

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 384 of 2016 (O&M)

Date of Decision: 29.10.2018

Sangeeta

.....Appellant

Versus

The State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present: Mr. Jitesh Bhardwaj, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the appellant.

Mr. P.S. Bajwa, Addl. AG Punjab.

Mr. Nitin Verma, Advocate for
Mr. Sameer Sachdeva, Advocate
for respondents No. 6 and 7.

AVNEESH JHINGAL, J.

This is an intra-court appeal against the order dated 09.02.2016 passed by learned Single Judge, dismissing the writ petition.

2. The appellant filed a writ petition seeking quashing of order dated 26.06.2014 (Annexure P-8) whereby the representation made by the appellant for appointment on the post of JBT Teacher was declined. In pursuance to the advertisement dated 15.03.2002 published in Indian Express Newspaper, the appellant applied for the post of JBT Teacher. She attended the interview and as per the resolution passed by the Management, she was appointed as JBT Teacher. All the appointments made in pursuance to the advertisement were sent to District Education Officer for approval. Certain objections were raised and ultimately approval was withheld. The appellant alongwith other persons filed

CWP No. 7189 of 2004. In the reply filed to the writ petition, it was stated that

except the appellant all other petitioners have been granted relief. The writ petition was disposed of on 21.02.2005 as having been rendered infructuous. Liberty was granted to the appellant to seek remedy. In April 2005, the appellant filed a representation. The same remained pending, therefore, the appellant filed CWP No.22015 of 2013. During the pendency of the writ petition, the order dated 26.06.2014 was passed rejecting the representation of the appellant. Challenging the order of rejection, the Writ Petition bearing No. 26548 of 2015 was filed. Learned Single Judge, held that the petitioner cannot be permitted to challenge the selection of 2002 after such an inordinate delay.

3. Aggrieved of the said order, the present appeal has been filed.

4. Learned counsel for the appellant argued that the learned Single Judge, erred in dismissing the writ petition. There was no delay in filing the writ petition. The representation was rejected on 26.06.2014 and the same was challenged by filing a writ petition in the year 2015.

5. The contention raised by learned counsel for the appellant lacks merit. The posts were advertised in the year 2002. The appellant in pursuance to the advertisement, applied for the post of JBT Teacher. The approval for appointment was rejected way back in the year 2004. The writ petition filed by the appellant alongwith others was decided in February 2005. Thereafter merely a representation was made in April 2005. After waiting for almost eight years a writ petition was filed in the year 2013, as the representation was not decided. Thereafter, on rejection of the representation, the appellant proceeded as if a fresh cause of action has arisen.

6. It is pertinent to note that the basic challenge was to the rejection of approval to the appointment in the year 2004. Merely by making a representation which was not a statutory right, the period of limitation cannot be enlarged.

decision on the representation was made only in 2014 and hence, the petition was filed within a reasonable period has been rightly rejected. The Supreme Court in case of *State of Tripura and others Versus Arabinda Chakraborty and others* 2014(6) SCC 460 held as under:

"14. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

8. In *Union of India and others Versus A. Durairaj (Dead) by LRs*, 2010 (14) SCC 389, the Apex Court relying upon its earlier decision in *Union of India Vs. M.K. Sarkar*, 2010(2) SCC 58, laid down as under:

"14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in [Union of India v. M.K. Sarkar](#) [2010 (1) S.C.T. 479 : 2010(2) SCC 58] and held as follows:

"The order of the Tribunal allowing the first 11 application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. x x x x

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.

We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the respondent for retrospective promotion from 1976, on the ground of delay and laches."

9. It was held that making of representation will not extend the limitation of the date when the last representation is rejected. It was further held that when belated representation with regard to stale or dead issue is decided in compliance with a direction of the Court to do so, the date on such decision cannot be considered as to create a fresh cause of action.

10. In the light of enunciation of law by the Supreme Court in the above referred cases, no error is found in the order of learned Single Judge, declining to interfere as there was inordinate delay and the writ petition was hit by latches.
11. Hence, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

29.10.2018
reema

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