.S. Dhami, Advocate, for the petitioner.

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Jaspal Singh, J

1. The instant petition has been preferred by the petitioner under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing order dated January 06, 2017 passed by respondent No.2, Director of Industries & Commerce, Government of Punjab, vide which, reversion of petitioner to the post of Junior Technical Assistant from the post of Laboratory Assistant has been denied, as well as for issuance of a writ in the nature of Mandamus, directing the respondents to revert the petitioner to the post of Junior Technical Assistant.

2. There is a delay of more than 2 decades till the date of superannuation of petitioner and more than five years subsequent thereto in filing the petition. Thus, petitioner is guilty of long delay and laches which is suggestive of the fact that he is deemed to have acquiesced or waived off

his claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay.

3. In case **Jagdish Lal v. State of Haryana, 1998(1) SCT 26 (SC) : (1997) 6 SCC 538**, the Hon'ble Apex Court observed that if a person chose to sit over the matter and woke up after the decision of Court, then such person cannot stand to benefit. In that case, it was observed as follows:-

“The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.”

In another case **Union of India & others vs. C.K. Dharagupta & others, 1992(2) SCT 117 (SC) : (1997) 3 SCC 395**, it was observed as under:-

“We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17.-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.”

In **Brijesh Kumar and others vs. State of Haryana and others, 2014 (11) SCC 351**, the Hon'ble Supreme Court has laid down various principles in which law of limitation has legal maxim. While relying upon the judgment in case of **Esha Bhattacharjee vs. Raghunathpur Nafar Academy & others, 2013(4) RCR (Civil) 785**, the Hon'ble Apex Court principles regarding delay and laches were laid down which can be summarized as under:-

“ x x x

(v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

x x x

(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

4. A glance at the aforesaid principles makes it crystal clear that increasing tendency to perceive delay as a non-serious matter and, hence, apathetic tendency can be exhibited in a nonchalant manner requires to be curbed.

5. Adverting to the case in hand, petitioner has prayed for quashing order dated January 06, 2017 passed by respondent No.2, Director of Industries & Commerce, Government of Punjab, vide which, reversion of petitioner to the post of Junior Technical Assistant from the post of Laboratory Assistant has been denied or in the alternative, for issuance of a writ in the nature of Mandamus, directing the respondents to revert the petitioner to the post of Junior Technical Assistant. Petitioner joined service with respondents as Laboratory Assistant on October 16, 1974. He was promoted as Junior Technical Assistant w.e.f. December 15, 1983. As he had not obtained ITI Diploma, he was reverted to the post on which he was working prior to promotion i.e. Laboratory Assistant, w.e.f. January 01, 1988 vide order dated December 31, 1987. Petitioner retired on July 31,

2011 on superannuation. Petitioner served a legal notice dated October 09, 2015 upon the respondents and filed CWP No.6071 of 2016 which was dismissed as withdrawn vide order dated March 31, 2016 with liberty to petitioner to avail his alternative remedy for the relief prayed for. Thereafter, petitioner submitted an appeal dated November 30, 2016 to respondent No.2 but it was filed vide impugned order dated January 06, 2017. After retirement, petitioner moved an application dated October 17, 2014 under the Right to Information Act, 2005, in response to which, it was informed vide letter dated November 18, 2014 that there were no notified rules regarding promotion to the post of Junior Technical Assistant in the year 1983 when he was promoted as such. Be that as it may, petitioner never challenged order dated December 31, 1987 at that time. Production of ITI certificate within a period of two years of promotion was required to be produced and petitioner was supposed to comply with the condition which, admittedly, has not been complied with. No ITI certificate was obtained by the petitioner within a period of two years.

6. In view of the legal position discussed above and on the basis of various authoritative pronouncements of the Hon'ble Apex Court, it can be safely observed that instant petition suffers from delay and laches.

7. Dismissed.

8. No order as to costs.

September 11, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No