

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 06.08.2018****CWP No.2632 of 2001(O&M)**

Kanwar Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. V.K.Jindal, Senior Advocate, with
Mr. Rajesh Bansal, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner had served for about 4 years as Assistant Sub Inspector before the entire selection of Assistant Sub Inspectors was quashed by the Supreme Court in Pritpal Singh Vs. State of Haryana & others, AIR 1995 SC 414 [Civil Appeal No.5027-36 of 1994 decided on 27.07.1994]. In *Pritpal Singh's* case, a direction was issued to re-conduct the recruitment.

Earlier, 98 vacancies had been advertised in the first round of selection, which selection was quashed. In the second process as well, 98 vacancies were advertised pursuant to the directions of the Supreme Court out of which 35 vacancies were of General category, while the remaining vacancies were earmarked for different reserved categories. All the 35 vacancies of the General category stood filled up in the re-selection process. The last candidate as per the affidavit dated 18.07.2018 filed by the Director

General of Police, Haryana, Panchkula was one Rakesh Rao securing 140 marks. The petitioner had secured 123 marks and, therefore, is far short of falling above the cut-off marks. There was a question and answer in the test for which grace marks were given to all the candidates and, therefore, even if 2 marks are credited to the petitioner that will bring him only to 125 (123+2) marks and he will still be short of the cut off by 15 marks rendering the exercise futile and academic in pursuit of relief. It has been explained in the affidavit that 14 vacancies meant for the Scheduled Caste category candidates were not filled up on account of insufficient eligible candidates being available and similarly 9 vacancies of the ESM category also could not be filled up and all such vacancies were ordered to be converted into the pool of General category, which were then filled up by an additional list in the order of merit in which the last candidate selected was one Hargopal, who has secured 125 marks. In Para.2, a break-up has been given regarding the requisitions sent to the Subordinate Services Selection Board, Haryana; the number of candidates recommended by the Board and the short fall. The said break-up in tabulated form is reproduced below:

	<u>General</u>	<u>SC</u>	<u>BC</u>	<u>ESM</u>	<u>Total</u>
Requisition sent to SSSB	35	24	14	25	98
Recommended by SSSB	35	10	14	16	75
Short fall	-	14	-	09	23

The State has referred to an order passed in CWP No.17026 of 1995 titled as 'Balraj Singh Vs. State of Haryana & others' decided on 22.02.1996, wherein the Division Bench had directed respondents without calling for written statement from the State in the same matter of selection of Assistant Sub Inspectors averring that reservation exceeded 50% and, therefore, capping should be done. A specific direction was issued that if

50% reservation is allowed, then 49 vacancies out of 98 vacancies are required to be filled up from the General category only, but 35 vacancies were filled up from General category. As a necessary corollary, 14 persons from General category have a right to be appointed as Assistant Sub Inspectors and, therefore, consideration was given to 49 candidates from General category as against 98 posts. It is pointed out that 35 candidates had been appointed prior to the filing of the instant petition.

It may also be mentioned that the first recommendations was made by the Board on 15.12.1994 of 75 candidates and an additional 22 General category candidates were recommended by the Board on 16.12.1994.

Mr. V.K.Jindal, learned senior counsel, submits that 2 General category vacancies are still available, but it has been counter explained by Ms. Shruti Jain Goyal from the pleadings that these 2 vacancies were filled up prior to the filing of the writ petition from 22 vacancies. Even assuming that 2 vacancies are available, the petitioner will not get the desired relief because his petition deserves to be dismissed on the short ground of delay and laches. The cause of action accrued to the petitioner on 15.12.1994 or 16.12.1994, as the case may be, and the petition was filed in February, 2001 after huge delay and unexplained laches as to what kept back the petitioner for so long in approaching court for legal redress of his grievance while others were litigating. This slumber has not been explained in the petition. The last candidate appointed was Varinder Singh on 28.08.1997. It is well-settled that once limitation starts to run in civil law or the issue of delay and laches arises in the extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution, it does not stop. Therefore, the delay and

laches clearly falls between December, 1994 and February, 2001. Even assuming that limitation would start running again on 28.08.1997 with the appointment of Varinder Singh, even then the petitioner is well beyond 3 years prescribed for bringing a suit. In case a suit is barred by time, then it would ordinarily be prudent for the writ court not to interfere in the discretionary writ jurisdiction. For this proposition *see*: State of Madhya Pradesh Vs. Bhailal Bhai & others, AIR 1964 SC 1006: 1964 SCR (6) 261. Moreover, the issue can be examined also from the stand point of the directions of the Supreme Court in State of U.P. & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347. Delay is apparent and laches remain unexplained as to what held back the petitioner for so long sleeping over his perceived rights and he will be deemed to have waived his rights and acquiesced in a state of things. The right may exist, but the remedy taken away. The claim is rather a stale and dead one by passage of time. Even if 2 vacancies remain unfilled, which is not the case; those would have to go for fresh recruitment.

Still further, as far as delay is concerned, the matter is also broadly covered by the ratio of State of Punjab & others Vs. Gurdev Singh & Ashok Kumar, AIR 1992 SC 111, Supreme Court explaining that residuary Article 113 of the Limitation Act applies to such cases where the approach to court is inordinately delayed from the first occasion of the right to sue.

Considering the matter from all angles, I have no doubt left that this petition has to be dismissed as devoid of merit and by reason of delay. It is also too late to offer the post of Assistant Sub Inspector after 24 years

when apprised that the petitioner is today 55 years of age, as admitted by him in Court, when the matter was heard.

Ordered accordingly.

06.08.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No