

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCWP 26910 of 2015 (O&M)
Date of Decision: 26.10.2018

Gaurav Bhardwaj

... Petitioner

Versus

Punjab & Haryana High Court and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr.Paul S.Saini, Advocate &
Mr.Vipul Sharma, Advocate for the petitioner

Ms. Geeta Sharma, Advocate for respondent no.1

Mr.R.K.Malik, Sr.Advocate with
Mr.S.K.Rana, Advocate for respondents no.2 to 4

....

RAJIV NARAIN RAINA, J.

1. The dispute in this case is summed up in two interim orders, the first dated 22nd December, 2015 while issuing notice of motion; and the other passed on 5th September, 2018. The first one reads:-

“Inter-alia contends that the petitioner had been appointed as Stenographer on 7.5.2009 and joined on 12.5.2009 (Annexure P/3) along with three others. As per Rule 11(1) (b) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 minimum two years period is required for promotion to the post of Judgment Writer subject to various other conditions. On account of power to relax under Rule 38 of the 1973 Rules by the Hon'ble Chief Justice, the condition of said period can be dispensed with.

Persons appointed with the petitioner filed a representation (Annexure P/5) for relaxation of this condition which was granted on 14.10.2010 and they were accordingly promoted on 29.10.2010 (Annexure P/9). The petitioner also applied for relaxation on

the same basis vide representation dated 17.12.2010 (Annexure P/10) as he was similarly situated and there were posts of Judgment Writers lying vacant. His case was recommended on 15.2.2011 (Annexure P/12) by the Committee but the office orders were only passed on 2.5.2011 (Annexure P/14). It is thus the case of the petitioner that he thereafter represented that he should be given promotion from the same date when the similarly situated persons were promoted i.e. 29.10.2010. It is further submitted that even otherwise on the date he was promoted i.e. on 2.5.2011, he would have completed the requisite period of two years by 12.5.2011.

Notice of motion for 9.2.2016.”

2. Pleadings on record, the matter when called for hearing on 5th September, 2018, the following order was passed after hearing the learned counsel for the High Court and the private respondents 2 to 4:-

“The Departmental Promotion Committee (DPC) in its meeting held on 15.02.2011 recommended the case of the petitioner for promotion as 'Judgment Writer' by according similar treatment as was given to Sham Sunder, Shamsher Singh and Raj Kumar Arora, all of whom were granted relaxation in the experience of two years. The Committee recommended that as per past precedent, the petitioner is also entitled to promotion as 'Judgment Writer' by relaxing rule.

Today, the original file has been produced by Ms. Geeta Sharma, learned counsel appearing for the High Court. The recommendations have been made by the Committee of the Hon'ble Judges, but there is no accompanying office noting placing the Minutes of the DPC before Hon'ble the Acting Chief Justice for perusal or appropriate orders. This file was put up for the first time before Hon'ble the Acting Chief Justice on 02.05.2011 and was approved on the same day by recording “seen” on the file.

Meanwhile, the process of absorption of Stenographers working in the office of District and Sessions Judge-cum-Registrar (Vigilance) started. The Committee approved the decision of absorption of 3 officials as Judgment Writers on the establishment of this Court on 25.03.2011. File was put up before Hon'ble the Acting Chief Justice on 28.03.2011 and was approved on 20.04.2011 w.e.f. 01.04.2011. These officials have been absorbed. Mr. Malik, learned senior counsel says that his clients were merged on the establishment of this Court.

Admittedly, the petitioner was appointed as Stenographer on 12.05.2009 and would have acquired experience of two years on 12.05.2011. The petitioner was promoted on 02.05.2011 as Judgment Writer thereby making him junior to the private respondents.

However, without going into the distinction whether the private respondents were absorbed or merged, an affidavit is required to be filed by the Registrar (General) of this Court or any person nominated by him, who is well acquainted with the facts of the case, to explain the movement of the file from 15.02.2011 till 02.05.2011 and to explain the delay in putting up the file of the petitioner before Hon'ble the Acting Chief Justice, whereas the case of the private respondents was processed within three days. An explanation be furnished by even looking into the conduct of those responsible for possession and processing of file resulting in putting the same before the Hon'ble the Acting Chief Justice after undue delay. Names of the persons responsible for delay in putting the case of the petitioner be mentioned in the affidavit i.e. those officials from whom the file was likely to pass hands to be placed before Hon'ble the Acting Chief Justice. The affidavit would also explain whether the recommendations of Hon'ble Committee dated 15.02.2011 should not have taken precedence over the subsequent recommendations.

