

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.3750 of 2018

Date of Decision:-17.04.2018

Lal Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH.

Present:- Mr. R.S. Manhas, Advocate for the Petitioner.

JASWANT SINGH, J.

Petitioner-Lal Singh who is working on the post of *Beldar* (Class-IV employee) in Department of irrigation, Punjab has filed the instant writ petition seeking a direction to appoint him w.e.f. 27/05/1995 on the aforementioned post, instead of 01/03/2012 which was issued to him vide order dated 09/04/2012 (Annexure P-5).

Learned Counsel for the petitioner has argued that the petitioner admittedly belongs to an oustee quota whereby the land owned by his father namely Buta Ram alias Bhotu was acquired for construction of Ranjit Singh Sagar Dam and as per the rehabilitation and resettlement policy dated 18th of November 1993, one member of his family was entitled for a government job. Since, the entire land of Buta Ram was required therefore, he proposed the name of his son Lal Singh (petitioner herein) for

employment. Thereafter, the petitioner was interviewed for the purpose of

determining his eligibility, whereby he was found eligible. However, the claim of the petitioner was not being considered and therefore he was constrained to file a civil suit No. 238 of 21/09/1995, which was ultimately decreed by Additional Civil Judge (Senior Division) Pathankot vide judgement dated 07/03/2000 (Annexure P-2). Despite there being numerous communications between the petitioner and the respondent-department, for one reason or the other the department did not appoint the petitioner to the post of *Beldar* and therefore, he was forced to file a CWP No. 18359 of 2011 in this Court, which was ultimately disposed of vide order dated 28/09/2011 with a direction to the Department to consider the claim of the petitioner for providing employment in light of the decision rendered in CWP No. 787 of 2008. It is argued that in compliance of the said order dated 28/09/2011, petitioner was finally offered appointment letter on 9th of April 2012 w.e.f. 01/03/2012 and since then he has been working on the post of *Beldar*. However, he has wrongly been not been granted appointment w.e.f. 27th of May 1995 i.e the day he was for the 1st time interviewed for the purpose of determining as to whether the petitioner belongs to the oustee quota or not.

I have heard learned Counsel for the petitioner and perused the paper book with his able assistance. However, I do not find any merit in the present writ petition and the same deserves to be dismissed.

Admittedly, the petitioner had filed a Civil Suit bearing No. 238 of 21/09/1995 claiming that he be appointed to the post of *Beldar* in accordance with the Dam Oustee Policy. The said suit was partly decreed vide judgement dated 7th of March 2000 (Annexure P-2). As per the said

for his appointment to the aforementioned post under dam oustee quota. It is not in dispute that the said judgement has attained finality and has not been challenged by either of the parties till date. Meaning thereby, the petitioner had already raised a claim before the competent court of jurisdiction for seeking employment with effect from 27/05/1995, however, apparently the said relief stands declined by the civil court and instead the Court directed respondents for considering the case of petitioner under the Dam oustee quota. Thus, the petitioner has already lost the bus for being considered for appointment to the post of *Beldar* w.e.f 27.05.1995.

It is also not in dispute that after a long drawn litigation and communication (as referred by the petitioner's counsel in his arguments) between the parties, the petitioner was ultimately offered a regular government job vide order dated 09/04/2012 (**P-15**) and the said order has been accepted by the petitioner. It is after a considerable delay of more than 5 years that the petitioner has approached this court seeking the relief of appointment w.e.f. 27/05/1995. In the opinion of this court the said relief cannot be granted to the petitioner in the present writ petition for three reasons:

“ **Firstly**, petitioner has already availed his remedy available under law and in case he wanted that he should be appointed w.e.f. 27/05/1995 then, he was required to agitate the said matter before the Civil Appellate Court of competent jurisdiction. At this stage, when the plaintiff has already availed his remedy as available under law then, this court while exercising the jurisdiction of article 226 cannot entertain the present petition being hit by principle of *res judicata*.

Secondly, the claim of petitioner is highly belated, as the cause of action accrued to the petitioner on 27/05/1995 and the present petition is being filed in the year 2018.

Thirdly, the petitioner had also filed a CWP No. 18359 of 2011 which was disposed of vide order dated 28/09/2011 (P-12). The petitioner could have very well raised his claim/grievance before the court at that point of time and should not to have given up his remedy/claim of appointment w.e.f. 27/05/1995 at the time of disposal of the writ petition. Since the petitioner has chosen not to agitate/claim benefit of appointment w.e.f. 27/05/1995 in the said writ petition as well, in the present petition the petitioner is not competent to raise a claim as the same is barred by Order 2 Rule 2 of CPC. ”

In view of the above, finding no merit in the petition the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

April 17, 2018
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No