

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

CWP No.9986 of 2018

Date of Decision:-24.04.2018

Harinder Sharma & Ors.

.....Petitioners.

Versus

The State of Punjab & Anr.

.....Respondents.

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

Present:- Mr. R.K. Chopra, Senior Advocate assisted by
Mr. Gaurav Chopra, Advocate for the Petitioners.

JASWANT SINGH, J.

1. Eight petitioners, who were appointed as Hindi/Punjabi teachers in the Punjab Education Department on different dates are seeking a writ in the nature of mandamus, for directing the respondents to treat them as part of the Master's Cadre w.e.f. 01/01/1986 and accordingly fix their seniority in the Masters Cadre from the said date.

2. Learned Counsel for the petitioners has argued that petitioners had joined the services with the respondent Department on different dates between 19/08/1982 to 05/03/1985 as Hindi/Punjabi teachers and acquired the basic essential qualification for the post of master/mistress between April 1989 to April 1995 (complete details have been given in para 2 at page 10 of the paper book). It is submitted that the classical and vernacular

Cadre in the Punjab Education Department consists of various categories of

teachers such as Hindi teacher, Punjabi teacher etc. All the teachers working in the classical and vernacular Cadre are having their joint Cadre and seniority, and are promoted to the post of Master on the basis of such seniority, which is governed by Rule 9 of the Punjab State Education Class-III (School Cadre) Service Rules 1978 (hereinafter referred as the 1978 rules). As per the said rule, 75% of the posts are to be filled by way of direct appointment, 15% by way of promotion from trained graduates JBT/ETT teachers and 10% from amongst the trained graduates i.e classical and vernacular teachers.

It is submitted that on the recommendation of the 3rd pay commission, the pay scales of Punjab government employees were revised w.e.f. 01/01/1986 by way of notification dated 17.02.1989(Annexure **P-1**), whereby it was decided by State of Punjab that Hindi/Punjabi teachers be equated in terms of pay with that of Masters and in future no appointment to the post of Hindi/Punjabi teachers shall be made and thereafter only Master/Mistresses be appointed as language Masters/Mistresses. In view of the said notification, the petitioners were granted pay scales of Masters with effect from 01/01/1986 and consequently, petitioners started performing the same duties as was being performed by the masters/mistresses w.e.f. 01/01/1986. However, petitioners were promoted vide promotion order dated 03/07/2001 (Annexure **P-2**) although, it is submitted that the petitioners were entitled for promotion w.e.f. 01/01/1986. It is contended that despite numerous representations being sent to the respondent Department and also considering the fact that names of petitioners were called for promotion to the post of Masters by concerned appointing authority between 1990 upto 1998, still, the names of the petitioners were

never sent for promotion from retrospective date and therefore, grave injustice has been caused to them. Hence, prayer has been made for directing the respondents to grant the petitioners seniority w.e.f. 01/01/1986 or from the date when they had acquired the essential qualification of BA/B.Ed (required for promotion to the post of Masters/mistresses).

3. I have heard learned counsel for the petitioners and have perused the paper book with his able assistance. However, I do not find any merit in the present writ petition and the same is liable to be dismissed.

4. Admittedly, the notification upon which the petitioners are relying upon was issued in the year 1989 whereby, for the 1st time, petitioners/teachers were equated with the posts of masters/mistresses. It is also an admitted position that petitioners did not agitate with the respondent Department for fixation of their seniority in the Masters Carder w.e.f. 01/01/1986 up till the issuance of a legal demand notice dated 8th of January 2018 (Annexure P-7). Mere inter-se communication between the officers cannot give a right to the petitioners for seeking seniority w.e.f 01.01.1986.

5. Even otherwise, the claim raised by petitioner is highly belated. The question of entertaining a petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of Hon'ble Supreme Court, in **Ramchandra Shanker Deodhar & Ors. vs. State of Maharashtra & Ors.** AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A

While deciding the said case, Hon'ble Supreme Court placed reliance upon its earlier judgments, particularly in **Tilokchand Motichand vs. H.B. Munshi**, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

" A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court. "

6. Hon'ble Supreme Court also placed reliance upon its earlier judgment of the Constitution Bench in **R.N. Bose vs. Union of India & Ors.** AIR 1970 SC 470, wherein it has been observed as under:-

" It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years. "

7. In **R.S. Makashi vs. I.M. Menon & Ors.** AIR 1982 SC 101,

Hon'ble Supreme Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in **State of Madhya Pradesh & Anr. vs. Bhailal Bhai etc.**, AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature is the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under **Article 226** of the Constitution can be measured. The

Court observed as under:-

" We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed. "

8. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by Hon'ble Supreme Court in **K.R. Mudgal & Ors. vs. R.P. Singh & Ors.** **AIR 1986 SC 2086.**

The Court held as under:-

" A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. "

While deciding the case, Hon'ble Supreme Court placed reliance upon its earlier judgment in **Malcom Lawrance Cecil D'Souza vs.**

Union of India & Ors. **AIR 1975 SC 1269**, wherein it had been observed

as under:-

" Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time. "

9. Similarly, in **B.S. Bajwa vs. State of Punjab & Ors.** AIR

1999 SC 1510, Hon'ble Supreme Court while deciding the similar issue re-

iterated the same view, observing as under:-

" It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This along was sufficient to decline interference under [Article 226 of the Constitution](#) and to reject the writ petition. "

10. Thus, in view of the settled position of law, as referred above, the present petition is bound to fail, being hit by principle of delay and latches. In any case, it must be kept in mind that it cannot be stated that there is no period of limitation for the Courts to exercise their powers under [Article 226 of the Constitution](#) nor can it be said that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under [Article 226 of the Constitution](#) in the case of persons who do not approach it expeditiously for

relief and who standby and allow things to happen and then approach the Court to put forward a stale claim and try to unsettle settled matters.

11. In view of the foregoing discussion, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

April 24, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>