Let the affidavit be filed well before the next date of hearing.

List again on 25.09.2018.”

3. As directed, the Registrar (Administration) has filed affidavit dated 24th September, 2018 deposing that the papers were placed before Hon’ble the Chief Justice who directed the Registrar (Rules) to conduct inquiry regarding delay in putting up the file before Hon’ble the Acting Chief Justice and names of the persons responsible for delay in putting up the case of the petitioner. In the affidavit it is stated in paragraph 2 that the reports of the then Registrar (Administration) and Sh. Varinder Shahi, Presenting Officer were obtained and the explanations given by the Officials through their statements are appended as Annex. A-1 and A-2 with the affidavit. It is stated in paragraph 3 that the meeting of the Hon’ble Committee of Judges was held on 15th February, 2011 and the Minutes were presented before Hon’ble the Acting Chief Justice on 2nd May, 2011. In the office of the then Registrar Administration, as reported by him, same were received on 2nd May, 2011 and without any delay, those were presented before Hon’ble the Acting Chief Justice for orders. Apparently, there is no delay in the office of the then Registrar (Administration) in putting up the file. As far as the preparation and handling of Minutes of Meeting w.e.f. 15th February, 2011 till 2nd May, 2011 is concerned, the deponent states that Mr. Varinder Shahi could have explained it well, but from his report, nothing can be gathered as to when the Minutes were received by him being Presenting Officer from the Hon’ble Committee of Judges. It may be possible that the Minutes might have been received with delay from the Hon’ble Committee, but again the report of Sh. Varinder Shahi is silent about this fact. The affidavit goes on to say that

as per practice prevailing even as on today, no record is maintained regarding movement of Minutes as to when those are prepared and received from Hon'ble Committees, after the meetings. The names of the persons responsible for delay as such at this stage cannot be ascertained without proper enquiry.

4. Lastly and more importantly, the affidavit states that as far as the question whether the recommendations of the Hon'ble Committee dated 15th February, 2011 should not have taken precedence over the subsequent recommendations, is concerned, in this regard it has been submitted that the recommendations of Hon'ble Committees are finalized after approval by Hon'ble the Chief Justice as the Committees are constituted by Hon'ble the Chief Justice for His Lordship's assistance. As such, so long as the recommendations of Hon'ble Committee are not approved by Hon'ble the Chief Justice, those cannot be acted upon and, therefore, at this stage without approval of Hon'ble the Chief Justice, it cannot be said as to whether the recommendations which were approved by the then Hon'ble the Acting Chief Justice on 2nd May, 2011 may take precedence over the subsequent recommendations.

5. Obviously, the core issue on which the fate of the case would hinge and which requires determination is the effect of delay between 15th February, 2011 (recommendations of the Hon'ble Committee) and 2nd May 2011 (approval of the Hon'ble the Acting Chief Justice on the day when the case was put up) on the rights of the petitioner vis a vis pipeline absorption/merger cases of respondents 2 to 4. Assuming the proceedings of the Hon'ble Committee had been put up promptly before Hon'ble the Acting Chief Justice soon after 15th

February, 2011, and without any loss of time, it is trite to say, the file would have been placed before Hon'ble the Acting Chief Justice for orders seeking approval, even before the cases of private respondents 2 to 4 could be considered for merger in the cadre of Judgment Writers and their proposed absorption on the establishment of this Court, a process which effectively began much after the recommendations made on 15th February, 2011 in the case of the petitioner. Had there been timely approval of Hon'ble the Acting Chief Justice (given that the file was put up on 2nd May, 2011 and approved on the same day) with the same alacrity, the petitioner would likely have been promoted as Judgment Writer much before the respondents 2 to 4 came in, the petitioner would be ranked senior to private respondents in the cadre.

6. The Hon'ble Committee while making its recommendations on 15th February, 2011 accepted the representation of the petitioner granting him similar treatment as was given to Sham Sunder, Shamsher Singh and Raj Kumar Arora, all of whom were granted relaxation of service of two years for promotion as Judgment Writers. As per Rule 11 (1) (b) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (for short "1973 Rules"), minimum two years service as Senior Scale Stenographers is required for promotion to the post of Judgment Writer, on the basis of merit-cum-seniority, subject to fulfilling other conditions. The power of relaxation vests with the Hon'ble The Chief Justice under Rule 38 of the 1973 Rules. The recommendations made on 15th February, 2011 are reproduced as under:-

"Item Nos.1 to 4

Deferred.

