

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA No.991 of 2018
Date of Decision :04.07.2018**

Ajay Kumar Gaur

.....Appellant

Versus

The State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. N.R.Dahia, Advocate for the appellant.

ARUN PALLI, J. (Oral):

This is an *intra court* appeal under clause-X of the Letters Patent, against the order and judgment dated 21.02.2018, rendered by the learned Single Judge, vide which, the writ petition preferred by the appellant, had since been dismissed.

The facts that are required to be noticed are limited.

The appellant was appointed to the post of Steno-Typist in the Education Department on regular basis on 16.12.1977, and he joined as such on 01.02.1978. He was promoted to the post of Assistant on 14.06.2010. But vide representation dated 24.08.2010, the appellant required the respondent-department to grant him ante-date promotion as Assistant w.e.f. 21.09.2007, the date from which persons junior to him in the cadre of Steno-Typists were promoted. For, either there was inaction at the end of the department or the appellant himself did not pursue his cause, thus in the meanwhile, he retired from service on attaining the age of

superannuation on 31.08.2014. However, he approached this Court, vide CWP No.16104 of 2015, for redressal of his grievance, and during the pendency of the said petition the department considered his claim and vide order dated 1.3.2016, he was granted promotion retrospectively w.e.f. 21.09.2007 as Assistant in the grade of Rs.5000-7850. He was not granted any arrears of pay on the promoted post, but was held entitled to increments w.e.f. 21.09.2007, for the purpose of pay fixation. Resultantly, vide order dated 9.11.2017, the writ petition was disposed of as having been rendered infructuous. Subsequently, in January 2018, he filed another writ petition claiming promotions to the post of Deputy Superintendent and also as Superintendent w.e.f. 26.09.2012 and 11.08.2014 respectively, the date persons junior to the appellant/petitioner were promoted as such. He also questioned the order dated 1.3.2016, to the extent he was denied arrears of pay from the date he was granted promotion as Assistant i.e. 21.09.2007. However, vide impugned order and judgment, the learned Single Judge dismissed the petition in limine on account of delay and laches, and since the claim of the appellant was also held to be barred under Order 2 Rule 2 of Code of Civil Procedure. That is how, as indicated above, the appellant is before this Court.

All what has been urged by learned counsel for the appellant is that the provisions of Order 2 Rule 2 of the CPC had no application as regards the proceedings under Article 226 of the Constitution of India and therefore, the claim of the appellant could not have been rejected in reference thereto. Reliance is placed upon the decision of the Supreme Court in ***Puran Singh and others Vs. State of Punjab, (1996) 2 SCC 205***,

in support of his contention.

We have heard learned counsel for the appellant and perused the records.

Concededly, the appellant retired from service as Assistant on 31.08.2014. Post retirement, he filed a writ petition (CWP No.16104 of 2015), and claimed ante-date promotion as assistant w.e.f. 21.09.2007. For, the relief prayed for was granted by the respondents-authorities, the writ petition filed by the appellant was disposed of as having been rendered infructuous. In the subsequent petition (CWP No.4192 of 2018), the appellant claimed promotion to the post of Deputy Superintendent w.e.f. 26.09.2012 and as Superintendent w.e.f. 11.08.2014, the date from which persons junior to the appellant were promoted. *Ex facie*, the cause of action, if any, accrued to the appellant on 26.09.2012, when his claim was ignored and his juniors were promoted. Thus, he ought to have made a claim or sought the necessary relief when he filed the first writ petition claiming promotion as Assistant from a retrospective date. Once the appellant himself omitted to claim promotion as Deputy Superintendent and/or as Superintendent or intentionally relinquished his claim while he filed the earlier writ petition, the issue that assumes significance: **if the second petition based upon the same cause of action would be maintainable.** Further, even if, it is assumed that the provisions of Order 2 Rule 2 of the CPC shall not apply, *stricto sensu*, to the proceedings under Article 226 of the Constitution, the question whether the principles upon which the said provisions is founded would also not be applicable, would be another question to ponder. In other words, could the appellant file successive

petitions seeking relief in parts? However, we are not inclined to examine these issues to the required depth in the matter at hands, for, we are affirming the decision rendered by the learned Single Judge and dismissing the appeal on an another ground. Thus, all these questions are kept open to be considered in an appropriate proceedings.

But we cannot resist to observe that upon perusing the records we find that even in the earlier writ petition (CWP No. 16104 of 2015), the appellant had prayed *inter alia* **“issue a writ in the nature of certiorari for questioning the impugned action of the respondent authorities in ignoring the petitioner for the promotion to the Post of Assistant and promoting the junior employee in violation of Rule 11 of Haryana Education Department Sub Offices, Ministerial (Group-C) Service Rules, 1983, and also for ignoring the petitioner for further promotions”**. Apparently, besides his claim for promotion to the post of Assistant w.e.f. 21.09.2007, the appellant had also questioned the action of the respondents-authorities in denying him further promotions. However, as during the pendency of the said petition he was granted promotion retrospectively the writ petition was disposed of on the statement of the counsel for the appellant:-

“Counsel for the petitioner submits that the present writ petition has been rendered infructuous as the necessary promotion has been granted from the back date.

Disposed of as infructuous”.

Needless to assert that the appellant had the option to press his claim for further promotions and keep his petition alive, but being satisfied

with the order dated 1.3.2016, he choose to have the petition disposed of as infructuous. Thus, how could he maintain the second petition claiming the same relief? Likewise, for the same reasons the grievance of the appellant that vide order dated 1.3.2016, he was denied the arrears of pay of the promoted post of Assistant is also mis-conceived.

Be that as it may, the learned Single Judge had even dismissed the writ petition, for, it suffered from gross, inordinate and unexplained delay and latches. The case set out by the appellant himself is that persons junior to him were promoted as Deputy Superintendent on 26.09.2012, whereas he filed the writ petition nearly 6 years later in January 2018. As indicated earlier the appellant had retired from service on 31.08.2014, and thus, to us the second petition filed by him rather appears to be an afterthoughts and speculative in nature. Further, as even referred to by the learned Single Judge, the Supreme Court in **P.S.Sadasivaswamyy Vs. State of Tamil Nadu 1975 (1) SCC 152** had observed:

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach

it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal”.

Apparently, the claim put forward by the appellant was stale vide which he sought to unsettle the settled matters as regards seniority, promotion and the rights that had come to vest in others concerned. In view of the above, we are dissuaded to interfere with the impugned order and judgment. Accordingly, the appeal being devoid of merit is dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.07.2018

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No