

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3728 of 2005

Ram Swaroop Kaushik, aged 37 years, S/o Shri Mohan Lal Kaushik UDC
Govt. Science PG College, Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Deptt of Higher Education, Govt. of Chhattisgarh DK Bhawan Mantralaya, Raipur (C.G.)
2. The Commissioner of Higher Education, Govt. of Chhattisgarh, Science College Campus, Raipur Chhattisgarh
3. The Principal Govt Science PG College Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ajay Kumar Chandra, Advocate appears under instructions from Shri Y.C. Sharma, Advocate
For State	:	Shri Ramakant Mishra, Dy.A.G.

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/04/2018

Heard.

1. The petitioner had initially filed an Original Application before the State Administrative Tribunal (in short "*the Tribunal*"). Upon abolition of the Tribunal, the case was received on transfer by this Court and registered as writ petition.
2. The petitioner was initially appointed on the post of Lower Division Clerk on ad hoc basis on 17.3.1986. Later on, his case for regularization was considered under Regularization of Ad Hoc Appointment Rules, 1986 and vide order dated 24.2.1987, he was regularized in service. Later on, the petitioner was considered for promotion to the post of Upper Division Clerk

and he was promoted as Upper Division Clerk vide order 27.9.1991 (Annexure A-8). The petitioner joined also. But then, within a short period of three months thereafter, impugned order dated 27.12.1991 (Annexure A-15) came to be passed by which promotion was cancelled. Later on, the petitioner made a representation on 11.10.1999 by submitting that there are other employees who were granted seniority, though, they were also ad-hoc employees like the petitioner. That representation was rejected vide order dated 19.4.2000, (Annexure P-1) whereafter, this petition has been filed.

3. Learned counsel for the petitioner submits that the petitioner has been subjected to hostile discrimination inasmuch as the petitioner and many other employees who were appointed on ad-hoc basis and regularized subsequently were considered for promotion and promoted as Upper Division Clerk vide order dated 27.9.1991. However, only in respect of the petitioner and some other employees, selectively, order of cancellation of promotion was issued on 27.12.1991. According to learned counsel for the petitioner, one Kapil Nath Sahu who was also working as ad hoc employee along with the petitioner was continued in service without cancellation of his promotion as Upper Division Clerk and later on, he was promoted as Accountant vide order dated 24.6.1998 (Annexure A-18). He was also promoted on 19.7.1991 as Upper Division Clerk. There are large number of similarly situated Lower Division Clerks who were appointed on ad hoc basis and, later on, regularized, whose promotion orders were not cancelled and were allowed to continue and granted promotion vide order dated 7.3.1998 (Annexure A-19). Therefore, the petitioner is entitled to appropriate relief to remove hostile discrimination.
4. On the other hand, learned counsel for the State takes serious objection to the very maintainability of the petition on the ground that the petition is highly belated. He would submit that promotion order of the petitioner was canceled vide order dated 27.12.1991, but the petitioner did not take any remedy whatsoever. The first representation was made by the petitioner only on 11.10.1999, which was eventually rejected. He would submit that

the petitioner having not taken any step to seek redressal of his grievance on account of cancellation of his promotion in the year 1991 is not entitled to any relief and the petition is liable to be dismissed only on the ground of delay and laches.

On merits, learned counsel for the respondent-State would submit that the promotion order was issued on 27.9.1991. In note No.(ज) appended to the order, it was made clear that if seniority has been granted to any Lower Division Clerk from the date of ad hoc appointment prior to 31.12.1986, he be not relieved. He would submit that later on, it was found that the petitioner was an ad hoc appointee appointed on 17.3.1986 and he was regularized as Lower Division Clerk on 24.2.1987. Some of those cases which came to the light of the authority were examined and the promotion order were cancelled vide order dated 27.12.1991 which included not only name of the petitioner but many other employees. He would further submit that as far as Kapil Nath Sahu is concerned, his promotion order was not cancelled and he continued and even if it is assumed that Kapil Nath Sahu was not entitled to promotion, this issue could be examined only if the petitioner would have approached this Court in time and not at this belated stage. He would submit that it is not a case of the petitioner that those, whose promotion order were cancelled along with the petitioner vide order dated 27.12.1991, were, later on, granted seniority from the original date of appointment, subjecting the petitioner alone to hostile discrimination. In support of his submissions, learned counsel for the respondent-State relies upon the judgments in the case of **Nandia Distt. Primary School Council and Anr. Vs. Sristidhar Biswas and Ors.** (2007) 12 SCC 779, **Ghulam Rasool Lone Vs. State of Jammu and Kashmir and Anr.** (2009) 15 SCC 321, **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Shrivastava & Ors.** (2015) 1 SCC 347.

5. After hearing learned counsel for the parties, in the considered opinion of this Court, this petition is liable to be dismissed only on the ground of delay and laches. Facts floating on the surface of the case are that the petitioner was granted promotion on 27.9.1991. It was cancelled within three months

thereafter vide order dated 27.12.1991. However, the petitioner did not take any remedy against the order of cancellation of his promotion. In the petition, there is no specific and categorical pleadings that from 1991 till filing of Original Application before the Tribunal, the petitioner had been promptly and diligently pursuing remedy before any forum. The first representation was made by the petitioner on 11.10.1999, placed on record as Annexure A-3. Except this, there is no other document to show that prior to that, the petitioner had sought indulgence of the authority in his case. Therefore, it is patently clear that from 27.12.1991 till 11.10.1999, the petitioner did not take any remedy and if I may say so, slept over the matter. The petitioner remained completely indolent and did not take any remedy for 9 years which only shows that the petitioner had acquiesced in the action of the respondent. It appears that when in the year 1998, those Lower Division Clerk whose promotion were not cancelled, were promoted as Accountant, the petitioner sought to re-agitate the stale claim by preferring representation on 11.10.1999 which was eventually rejected by the impugned order dated 19.4.2000.

6. The three decisions cited by learned counsel for the State is that a party who seeks redressal of his grievance is required to approach the Court promptly and without undue delay. It is not the length of period but the explanation which is required to be seen to find out whether a party is entitled to indulgence of the Court. In the present case, apart from the dispute being brought to the Court after 9 years from the date of cancellation of promotion order, there is hardly any explanation offered by the petitioner in the petition in respect of the period from 27.12.1991 till he preferred his representation on 11.10.1999. Therefore, irrespective of merits of the case, only on the ground of delay and laches, the petition is liable to be dismissed and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge