

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.4703/2008**

% **3rd February, 2017**

D.N. KUMAR Petitioner

Through: Mr. Rajiv Dewan, Advocate.

versus

DIRECTOR OF EDUCATION & ORS. Respondents

Through: Mr. Varun Nischal, Advocate
for respondent No.1.

Mr. Raj Birbal, Senior Advocate
with Ms. Raavi Birbal,
Advocate for respondent Nos.2
and 3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, the petitioner challenges the order of the Delhi School Tribunal (DST) dated 21.1.2008 by which the DST dismissed the appeal filed by the present petitioner, and whereby the petitioner had effectively challenged the action of the employer/Modern School (represented by respondent nos.2 and 3) in taking the petitioner as a PGT in the school only from 1.7.1978 instead

of from the original date of appointment of the petitioner with the respondent nos.2 and 3/school on 29.7.1970.

2. DST has dismissed the appeal filed before it on the ground that the appeal is hopelessly barred by limitation because petitioner only in 1996 was found to be effectively challenging the seniority list of the year 1987 (i.e about 9 years old) wherein he was shown junior to respondent nos.4 and 5 herein. In the year 1987 seniority list was on the basis that respondent nos.4 and 5 were appointed earlier/prior to petitioner.

3. The relevant observations of the DST holding the appeal to be hopelessly time barred are contained in paras 6(a) to (e) and 7 of the impugned judgment of the DST dated 21.1.2008, and which paras read as under:-

“6. Written arguments were also filed by both the parties. I have gone through the case file and my considered view is as under:-

a. Let us take the issue of limitation first as it goes to the root of the Appeal pending before this Tribunal. The Appeal was filed by the Appellant on 13/03/1996. The contention of the Appellant is that he was informed by the School only on 29th of January, 1996 regarding rejection of his representations.

b. On the other hand the stand of the Respondent School is that the Appellant had raised this issue through Modern School Teachers Association in 1983 and after consideration of the same, the representation was rejected by the School on 8th of March, 1984 and the Secretary of the Association namely Sh.S.C. Asthana had received the rejection letter on 08/03/1984. Copy of the same was also marked to the Appellant, who had received the same on 08/03/1984 itself. Typed copy of this letter was filed as Annexure-A alongwith the reply and a photocopy of the office copy of the same was Annexed with the written submissions filed on behalf of the Respondent School.

c. The Appellant has made a bald denial regarding receipt of this letter but his own documents filed on 07/03/1996 prove that his Appeal is barred by limitation. First document is the letter addressed to the Principal dated 05/05/1987, in which Appellant had sought reversal of the seniority list or in default to represent his case to the Education Department. A reminder was sent by him on 07/09/1988. On 01/03/1989 he sought permission to approach the Tribunal for redressal of his grievance. In my view, no permission was required from the employer to file an Appeal before this Tribunal. The Appellant had again made a detailed representation on 08/11/1995.

d. The grudge of the Appellant is against the seniority list prepared and circulated in the year 1987 and the Appeal was filed on 13/03/1996, i.e., after about 9 years of the circulation of the seniority list. There is no explanation on record as to why the Appellant did not file the Appeal during these long 9 years.

e. The reply of the Respondent School dated 29th January, 1996 to the representation submitted by the Appellant on 24/01/1996 could not be the basis for extension of limitation against a cause of action which arose in the year 1987. The Hon'ble Supreme Court in the matter of "Karnataka Power Corporation Ltd. and Another versus K. Thangappan and Another" (2006) 4 SCC 322 has held that where there was a long delay on the part of the petitioner without there being any proper explanation, then High Court was not justified in granting relief to the Petitioner. It has been further held that merely making representations to the authority concerned could not justify a belated approach to the Court. Similar view was taken by the Hon'ble Supreme Court in 1980 in the matter of "Gian Singh Mann versus High Court of Punjab & Haryana and Another" (1980) 4 SCC 266. In the matter of "Union of India and Another versus S.S. Kothiyal and Another" (1998) 8 SCC 682 the Hon'ble Supreme Court has also reiterated the same issue regarding representations not extending the limitation.

7. Under these circumstances, where the delay of about 9 years is unexplained, I am of the view that the Appeal is highly belated and is barred by limitation. Because the Appeal is barred by limitation, there is no need to give findings on other grounds; hence the Appeal is rejected."
(underlining added)

4. I completely agree with the view of the DST that appeal filed by the petitioner was hopelessly time barred. It is seen that in the appeal filed by the petitioner himself before the DST petitioner is deliberately vague so far as his appointment as a PGT in the respondent nos.2 and 3/school is concerned. Petitioner in the appeal

before the DST is found to have admitted that though he was appointed in the year 1970, but that in 1973 the school had reduced the pay scale of the petitioner. Obviously, what the petitioner is pleading is only like a case of half glass full, because, effectively and really the petitioner pleads and admits that he was only a PGT in the year 1973, and also by stating that his salary was Rs.450/-, and which salary was not the salary of a TGT i.e the salary would be of a PGT. It is further seen that in para 16 of the appeal filed before the DST petitioner admits that petitioner was “once again” put in PGT grade in the year 1978, and this averment again shows that till 1978 petitioner was not a PGT and the actual reality of the correct year of petitioner being appointed as a PGT was only in 1978, and which is also the stand of the respondent nos.2 and 3/school because the respondent nos.2 and 3/school has taken up a specific case before the DST that petitioner was appointed as a PGT only on 1.7.1978. Obviously, petitioner was playing a game of hide and seek before the DST by trying to conceal the facts although the appointment of the petitioner as PGT was only w.e.f 1.7.1978 and that he was holding a lower post than a PGT with the respondent nos.2 and 3/school prior to 1.7.1978.

