

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

CWP No.31253 of 2018

Date of Decision:-11.12.2018

Satish Kumar & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Bhupinder Gupta, Advocate for the Petitioners.

JASWANT SINGH, J.

Eight (08) Petitioners have preferred the instant writ petition for quashing the impugned order dated 23.10.2009 (**P-8**) passed by District Education Officer-respondent no.3, whereby the services of the petitioners were terminated by relying upon the decision passed by Hon'ble Division Bench in LPA No.239 of 2011 decided on 04.05.2011 (**P-11**), as well as orders Annexure P-22, which is the information supplied under the Right to Information Act, 2005, whereby candidates similar to petitioners have been re-instated in service.

Learned Counsel for the petitioners has argued that respondent-Education Department had issued an advertisement No.2/September 2007 for recruitment of 9998 posts of ETT Teachers in the State of Punjab and in pursuance to the said advertisement, petitioners had applied for the posts in question. As per the advertisement, 7 marks were earmarked for teaching

experience i.e. One mark each for one year of completed experience from Government School, Government aided schools, Government recognized schools affiliated with PSEB or CBSE/ICSE and same would be counted from the date of passing of ETT/B.Ed and from the date of affiliation of the school. It was however, clarified that the certificates were required to be countersigned by the District Education Officer . It is argued that the petitioners, who were working in private educational institutions, had duly submitted their experience certificates countersigned by the District Education Officer. It is further submitted that counselling for the posts in question was conducted by the respondents, who after finding the experience certificates to be correct, issued appointment letters (P-6 Colly) to the petitioners, as per their merit. It is, however, submitted that on 07.08.2009 (P-9), respondent no.2 issued a public notice in various newspapers wherein by giving reference to a letter dated 3.6.2009, a list was published, which included the names of petitioners, whereby it was stated that such candidates have obtained bogus/fake experience certificates and, therefore, these candidates were directed to appear before a committee. In pursuance to the said public notice, it is argued that petitioners appeared before the said committee for personal hearing, who without affording detailed hearing recommended termination of their services. It is submitted that in pursuance of the said recommendations, respondent no.3-District Education Officer passed the impugned orders Annexure P-8 Colly dated 23.10.2009, whereby the services of petitioners were terminated.

It is argued that aggrieved against the said action of the respondent no.3 a number of writ petitions were filed by the aggrieved candidates and the said writ petitions were allowed vide order dated

18.03.2010 (P-9) passed in the main writ petition no.11111 of 2009 titled as Parminder Kaur Vs. State of Punjab & Ors. Aggrieved against the said order dated 18.03.2010, State of Punjab preferred an appeal bearing No.LPA 239 of 2011, which was allowed partially vide order dated 04.05.2011 and it was ordered that the candidates who have submitted genuine experience certificates, their candidature be considered. It is argued that after passing of the said order, the petitioners had represented the respondents to reinstate the petitioners into service, however, till date they have not been re-instated, whereas on the supply of information under RTI vide letter dated 04.04.2014 (P-12), it has come to their knowledge that similarly situated candidates have been offered appointment and further have been promoted to next post as well. Thus, on the strength of the aforesaid facts, it is argued that the petitioners, being similarly situated are also entitled for relief of reinstatement with full service benefits, especially when as late as in the year 2015, certain candidates had filed similar writ petitions, which have been allowed by the Co-ordinate Benches of this Court in the year 2016 vide orders Annexure P-16 & P-17. Hence, prayer has been made for allowing the instant writ petition.

After having scrutinized the arguments raised by the Learned Counsel for petitioners and perusing the paper book with his able assistance, this Court is of the opinion that instant writ petition is without any merit and therefore deserves to be dismissed.

Admittedly, a favourable order was passed in favour of candidates who were similarly situated as petitioners as far back as in the year 2011. Although it is stated that the petitioners had kept on representing to the respondents for considering their claim, however, no such

representation or written communication is coming forth. Even, if there was some representation given by the petitioners, still it would not cloak them with any right for seeking reinstatement at this stage. It is settled position of law that mere giving of representations or approaching the authorities would not stop the clock and, therefore, grounds of limitation and delay and laches would keep on running. In the instant case, the petitioners are approaching this Court after their services were terminated in the year 2009. It is not borne out of the record as to whether they had preferred any writ petition, seeking to challenge the action of respondents or not. However, even if benefit of doubt is given to the petitioners, that the judgment passed in the aforementioned writ petition and LPA were '*judgments in rem*', still, the petitioners are not entitled for any claim at this stage, as they have approached this court after a considerable delay of 7 years. Since material third party rights of seniority etc. already stand created in favour of other employees belonging to the selection list of 2011, the petitioners cannot be granted any benefit. Another fact that has weighed heavily with this Court is the prospect of the vacant posts being filled up by the Education Department in the interregnum of 7 years by issuance of subsequent advertisements.

Not only this, it is also seen that the petitioners were in the knowledge of reinstatement of similarly situated employees in the year 2014 itself, as is evident from the information received by them vide letter dated 4.4.2014 (P-12) and further they were also in the knowledge that such employees have been further promoted to the next posts as well. Meaning thereby, the petitioners were very well aware of the orders passed in favour of the other employees, still they choose to remain silent.

As far as reliance placed by learned Counsel for the petitioners on the judgments passed by Co-ordinate Benches Annexures P-16 & P-17 are concerned, same cannot be made applicable to the petitioners. The reason for same is in view of decision passed by Hon'ble Supreme Court in **“State of Uttar Pradesh &Ors. Vs. Arvind Kumar Srivastava & Ors. 2015(1) SCC 347”** whereby the Hon'ble Supreme Court has held that such kind of petitioners, as the instant ones, are not entitled for any benefit from the Court by seeking parity with similarly situated candidates, as they are *fence sitters* who waited for some other persons to fight their proxy litigation and once the said persons were able to secure some relief, claimed benefit on ground of being similarly situated. The Hon'ble Supreme Court has clearly held that such persons are not entitled for any benefit, as their petition is hit by delay and laches.

The aforesaid judgment of **Arvind Kumar Srivastava's case (*supra*)** is squarely applicable to the facts of the instant case.

In view of the above, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

December 11, 2018
Vinay

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