

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8597 of 2018
Date of Decision: 06.04.2018

Subhash Chander

...Petitioner

Vs.

Haryana Power Generation Corporation
Limited and others

...Respondents

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

Present:- Mr. Kiran Pal Singh, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the decision of the State Level Grievance Cell (Corporate Office) of the Haryana Power Generation Corporation Limited taken in the meeting on April 21, 2017 by a committee of five officers under the Chairmanship of the Director Technical, HPGCL, Panchkula rejecting the representation of the petitioner for retrospective promotion as Upper Division Clerk (F) w.e.f. April 11, 2001. The claim has been declined for two reasons. Firstly, the four officials of the general category were promoted as UDC (F) on April 11, 2001 were senior to the petitioner and another claimant, namely, Roshan Lal (non-petitioner). These officials were promoted on their own quota post and no official junior to the petitioner had been promoted to the post of UDC (F) prior to them. The second reason given is that the representation for deemed date promotion with retrospective effect from April 11, 2001 is highly belated and no prejudice is caused to the petitioner as no official, junior to him has been promoted against vacancy at reserve roster point earmarked for the members

of the Scheduled Caste. The petitioner is a member of Scheduled Caste and was appointed as Lower Division Clerk on ad hoc basis in erstwhile Haryana State Electricity Board on January 10, 1989 and his services were regularized under policy instructions applicable to the erstwhile Board w.e.f. March 31, 1993. He was promoted as Upper Division Clerk by office order dated January 10, 2006. Earlier, he had passed the Departmental Ministerial Establishment Examination in the year 2000.

2. The petitioner pleads in the petition that recruitment and promotion policy with regard to Ministerial Establishment of the Corporation for promotions of LDCs and UDC can be applied and offered only if the candidate passed the Departmental Account Examination (DAE). Departmental Account Examination was held during March 27, 2000 to March 31, 2000 but the petitioner in his attempt was declared successful on June 02, 2000 as his name found mention in the list of successful candidates. It was thereafter on April 11, 2001 that four employees were promoted as UDC and the petitioner was ignored.

3. It is the petitioner's case that 15 posts of UDC were lying vacant when similarly situated employees were promoted. Who these similarly-situated employees are is not disclosed. In the year 2001 there was backlog of 11 posts of UDC in SC category when the petitioner was not offered promotion. It was only after his promotion as UDC in 2006 that the petitioner started claiming deemed date promotion by submitting a representation through proper channel on June 02, 2006. These representations were repeated time and again, one in 2007, six representations in 2012, three in 2013, four in 2014, two in 2015, one each

in 2016 and lastly February 08, 2017.

4. On April 04, 2017, the petitioner was informed by the respondents that the meeting of the State Level Grievance Cell constituted under the Litigation Policy 2010 was scheduled to meet on March 24, 2017 but was postponed to April 21, 2017. On April 21, 2017 the impugned order was passed and communicated to the petitioner vide letter dated June 27, 2017 enclosing proceedings of the meeting of the Cell, which proceedings are under challenge in this petition filed under Article 226 of the Constitution.

5. Heard Mr. Kiran Pal Singh, learned counsel for the petitioner on a belated claim made after 17 years of the cause of action seeking judicial redress. The State Level Grievance Cell in its decision has *inter alia* declined the claim as highly belated which it certainly is. Not only is there an inordinate delay of 17 years but the period is covered by filing representation after representation from 2006 till 2017. It is long settled in law that repeated representations do not give rise to fresh cause of action, the remedy for which may have expired by bar of delay and unexplained laches. Had the petitioner brought a suit for the same relief of antedated promotion anytime after three years and two months he would have met the stonewall of limitation three years having expired when general category candidates were promoted as Upper Division Clerks on April 11, 2001. The petitioner is a member of the Scheduled Caste and cannot be similarly situated as general category candidates as he could earn promotions either on his own turn as per seniority or on reserve roster point. No person junior to the petitioner was promoted till he was not promoted as Upper Division

Clerk in 2006. The petitioner has not established his claim for reserve roster point promotion as per reservation policy of the State of Haryana. Clearing departmental examinations may make a candidate eligible but still the promotion is dependent on availability of a clear vacancy. Apart from delay, there is unexplained laches in not seeking legal recourse for over 17 years. If the petitioner was serious enough he should have approached Court long back. In cases of claims of seniority and promotion, aggrieved person must approach within six months to one year of the cause of action as observed in P.S. Sadasivaswamy v. The State of Tamil Nadu, AIR 1974 SC 2271. Delay defeats equity. The petitioner has been sitting on the fence for 17 years and letting time pass. Third party rights have settled long ago which are protected have not to be disturbed. Administrative chaos in the cadre has to be avoided and prevented at all costs especially when rights asserted are only civil in nature and not constitutionally fundamental in character when delay may be excused by court interdict.

6. I have thus no valid or plausible reason to undo the impugned order declining the claim of the petitioner for promotion as Upper Division Clerk (F) from April 11, 2001 brought in 2018.

7. I would, as a result, dismiss the petition, the claim being belated and not vested and accrued.

(RAJIV NARAIN RAINA)
JUDGE

06.04.2018
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Whether speaking/reasoned

Yes

Whether reportable

No