5. A reading of the appeal of the present petitioner before the DST also shows that grievance of the petitioner of being placed lower

in the seniority arose in the year 1987 itself, appeal being filed before the DST in the year 1996, because in paras 18 and 19 of the appeal before the DST petitioner admits that in a seniority list circulated in the year 1987 the petitioner was shown junior to the respondent nos.4 and 5 herein. Petitioner therefore at least in the year 1987 had a cause of action to challenge his seniority by claiming that he should not be taken as PGT from 1.7.1978 but from 29.7.1970 but the petitioner admittedly did not challenge the seniority list of the year 1987 within the period of limitation either before this Court or before the DST. I note that principles of Limitation Act also apply to writ petitions filed in this Court vide *State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436*. The seniority list of the year 1987 therefore showing the petitioner below respondent nos.4 and 5 herein, in the absence of challenge within limitation has therefore necessarily to be taken as final, and which challenge was not laid by the petitioner within limitation really because the petitioner became a PGT with the respondent nos.2 and 3/school only w.e.f 1.7.1978 and not before. Therefore, the appeal filed by the petitioner before the DST in the year 1996 which directly had the effect of challenging the seniority list of the year 1987 was thus clearly barred by limitation as also delay and *laches*.

6. Another aspect further is to be noted that para 29 of the appeal of the petitioner filed in DST talks of his having made a representation dated 1.3.1989 to the respondent nos.2 and 3/school challenging the seniority list, and thereafter, there is a complete silence and wide time-gap in the appeal filed which was filed only in 1996. Once petitioner gave a representation in the year 1989 for challenging the seniority list of the year 1987, then, mere pendency of a representation did not postpone the arising of the cause of action which had accrued in the year 1987 itself when the petitioner was shown as junior to respondent nos.4 and 5.

7. The counsel for the petitioner argued that cause of action has accrued only in the year 1996 when the school gave its letter dated 29.1.1996 referring to an earlier letter of the year 1984, however, this argument is misconceived for the reason that even assuming for the sake of arguments, though the respondent nos.2 and 3/school categorically state that petitioner's representation was rejected and so informed in 1984 to the petitioner through the association, even then the letter dated 29.1.1996 of the respondent nos.2 and 3/school cannot be said to be a cause of action arising for questioning the action of the respondent nos.2 and 3/school in not considering the petitioner as PGT from 29.7.1970 i.e the cause of action really for the petitioner had

arisen in 1970 viz on the original date of the appointment of the petitioner. In fact, the petitioner had to within three years from 29.7.1970 question and challenge the action of the respondent nos.2 and 3/school in not giving him the scale of PGT assuming petitioner rightly claimed that petitioner was appointed or ought to have been appointed as a PGT by the respondent nos.2 and 3/school and not at a lower post which was done by the respondent nos.2 and 3/school and in fact further in 1978 in which year petitioner pleads a 'correction' in being given PGT scale i.e appointment as a PGT.

8. In view of the above, I do not find any error in the impugned judgment of the DST dismissing the appeal of the petitioner as barred by limitation. It is again reiterated that if the petitioner was wrongly not given the scale and the post of PGT in the year 1970 but only a lower post, then the cause of action firstly and definitely accrued in the year 1970 itself. Further a cause of action accrued again in the year 1978 when petitioner claims that he was given a higher scale of PGT in the year 1978 by a 'correction' i.e petitioner admits that it is from 1978 that petitioner became PGT and not earlier thereto and that petitioner did not challenge the action of the respondent nos.2 and 3/school in granting PGT scale to the petitioner only from 1978. Surely petitioner ought to have then at least challenged the seniority

list of the year 1987 which was on the basis of the petitioner being appointed as PGT in the year 1978 only within a period of three years from 1987, but admittedly petitioner did not challenge the seniority list of the year 1987 within the period of limitation, of course and which aspect is stated as a matter of abundant caution because really the petitioner's case of appointment to the post of PGT arose in the year 1970, and if not in 1970, then definitely in the year 1978. Repeated representations cannot extend the period of limitation, and therefore, the DST has rightly dismissed the appeal filed by the petitioner.

9. Writ petition is accordingly dismissed, leaving the parties to bear their own costs.

FEBRUARY 03, 2017
Ne

VALMIKI J. MEHTA, J