

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

227

**CWP-1467-2015 (O&M)
Date of decision:09.02.2018**

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

2)

CWP-1468-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

3)

CWP-1469-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

4)

CWP-1470-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

5) **CWP-1471-2015 (O&M)**

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

6) **CWP-1472-2015 (O&M)**

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

7) **CWP-1473-2015 (O&M)**

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

8)

CWP-1474-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

9)

CWP-1475-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

10)

CWP-1476-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

11)

CWP-1477-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another
.... Respondents

12) **CWP-1478-2015 (O&M)**

Chairman-cum-Managing Director and another
...Petitioners
Versus

The Presiding Officer and another
.... Respondents

13) **CWP-1479-2015 (O&M)**

Chairman-cum-Managing Director and another
...Petitioners
Versus

The Presiding Officer and another
.... Respondents

14) **CWP-1480-2015 (O&M)**

Chairman-cum-Managing Director and another
...Petitioners
Versus

The Presiding Officer and another
.... Respondents

15) **CWP-1481-2015 (O&M)**

Chairman-cum-Managing Director and another

...Petitioners
Versus
The Presiding Officer and another
.... Respondents

16) **CWP-1482-2015 (O&M)**
Chairman-cum-Managing Director and another

...Petitioners
Versus
The Presiding Officer and another
.... Respondents

17) **CWP-1483-2015 (O&M)**
Chairman-cum-Managing Director and another

...Petitioners
Versus
The Presiding Officer and another
.... Respondents

18) **CWP-1484-2015 (O&M)**
Chairman-cum-Managing Director and another

...Petitioners
Versus
The Presiding Officer and another
.... Respondents

19)

CWP-1485-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

20)

CWP-1486-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

21)

CWP-1487-2015 (O&M)

Chairman-cum-Managing Director and another

...Petitioners

Versus

The Presiding Officer and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Rajat Khanna, Advocate for the petitioners.

Mr. Gautam Kaile, Advocate and
Mr. Dinesh Kumar, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

This order shall dispose of the aforementioned 21 petitions. However, for convenience and clarity, facts are being taken from petition bearing No. 1467 of 2015.

2. In the instant writ petition, petitioners have challenged award passed by the Labour court dated 30.09.2014 (Annexure P1). Petitioners launched Voluntary Retirement Scheme on 23.01.2009 called Voluntary Retirement Scheme for non-management Clerical Staff 2009. This scheme is launched on 23.01.2009. Employees were permitted to exercise their option under the Scheme up to 16.02.2009. All the respondents-employees submitted their applications prior to 16.02.2009. Consequently their applications were accepted under the scheme and they have been informed that their services would be continued up to 01.04.2009. They have also been paid appropriate remuneration during the intervening period from 24.02.2009 to 01.04.2009. Respondent's contentions are that submission of application for voluntary retirement with reference to voluntary retirement scheme was on coercion and allurement. It was also submitted that intention of the petitioners was to shift the employees from one place to another place. In this regard, for the first time legal notice was issued on 09.03.2010. The respondents-employees had cause of action for the first time during the intervening period from 23.01.2009 to 16.02.2009 if their contention is that petitioners are pressurizing the respondent-workman to opt for voluntary retirement under the voluntary retirement scheme. Further

even on 24.02.2009 the date on which respondents applications for voluntary retirement was accepted and so also on 01.04.2009 the date on which respondents services have been relieved amongst others. Respondents are making serious allegations against the petitioner-Company stating that they were compelled to furnish applications for voluntary retirement. If it is so they could have raised their objections if any, during the intervening period from 23.01.2009 to 16.02.2009. Further on 24.02.2009 or at the best on 01.04.2009. Whereas, legal notice was issued for the first time on 09.03.2010 stating that they were under-pressure to furnish applications for voluntary retirement under Voluntary Retirement Scheme. Before issuance of legal notice dated 09.03.2010 each and every benefit including monetary benefits under Voluntary Retirement Scheme has been accepted by them and amount has been remitted in their accounts. Therefore, they cannot turn around after lapse of nearly one year and state that submission of application for voluntary retirement is under coercion. Labour court has erred in not appreciating the above factual aspects. Supreme court in the case of ***D.Sarojakumari versus R. Helen Thilakom and others*** reported in (2017)9 SCC 478 held as under:-

“4. The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

5. *In G. Sarana vs. University of Lucknow*, the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :- (SCC p. 591, para 15)

“15. We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.”

6. *In Madan Lal vs. State of J&K*, the petitioner laid challenge to the manner and method of conducting viva voce test after they had appeared in the same and were unsuccessful. This Court held as follows: (SCC p.493, para 9)

“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated

chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.”

7. In *Manish Kumar Shahi vs. State of Bihar*, this Court held as follows : (SCC p.584, para 16)

“16.....Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

8. In *Ramesh Chandra Shah vs. Anil Joshi* the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :(SCC p.320, para 24)

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being

made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

Supreme court in the case of ***Purohit and Company versus Khatoonbee and another*** reported in (2017) 4 SCC 783 held as under:-

“12. Reliance was also placed on Haryana State Coop. Land Development Bank Vs. Neelam, wherein, this Court held as under: (SCC pp.98-100, paras 17-23)

"17. In Nedungadi Bank Ltd., a Bench of this Court, where S.Saghir Ahmad was a member (his Lordship was also a member in Ajaib Singh, opined : (SCC pp.459-60, para 6)

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no

industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio. The respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10.8.1988. In her replication filed before the Presiding Officer of the Labour Court

while traversing the plea raised by the appellant herein that she is gainfully employed in HUDA with effect from 10.8.1988 and her services had been regularized therein, it was averred :

"6. The applicant workman had already given replication to the ALC-cum-Conciliation Officer, stating therein that she was engaged by HUDA from 10.8.1988 as clerk-cum-typist on daily wage basis. The applicant workman has the right to come to the service of the management and she is interested to join them."

19. She, therefore, did not deny or dispute that she had been regularly employed or her services had been regularized. She merely exercised her right to join the service of the appellant.

20. It is true that the respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained the same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding. Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary

jurisdiction. The conduct of the respondent in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution.

21. The matter might have been different had the respondent been appointed by the appellant in a permanent vacancy.

22. Both HUDA and the appellant are statutory organizations. The service of the respondent with the Appellant was an ad hoc one. She served the appellant only for a period of one year three months; whereas she had been serving HUDA for more than sixteen years. Even if she is directed to be reinstated in the services of the appellant without back wages as was directed by the High Court, the same would remain an ad hoc one and, thus, her services can be terminated upon compliance of the provisions of the Industrial Disputes Act. It is also relevant to note that there may or may not now be any regular vacancy with the appellant-Bank. We have noticed hereinbefore that in the year 1996, the vacancies had been filled up and a third party right had been created.

It has not been pointed out to us that there exists a vacancy. Having considered the equities between the parties, we are of the opinion that it was not a fit case where the High Court should have interfered with the discretionary jurisdiction exercised by the Labour Court.

23. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

3. In view of factual aspects read with principle laid down in the aforesaid decision, labour court award dated 30.09.2014 (Annexure P1) is set aside.

4. CWP stands allowed.

09.02.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No