

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1278 of 2016 (O&M) in
CWP No.11597 of 2016
Date of Decision: 2.4.2018

Parminder Kaur and others

..... Appellants

versus

State of Punjab and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Kapil Kakkar, Advocate for the appellants.

B.S.WALIA, J.

1. Intra-court appeal has been filed against order dated 2.6.2016 dismissing the writ petition in limine on ground of delay and laches.

2. Learned counsel contended that counseling was held on 13.12.2011 and the selection process withheld till 03.04.2013 i.e. date of decision of Full Bench in **Abhishek Rishi v. State of Punjab, 2013 (3) RSJ 464** whereafter counseling dated 13.12.2011 was cancelled vide public notice dated 29.7.2013. On the basis of the same, it has been contended that the appellants were not having any issue to be raised before the decision in **Abhishek Rishi's** case (supra). Thereafter, due to pendency of CWP No.9197 of 2014 filed by Mamta Thakur, the appellants were told that the issue regarding applicability of judgment in **Abhishek Rishi's** case (supra) was pending. Mamta Thakur's case was decided in her favour and SLP against the decision was dismissed on 27.11.2015. It was contended that still the appellants were not having any cause of action because the department did not implement the select list prepared on the basis of the

counseling held on 13.12.2011 and it was only when the decision was given by this Court in Jaspreet Kaur and others v. State of Punjab and others i.e. CWP No.21619 of 2013 and other connected writ petitions on 17.2.2016 whereby the department decided to give appointment orders to the candidates of the select list of counselling dated 13.12.2011 and same were issued on 1.5.2016 and the candidates lower in merit than the appellants were given appointment and claim of the appellants was not considered that the appellants submitted representation on 11.5.2016 requesting for issuance of appointment orders. On the basis of the same, it is contended that there was no delay. The appellants have also challenged the findings of the learned Writ Court against non issuance of mandamus on representation dated 11.5.2016 on the ground that the benefit as had been granted by the Court ought to have been applied in the case of all similarly situated persons without their having to invoke the jurisdiction of the High Court.

3. We have considered the submissions of learned counsel for the appellants and are of the considered view that for the reasons given hereunder the same are devoid of merit and the appeal bereft of merit.

4. Admittedly, the advertisement is of the year 2007. Counseling took place on 13.12.2011. Process of selection became the subject matter of litigation with regard to award of 5 marks to Rural Area candidates in direct recruitment in CWP No.11071 of 2011 titled as **Abhishek Rishi versus State of Punjab**". The same was eventually decided by Full Bench of this Court on 3.4.2013 wherein award of 5 marks to candidates on account of having passed their middle and matriculation from Rural Area Schools was held to be not legal and justified. Thereafter, public notice dated 29.7.2013 was issued. Counseling conducted on 13.12.2011 and 20.12.2011 was cancelled and candidates including the appellants who were selected were not issued the appointment orders. Though other similarly

situated candidates viz. Mamta Thakur who had participated in the counselling on 13.12.2011 approached this Court by way of CWP No.9197 of 2014, the plea of decision in Abhishek Rishi's case (supra) was held to be inapplicable and the writ petition was allowed vide judgment (Annexure P-5) and attained finality on dismissal of the SLP on 27.11.2015.

5. It would be relevant to mention here that prior to Mamta Thakur's case (supra), Jaspreet Kaur and others had filed CWP No.21619 of 2013 which was allowed on 17.2.2016. All along the appellants maintained a stoic silence and did not bother to project their claim before a Court of law and invoked the jurisdiction of the Writ Court only by way of CWP No.11597 of 2016 in case titled as **“Parminder Kaur and others versus State of Punjab and others”** on 31.05.2016. It is a clear case of the appellants being fence sitters and invoking the jurisdiction of the Court after a number of years from date of accrual of cause of action firstly, when appointments were not issued pursuant to the counseling conducted on 13.12.2011 and secondly, on 4.12.2012 when directions were issued by respondent No.2 to District Education Officer in the State of Punjab to issue appointment to candidates who had attended the counseling on 13.12.2011, even thereafter, on 29.7.2013 when the counseling conducted on 13.12.2011 and 20.12.2011 was cancelled and the candidates including the appellants who were selected in the counseling were not issued appointment orders and the writ petition was filed only on 31.05.2016 whereas the writ petition filed by Mamta Thakur and Jaspreet Kaur and others respectively was allowed in 2014 and 2016 respectively. The Writ Court by relying on the decision of Hon'ble the Supreme Court in **State of U.P and others versus Arvind Kumar Srivastava and others, 2015(1) SCC 347** has rightly held the writ petition filed by the appellants to be hit by delay and laches and being fence sitters, could not be allowed the benefit of

of Hon'ble the Supreme Court in **P.S. Sadasivaswamy versus State of Tamil Nadu** (1975) 1 SCC 152 to hold that a person who did not approach the Writ Court for relief expeditiously and stood by and allowed things to happen and then approached the Court to put forward stale claims and tried to unsettle settled matters, was not entitled to relief. Reliance was also placed by the Writ Court upon the decision of Hon'ble the Supreme Court in **State of Madhya Pradesh versus Bhailal Bhai**, AIR 1964 SC 1006 holding that where a suit was barred, a writ would ordinarily not lie. In view thereof the writ court held that in the instant case if a suit was filed in the Civil Court claiming the same relief and on the same cause of action, it would definitely be barred by limitation.

6. Reference can also be made to the decision of Hon'ble the Supreme Court in **Gulam Rasool Lone vs. State of Jammu & Kashmir and another**, 2009 (15) SCC 321 in support of the proposition that fence sitters cannot be allowed to take advantage of judgments rendered in the case of other similarly situated persons where they had chosen to let their claim be barred by delay and laches and had not taken any steps to agitate their claim at the appropriate time.

7. In the light of the position as noted above, we are of the considered view that the decision rendered by the Writ Court does not warrant any interference. Accordingly, the appeal being bereft of merit is dismissed in limine. Consequently, the application seeking condonation of delay in filing the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

April 02, 2018

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