

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

CWP-7659-2013 (O&M)

Date of Decision: 25.04.2018

Ajit Singh and another

... Petitioners

Vs.

Haryana Power Generation Corporation Limited and another

... Respondents

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

Present : Mr. Suvineet Sharma, Advocate
for the petitioners.

Mr. P.S. Poonia, Advocate
for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has assailed the award passed by the Labour Court dated 16.4.2012 (Annexure P-13).

2. Petitioners were stated to have been appointed as T-Mates on work charge basis on 4.9.1974 and 8.10.1974. Petitioners' grievance is relating to not promoting them to the post of Assistant Foreman in the year 1977. Thus, they raised industrial dispute to the extent they are entitled for promotion to the post of Assistant Foreman. Award was passed in their favour vide Annexure P-1 on 18.9.1989 and it was implemented by the respondents on 14.02.1991 (Annexure P-4) by which both the petitioners have been assigned the date of promotion as 2.2.1977. Petitioners have been extended monetary benefits in the year 1996. Further in respect of grievance of promotion to the post of Foreman and consequential benefits, petitioners were stated to have issued a demand notice on 13.01.1998. Consequently, Labour Court decided the reference on 16.04.2012 against the petitioners on the score that petitioners had grievance with reference to the award dated 18.9.1989 (Annexure P-1) and it has attained finality, therefore, question of

reconsidering with reference to the award passed on 18.9.1989 may not appropriate. Accordingly, award dated 16.4.2012 has been passed against the petitioner. Hence, the present petition.

3. Learned counsel for the petitioner submitted that insofar as claiming further promotion from the post of Assistant Foreman, cause of action accrued on 14.02.1991 (Annexure P-4). Therefore, Labour Court has erred in holding that petitioners had cause of action in the year 1989 which has been decided vide Annexure P-1 dated 18.9.1989. It was also submitted that there is no delay in raising demand notice on 13.01.1989 in respect of claiming further benefits to the post of Foreman like Sh. Dhyan Singh who is stated to be junior to the petitioners with reference to the date of entry into the cadre of Assistant Foreman.

4. Per contra, learned counsel for the respondents pointed out that petitioner had cause of action for the purpose of claiming promotion or any benefits on par with Sh. Dhyan Singh as on 14.2.1991 the date on which the petitioners have been assigned the date of promotion as 2.2.1977. It was further contended that while petitioner was aware that they have been given promotion retrospectively w.e.f. 2.2.1977 on 14.2.1991, they had grievance in respect of Foreman on par with Sh. Dhyan Singh on 14.2.1991. Thus, there is a delay in seeking relief in respect of Foreman and consequential benefits on par with Sh. Dhayan Singh.

5. Heard learned counsel for the parties.

6. Labour Court has held that the petitioners had grievance in the year 1989 which has been settled would be an error having regard to the cause of action accrued to the petitioners on 14.02.1991 the date on which 1st award was implemented while extending the benefit of promotion to the

petitioners to the post of Assistant Foreman w.e.f. 2.2.1977. Even though delay issue has not been taken into consideration by the Labour Court. At the same time under Article 226 of the Constitution, this Court cannot lose sight relating to delay and laches. Supreme Court in the case of **State of Jammu and Kashmir v. R.K. Zalpuri and others**; AIR 2016 SC 3006 held in para-20 how to entertain a writ under Article 226 of the Constitution. Extract of para-20 of the said judgment is as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any law as of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

In the above cited decision, one of the issue is relating to delay and laches. Admittedly, in the present case, petitioners' grievance relating to promotion to the post of Foreman on par with Sh. Dhyan Singh relates back to 14.2.1991 the date on which petitioners had cause of action for the reasons that they have been promoted to the post of Assistant Foreman w.e.f. 2.2.1977 on 14.2.1991. Whereas, petitioners issued demand notice on

13.01.1998 in respect of claiming promotion to the post of Foreman and consequential benefits on par with Sh. Dhyan Singh. On this score itself, petitioners' claim cannot be considered. Moreover Supreme Court in the case of P.S. Sadasivaswamy v. State of Tamilnadu; (1975) 1 SCC 152 has held that in respect of seniority and promotion, affected person has to approach the Court within a reasonable period of six months or one year.

7. In view of the above principle laid down by the Supreme Court, petitioner has not made out a case.

8. Accordingly, petition stands dismissed.

7. At this stage, learned counsel for the petitioners submitted that petitioners have attained the age of superannuation and retired from service, if he is promoted to the next higher post, 3rd party right would not be affected. At the best he would be entitled to regularization of pay notionally and further he would be entitled to pension. As long as petitioner has not entered into the promotional cadre, he is not entitled to regularization of pay and pension in the higher post because one must have to join on the post to claim benefit of promotional post. In the present case, petitioner has already attained the age of superannuation and his claim has been rejected on the ground of delay and laches in respect of promotional post, question of extending notional benefits in the higher cadre do not arise. Thus, aforesaid contention of the petitioners is hereby rejected.

25.04.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No