Item No.5

Vide representation, Sh. Gaurav Bharadwaj, Stenographer of this Court, has submitted that he was appointed as Stenographer as per the test conducted by the High Court. He has stated that he joined as such on 12.5.2009 alongwith S/Sh. Sham Sunder, Shamsher Singh and Raj Kumar Arora. He has requested that since aforesaid S/Shri Sham Sunder, Shamsher Singh and Raj Kumar Arora have already been promoted as Judgment Writers by relaxing the requisite condition of length of service, he, being on the same footing may kindly be promoted as such on the basis of parity.

The Office has informed that a Stenographer can be promoted as Judgment Writer if he completes two years of service, by relaxing the requisite period.

The Committee has perused the matter.

The applicant- Sh. Gaurav Bhardwaj joined as Stenographer in this Court on 12.5.2009. As per the past precedent, he is also entitled for promotion as Judgment Writer. The Committee, therefore, recommends accordingly.”

7. A few facts may be necessary to be noticed. The petitioner was inducted on the establishment of this Court as a Clerk on 21st July, 2008 by order dated 10th July, 2008 (Annex. P-1). In the month of April, 2009, the High Court conducted a test in April 2009 for filling up 14 posts of Stenographers on the establishment of the High Court in which the petitioner also appeared alongwith other applicants. On the basis of performance in the Test, only four out of fourteen candidates including the petitioner as well as S/Shri Sham Sunder, Shamsher Singh and Raj Kumar Arora were selected on merit. On the basis of their selection, separate office orders were issued by the High Court appointing them Stenographers. The petitioner's letter of appointment is dated 7th May 2009.

8. The next promotion from the post of Stenographer is to the post of Judgment Writer which is governed by the provisions of Rule 11 (1) of the Rules as amended in the year 2010 vide Notification dated 11th May, 2010 (Annex. P-4). As per the provisions of the amended Rule, 50% of the posts of Judgment Writers are to be filled up by direct recruitment. Rule 38 of the 1973 Rules empowers Hon'ble the Chief Justice to relax the rules in case of any undue hardship in any particular case. The rule of relaxation is as follows:-

“38. Where the Chief Justice is satisfied that the operation of any rule causes undue hardship in any particular case, he may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner provided that the case is not dealt with in a manner less favourable to the officer or official concerned than in accordance with the rules.”

9. How the dispute started was when the other three batchmates of the petitioner, namely, Sham Sunder, Shamsheer Singh and Raj Kumar Arora made a representation in the Month of September, 2010 (Annex. P-5) seeking relaxation of rules pertaining to service of two years as Senior Scale Stenographers for promotion to the post of Judgment Writer. The petitioner asserts that the three representationists projected their case as if only three candidates were appointed to the posts of Stenographers in May, 2009 whereas factually, four candidates including the petitioner were selected, appointed and joined as Stenographers as mentioned in the order dated 23rd May, 2009 (Annex. P-3). The representation was placed before the Establishment Committee-III comprising of three Hon'ble Judges through a Meeting

Note dated 6th October, 2010 (Annex. P-6). The Hon'ble Committee in its meeting held on 14th October, 2010 while accepting the aforesaid representation (Annex. P-5) made recommendations for promotion of the aforesaid three batchmates of the petitioner, namely, Sham Sunder, Shamsher Singh and Raj Kumar Arora as Judgment Writers by relaxing Rule 11 (1) (b) of the 1973 Rules regarding condition of minimum period of two years service for promotion, making its recommendation to the Chief Justice under the provisions of Rule 38 of the 1973 Rules, primarily considering the fact that 22 posts of Judgment Writers pertaining to the promotee quota were available at that time and an earlier administrative precedent existed when one Pardeep Nautial was promoted as Judgment Writer from the post of Stenographer by relaxing the rules pertaining to the requirement of minimum two years' service for promotion.

