

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21621 of 2014

Date of Decision: 04.04.2018

Lala Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Sonak, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This writ petition has been filed after 21 years of accrual of the alleged cause of action and, therefore, the same deserves to be dismissed by reason of inordinate delay and unexplained laches. The petitioner seeks directions to the respondents to regularize his services as a Water Pump Operator/APO in Group-C with effect from 31.03.1993. The petitioner joined service as a daily wage workman on 01.10.1987. He was regularized as a Mali-cum-Chowkidar in Group-D in the year 1993 in terms of policy for regularization dated 27.05.1993 meant for casual and daily rated employees who had completed 5 years of service on 31.05.1993 and were in service on said date. Five years later, the Haryana Public Works Department (Public Health Branch), Circle Cadre Mechanical establishment (Group-C) Service Rules, 1998 were notified on 17.04.1998. The prescribed qualification for the post of WPO-II for direct recruitment was Matric with

ITI Certificate in the trade of Motor/Tractor/Diesel Mechanical/Electrical/Wireman with knowledge of Hindi up to Matric standard. The petitioner was Middle Class (8th Class). He could not be regularized on Group-C post WPO-II for lack of essential qualification, i.e. ITI Certificate. He was contented with that order and made no grievance of it to the department for two decades. Having slept over his rights, has moved this Court seeking regularization on a Group-C post from the Group-D post he worked on.

2. This issue has received the judicial imprimatur in this Court in CWP No.9813 of 2012, *Krishan Kumar and others v. State of Haryana and others*, decided on November 21, 2014 by learned Single Judge where the petitioners therein approached this Court belatedly claiming regularization as Water Pump Operator-II, in Group-C in similar circumstances.

3. The claim presently is based on a judgment to which the petitioner was not party, i.e. in CWP No.18974 of 1998, *Abdul Kayyum and another v. State of Haryana and others* decided on September 26, 2000. An important fact is noticed from the judgment that the petitioners were working on the post of WPO-II/APO and were being paid emoluments of the said post. There were entries in the service record to maintain the position which is not the case in the present petition. The case is, therefore, distinguishable on facts.

4. The present writ was filed in 2014 after a delay of 12 years from the date of the judgment in *Abdul Kayyum* and 19 years from the date of regularization in Group-IV as Assistant Water Pump Operator. After noticing several judgments of the Supreme Court including in Union of

India & others Vs. M.K.Sarkar, (2010) 2 SCC 59; C. Jacob Vs. Director of Geology & Mining of Ministry & another, (2008) 10 SCC 115 and State of Uttaranchal & another Vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179 etc., the Court in *Krishan Kumar* (supra) after an elaborate discussion on the point dismissed the petition by reason of delay and laches. I would follow that judgment to non-suit the petitioner. Anyone who sleeps over his right is bound to suffer.

5. After the decision was rendered in *Krishan Kumar*, the Supreme Court has explained the position authoritatively on delay and laches and claim for similar relief based on past precedent to which employee is not party; exhaustively in State Of U.P. and others v. Arvind Kumar Srivastava and others, (2015) 1 SCC 347 indicating in the first exception to the general rule of equality and parity of treatment as culled out is not to be given to fence-sitters who have waived their rights for long and acquiesced to a state of things and let time pass.

6. I have no reason to introduce the element of equality or equity in a case of humongous delay in approaching Court. In State of Madhya Pradesh v. Bhailal Bhai and others, AIR 1964 SC 1006, the Supreme Court have indicated that normally when the period of of limitation in bringing a suit has expired, it would be prudent for the Writ Court not to interfere in proceedings under Article 226 of the Constitution. This is especially true when fundamental rights are not shown to be breached as in this case. Besides, the petition ought to be dismissed also for the reason that third party rights have settled which should not be disturbed at a highly belated stage including issues of seniority etc.

7. One last word on the reliance placed on an order of the Supreme Court in Civil Appeal Nos 1570-80 of 1998, Amit Lal v. State of Haryana & others (at Annex P-6) decided on 18.03.1998. The then prevailing rule for WPO-Grade II was possession of ITI Certificate or being literate and having experience of 5 years with field test. The department had issued letter dated 20.10.1994 and further certificate dated 03.02.1995 to the effect that Amit Lal, inter alia, possessed the prescribed qualification and was a matriculate. That is how the the appeal was allowed and regularization granted. The judgment was rendered prior to coming in to force the 1998 rules on 17.04.1998. The case is distinguishable on facts. Moreover, there was no delay in approaching court.

8. In view of the observations made above, this petition would have to be dismissed on delay and laches and the desired relief of ante-dated regularization in higher class in Group-C service, refused. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

04.04.2018
manju

Whether speaking/reasoned Yes

Whether reportable No