10. The recommendation of the Hon'ble Committee dated 14th October, 2010 was subsequently approved by Hon'ble the then Chief Justice on 29th October, 2010 i.e. within a fortnight. Accordingly, the three were promoted as Judgment Writers on 29th October, 2010. The petitioner asserts that the officials who prepared the Meeting Note for consideration of the Hon'ble Committee failed to reveal to the Hon'ble members of the Committee and clarify the fact that in fact four candidates, namely, the petitioner and the other three were entitled to be considered together being identically placed. In view of this, the case of the petitioner could not be considered and was ignored which resulted in discrimination between the petitioner and his three batchmates becoming the bone of contention in the present case. The petitioner joined as Stenographer on 12th May, 2009 which is prior to

the aforesaid three batchmates who joined on 21st May, 2009 and 22nd May, 2009.

11. After coming to know of this, the petitioner submitted a representation dated 17th December, 2010 (Annex. P-10) pointing out the injustice caused to him in the matter of promotion to the post of Judgment Writer. The representation was put up before Hon'ble the Chief Justice and His Lordship was pleased to pass an order sending the matter to the concerned Hon'ble Committee of Judges for considering the representation sympathetically. That is how the matter was placed before the Hon'ble Committee for consideration by the then Registrar (Administration) through a Meeting Note dated 24th January, 2011 (Annex. P-11).

12. On being convinced and satisfied with the bona fide and genuine claim of the petitioner, the Hon'ble Committee recommended the case of the petitioner for promotion to the post of Judgment Writer on the same footing as his batchmates i.e. on parity basis, in its meeting held on 15th February, 2011 (Annex. P-12). Sadly, the office of the establishment of the High Court did not put up the recommendations of the Hon'ble Committee before Hon'ble the then Acting Chief Justice for seeking the formal/procedural approval for a fairly long time. The dealing persons in the office concerned put up the matter seeking formal/procedural approval of the recommendations of the concerned Committee dated 15th February, 2011 before Hon'ble the then Acting Chief Justice as late as on 2nd May, 2011 i.e. after a spell of two and a half months. The recommendations were approved on the same day itself i.e. on 2nd May, 2011. It is this delay which has proved fatal to the petitioner's cause inasmuch as, it not only adversely affected his

promotion and seniority as Judgment Writer, but also adversely affected his seniority on subsequent promotion to the post of Private Secretary etc. and would continue to affect his seniority in future.

13. It is in this background that the petitioner has approached this Court for directions to the official respondents to relate his promotion and seniority back to the date when his fellow Stenographers were promoted on 29th October, 2010 as Judgment Writers and in any case to rank and place him before the private respondents 2 to 4 who were absorbed/merged in the cadre of Judgment Writers. If such relief is granted to the petitioner, it would remove any vestige of unfair discrimination and would bring his case on par with the other three compatriots.

14. On the other hand, respondents 2 to 4 originally belonged to the Subordinate Staff Cadre in the District & Sessions Courts and had been posted to work in the High Court office of the District and Sessions Judge-cum-Registrar (Vigilance), Punjab and in the Office of the District & Sessions, Judge-cum-Registrar (Vigilance), Haryana. They were absorbed as Judgments Writers on the establishment of the High Court vide office order dated 3rd May, 2011 (Annex. P-15) with retrospective effect from 1st April, 2011 thereby superceding the petitioner in the matter of promotion/appointment and loss of consequential seniority in the cadre of Judgment Writers.

15. Feeling aggrieved by the order dated 3rd May, 2011, the petitioner submitted a representation dated 17th September, 2011 (Annex. P-16) to the authorities, which was placed before the Hon'ble Committee after a lapse of seven months through Meeting Note dated 20th April, 2012 (Annex. P-17). The Hon'ble Committee in its meeting

held on 11th May, 2012 declined the request of the petitioner without assigning any reason by recording cryptically “After perusing the Meeting Note, the Committee recommends that the request of Sh. Gaurav Bhaardwaj, Judgment Writer, be declined.” These recommendations were put up before Hon’ble the Acting Chief Justice within a period of less than a week i.e. on 16th May, 2012 by the Office of the High Court through a forwarding Note of even date. The decision was approved by His Lordship. As a result of declining promotion from the date when the three batchmates were promoted on 29th October, 2010, the next promotion of the petitioner to the post of Private Secretary was also delayed by more than four months from the dates when the three batchmates were promoted on 17th January, 2013 to the higher post.

16. The petitioner argued that even if respondents 2 to 4 were promoted from 3rd May, 2011 and not from 1st April, 2011, he would rank senior to them because his case was finalized by Hon’ble the Acting Chief Justice one day before on 2nd May, 2011. It is, inter alia, the retrospective promotion given to respondents 2 to 4 w.e.f. 1st April, 2011 which has turned the tables against the petitioner and the subordinate court staff have stolen a march over him.

17. Feeling aggrieved by the order dated 3rd May, 2011 (Annex. P-15) promoting respondents 2 to 4 and the order dated 16th May, 2012 (Annex. P-19) approving the decision of the Hon’ble Committee declining the request of the petitioner vide application dated 17th September, 2011 (Annex. P-16) he claimed promotion with retrospective effect by making a representation dated 24th December, 2014 (Annex. P-24) staking his claim for justice. Before deciding the

representation of the petitioner, a copy was supplied to respondents 2 to 4 and the objections were invited from them. The petitioner laments that although objections were called but no opportunity of hearing was afforded to him before deciding the representation by the Hon'ble Committee in its meeting held on 6th August, 2015 (Annex. P-29). The principles of natural justice would require the petitioner to have been given a fair and reasonable opportunity of hearing for him to explain his case in person. As a result, sufficient compliance of the rule of *audi alteram partem* is lacking. Points out that the order declining the representation of the petitioner is a non-speaking order. No reasons have been assigned therein as to what weighed in the mind. These orders, among others have been challenged in this petition.

18. The petitioner says that as soon as the decision was taken recommending rejection of his claim, the file was put up by the Registrar (Administration) before Hon'ble the Acting Chief Justice on the very next date i.e. on 7th August, 2015 by forwarding Note dated 7th August, 2015 which was approved by His Lordship on the same day.

19. The respondent-High Court has put in its written statement contesting the case. Preliminary objection has been entered taking the ground of delay and laches in challenging the impugned orders declining the representations of the petitioner seeking relaxation of condition of two years' service for promotion to the post of Judgment Writer. It is admitted that the Hon'ble Committee made recommendations on 15th February, 2011 in favour of the petitioner recommending relaxation on par with his three fellow Stenographers, all four of whom were selected in the same examination and duly appointed in May 2009 (Annex. P-3). It is explained that certain staff

members working in the office of District & Sessions Judge-cum-Registrar (Vigilance), Punjab and Haryana and particularly Judgment Writers had been submitting representations in the year 2010 (representations dated 20th July, 2010 and 29th November, 2010) requesting absorption from the office of the District and Sessions Judge-cum-Registrar (Vigilance), Chandigarh to the establishment of the High Court on account of abolition of the said offices. The request of the staff members was considered by the Hon'ble Committee in its meeting held on 25th March, 2011 which recommended the absorption of such staff members on the establishment of the High Court, vide Minutes dated 25th March, 2011 (Annex. R-1). The said recommendations were placed before Hon'ble the Chief Justice on 28th March, 2011 who approved the same on 20th April, 2011 w.e.f. 1.4.2011 and office order was issued on 3rd May, 2011 (Annex. P-15). Consequently, respondents 2 to 4 were absorbed on the establishment of the High Court w.e.f 1st April, 2011 by order dated 3rd May 2011. In ordering the absorption, power of relaxation under Rule 38 of the Rules of 1973 was invoked to absorb the supporting staff of the Office of the District & Sessions Judge (Vigilance), Punjab and Haryana in corresponding posts of equal pay, work and status etc. The petitioner's case was decided on 2nd May, 2011, but by that time respondents 2 to 4 had been absorbed with retrospective effect from 1st April, 2011 by order dated 3rd May, 2011 (Annex. P-15). There is no reason assigned in the order dated 3rd May, 2011 why the date 1st April, 2011 was chosen, if not only for convenience as start of the fiscal year.

20. It may be mentioned that the case of respondents 2 to 4

was considered in the meeting held on 25th March, 2011 while the

petitioner's case for relaxation of rule was considered earlier by another Hon'ble Committee on 15th February, 2011 recommending promotion/appointment by relaxation of condition of two years service. The speed with which papers were processed in the case of respondents 2 to 4 was within less than a month and the culpable delay in his case is the core grievance of the petitioner of being unfair dealt with by the officials of the establishment not to have put up his case before Hon'ble the Acting Chief Justice within reasonable time for orders. Due to this fortuitous circumstance alone, the petitioner has lost seniority vis-a-vis respondents 2 to 4.

21. The High Court further presses on the objection of delay in its reply that after joining as Judgment Writer, the petitioner submitted a representation after more than four months on 17th September, 2011 (Annex. P-16) [conveniently skipping the first representation dated 17th December, 2010 (Annex. P-10)] claiming promotion w.e.f. 29th October, 2010, that is, the date when his three contemporaries were promoted as Judgment Writers. The representation was declined by the Hon'ble Committee chaired by Jasbir Singh, J. in the meeting held on 11th May, 2012 which was approved by Hon'ble the Chief Justice. But the petitioner did not challenge the rejection order before any judicial forum and therefore, his case is barred by delay and laches. The present petition has been filed in the year 2014 in relation to an event which happened in the year 2011 and consequently, a civil suit to challenge the decision made in 2011 would be barred by limitation, and therefore, the petitioner has no cause of action to file the present petition and the same is liable to be dismissed on the ground of delay and laches.

22. The petitioner has filed replication to the reply of the High Court. Faced with the objection of delay and laches, the petitioner submits that he had made a representation as early as on 17th December, 2010 (Annex. P-10) seeking promotion to the post of Judgment Writer by relaxing the condition of two years service on the basis of parity as was granted to his three other batchmates who had joined on the post of Stenographer together. To counter the argument on delay, the petitioner says he is himself a victim of delay and laches at the hands of respondent No.1 and its dealing officials in withholding the file and placing the matter before Hon'ble the Acting Chief Justice very late for obtaining approval of recommendations of the Hon'ble Committee. He further pleads that even otherwise he had completed two years service as Stenographer required for promotion as Judgment Writer under Rule 11 (1) (b) of the 1973 Rules by 2nd May, 2011, the date on which the condition of requirement of two years service was approved by relaxation under Rule 38 of the 1973 Rules. Consequently, the said approval regarding two years service on the verge of completion of two years as Stenographer becomes a vacant exercise and rendered meaningless to him. As such, the petitioner has been discriminated against vis a vis his three fortunate batchmates who were granted benefit of relaxation of two years service for their promotion on 29th October, 2010 by conveniently ignoring his case even when 22 vacancies existed lying unfilled from promotion quota at the relevant time. Argues it was a culpable mistake and oversight on the part of the office not to have brought to the notice of the Hon'ble Committee which considered the representation of the three batchmates that there was another person equally eligible on merit in the same test for

considering case for relaxation of rule as there was not an iota of difference between their cases. There was a delay of 2 1/2 months as on 2nd May, 2011 when approval was granted by Hon'ble the Acting Chief Justice and that approval factually had no practical use left for him, since, he had by then already acquired two years service as Stenographer. While the case of private respondents was fast tracked his was curiously melted down by burying the file. And for coming to this pass, answers are required to be given by the officials who delayed finalization in one case and to have acted promptly in another. The petitioner asserts emphatically that order dated 16th May, 2012 declining the representation of the petitioner dated 17th September, 2011 passed after about 8 months was never conveyed to him and as such the question of challenging the same before any judicial forum does not arise. The petitioner obtained a copy of the decision through an application under the Right to Information Act, 2005, after which he was pursuing the matter with the authorities and also had made a representation dated 24th December, 2014 (Annex. P-24).

23. An employee of the High Court who is aggrieved is not expected to knock at the doors of the High Court on the judicial side where he serves expecting justice from the authorities at all times. I do not think that it is fair and proper for the High Court to object on delay and laches when its offices are guilty of delay. Once a case of arbitrary inaction and unfair discrimination has arisen and the right has become fundamental in nature by the sweep of Article 14 of the Constitution of India, then objections of delay and laches pale into insignificance and merits of the case require to be examined. The State or the High Court should desist from taking pleas of delay, laches and limitation in a just

cause. This is especially true when Article 14 has been breached since three batchmates made a representation without associating the petitioner. At that stage he should have been heard. The representation made by colleagues should have been brought to his knowledge then it was for the petitioner to chalk out his course of action. He should have been asked to join in or make a separate representation for a joint decision. It is not the case that the petitioner himself disassociated from the cause espoused by his three batchmates. If this error could have been corrected by the Office when that representation was decided, the case of the petitioner would most certainly never have come to Court. This fundamental error is now the concern of the Court to do justice even-handedly and in accordance with law. Accordingly, the objections on delay and laches and limitation are over-ruled. Still further, the petitioner was not invoking pure civil rights that he should have filed a civil suit in the district courts. His claim is based on the principles of equal opportunity and fairness-in-action and is justiciable. Even if no one is at fault, even then the value of equality before the law must prevail and over-ride all other considerations in the quest for justice. The petitioner should be returned to his pre-existing rights accrued and vested in him when relaxation was granted to three of his fellow stenographers who together formed a homogeneous class and are reasonably classified. There is no legal justification in setting apart the case of the petitioner from the rest i.e cases of Sham Sunder, Shamsheer Singh and Raj Kumar Arora. Moreover, it is a continuing wrong which if not remedied causes financial loss and loss of status to the petitioner every day which will run throughout his career, if the court fails to interfere. If the petitioner attributes motive to the then Registrar

(Administration) he really means the officials who were the link between the Hon'ble Committee and the Chief Justice and in them purposely delaying putting up the matter for consideration before Hon'ble the Acting Chief Justice. Then he has every reason to question the steady silence of the file in his case and the prompt disposal of business in the cases of respondents 2 to 4. The court cannot ignore this culpable laxity of the ministerial staff as bridge between the Hon'ble Committee and the Chief Justice. Not only did they fail in their duty, the dealing officials appear to have actively suppressed material facts and failed to impartially provide valuable inputs to the Hon'ble Committee that relaxed the rule for three persons and conveniently forgetting the petitioner when he was equally placed on all fours. Vested interests and extraneous reasons at work in the ministerial staff cannot be ruled out which appear to have played their vicious part at both the critical stages. Someone in the office must have had some axe to grind by sitting over the file and pushing it only too late in order to create a *fait accompli*. This apathy has led to this litigation.

24. The petitioner is not up in arms against respondents 2 to 4 on their absorption, but he is aggrieved by the timing. The retrospective absorption before he could be promoted as Judgment Writer. Vested interests might have delayed his file to usher in respondents 2 to 4 stealthily to win a march. Office should have advised that the recommendations have been made in favour of the petitioner on 15th February, 2011 and the same needed to be addressed before the matter of merger and absorption of respondents 2 to 4 was considered since their case was recommended later. Presently, respondents 2 to 4 have been further promoted to the post of Secretary vide order dated 16th

May, 2016 and this is further cause of heartburn. The Hon'ble Committee took just three weeks to consider the case of the petitioner favourably making recommendations on the representation. The recommendations by the Hon'ble Committee were made on 15th February, 2011 and the same were approved by Hon'ble the Acting Chief Justice on 2nd May, 2011 when the rights of the petitioner on acquiring two years service as Stenographer was around the corner. The petitioner cannot be made to pay heavily for this lapse of office taking two and a half months to place the recommendation of the Hon'ble Committee before Hon'ble the Acting Chief Justice for approval.

25. Respondents 2 to 4 have filed a short written statement pleading that the petition is liable to be dismissed being highly belated. The petitioner was aware that the answering respondents were absorbed as Judgment Writers w.e.f. 1st April, 2011 vide order dated 3rd May, 2011 (Annex. P-15), but he never chose to challenge the order of absorption and the present petition has been filed after 4 1/2 years. Mr. Malik, learned Sr. Counsel cites ruling in P.S.Sadasivaswamy vs. State of Tamil Nadu, AIR 1974 SC 2271 wherein the Supreme Court have held that writ petition can be filed within six months or at the most within a year. Mr. Malik asserts that even otherwise no case on merits against the answering respondents is made out, but the fact is that the rights of the petitioner are exclusive to him going back to the date when the three barchmates were promoted. Therefore, the objection to the delay with regard to claiming promotion and consequential seniority becomes insignificant. Seniority has to be decided on the basis of objections from persons likely to be affected. Mr. Malik contends that

the three officials stated to be batchmates were senior to the petitioner and when seniors have been promoted by giving relaxation, a junior cannot claim relaxation and promotion as a matter of right. So the petitioner has no cause for seeking promotion to the post of Judgment Writer on 29th October, 2010 when his seniors were promoted as Judgment Writer by giving relaxation, even the seniors are not party in the present writ petition, so in the absence of those candidates, the petitioner has no case to claim promotion as Judgment Writer w.e.f. 29th October, 2010. Mr. Malik asks how the petitioner is claiming his rights over his seniors. The seniors and the petitioner were put to a test of Stenographers where only 4 out of 14 candidates were selected on merits. The petitioner would have a right of promotion from the next available vacancies as per seniority existing on 29th October, 2010 against an available post of Judgment Writer of which sufficient number of posts i.e. 22 posts were available.

26. The replication to the written statement of respondents 2 to 4 need not be gone into as there are only repetition and nothing new has been stated by the petitioner except to answer the plea of the private respondents that seniority is wholly immaterial for the purpose of determination of the issue involved in this case especially when relaxation in experience was granted to the petitioner by the Hon'ble Committee and approved by the Hon'ble Acting Chief Justice. The petitioner has no dispute with his three batchmates and they are not necessary party. They will not be disturbed in any manner by the result of this petition. Moreover, seniority principle between the petitioner and his three batchmates breaks down when 14 candidates appeared for the Test and only four of them were selected on merit.

27. There is another crucial facet that requires to be addressed on the question of relief. Since the recommendation of the Hon'ble Committee dated 15th February, 2011 is silent from which date the promotion by relaxation of rule is to be granted nor is anything said in this regard in the order of approval by Hon'ble the Acting Chief Justice dated 2nd May, 2011, then it would only mean relief will be in relation to past event of cases of S/Sh. Sham Sunder, Shamsher Singh and Raj Kumar Arora when relaxation was accorded to them and the petitioner ignored. That was the prayer in the representations dated 17th December, 2010 (P-10) which was allowed and 17th September, 2011 (P-16) which was declined on 11th May, 2012. The petitioner was near about completion of two years service in May, 2011 which was less than three months from the date of the recommendation and the promotion of the petitioner at the belated stage would be rendered meaningless if the petitioner is not returned to his seat among his batchmates. Otherwise, it would be a travesty of justice if the petitioner is left on the way side without any real relief. An anomalous situation would arise on 2nd May, 2011 when the petitioner was granted relaxation and by which time he has already completed two years of service or the period was about to mature. Relaxation in such circumstances would be a mirage, if ante-dated promotion is not given to the petitioner notionally and if his seniority is not restored over and above respondents 2 to 4 and amongst his batchmates, he would suffer endlessly till he retires. There is nothing on record to show that this relevant feedback was supplied by the office to Hon'ble the Acting Chief Justice at the time of approval. The relaxation accorded to the petitioner is thus rendered pyrrhic. There will be defeat in the victory.

Therefore, amends are to be made by restitution of rights by the fiction of the law relating back the relaxation to 29th October, 2010 to remove unfair discrimination within a homogenous class of four employees selected in the same process successfully qualifying a common test for which 14 candidates competed for the post of Judgment Writer and 10 lost it.

28. Accordingly, the writ petition is allowed. The impugned orders dated 11th May, 2012 (P-18), 16th May, 2012 (P-19), 6th August 2015 (P-29) and 7th August 2015 (P-30) denying the prayer of the petitioner are invalidated. The petitioner will be notionally promoted from the date of availability of vacancy as Judgment Writer (from amongst 22 in promotion quota) on par with S/Sh. Sham Sunder, Shamsher Singh and Raj Kumar Arora, as per merit and inter se seniority as Stenographers. Accordingly, the order Dated 3rd May 2011 is modified. The order dated 2nd May, 2011 is directed to relate back to 15th February, 2011 and consequently the recommendation dated 15th February, 2011 would relate back to 29th October, 2010 with the declaration that the petitioner would become senior to respondents 2 to 4 in the cadre of Judgment Writers and remain so in the higher promotional posts. Seniority *inter se* between the petitioner and respondents 2 to 4 is directed to be re-drawn accordingly. Further promotions from Judgment Writer onward be reviewed in the light of this judgment and fresh orders passed. Hearing, if necessary, be given to persons likely to be affected, other than respondents 2 to 4 as they have been heard at length through Mr. R.K.Malik, Senior Advocate appearing for them.

29. The judgment was reserved on 25th September, 2018 and is pronounced today on 26th October 2018.

(RAJIV NARAIN RAINA)
JUDGE

26.10.2018
MFK

REPORTABLE