

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

CWP No. 14753 of 2018 (O&M)

Date of Decision: 08.11.2019

Seema

...Petitioner

Vs.

Punjab and Haryana High Court, Chandigarh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Gupta, Advocate
for the petitioner.

Mr. Raman B. Garg, Advocate
for respondent Nos. 1 and 2.

RAJIV NARAIN RAINA, J. (Oral)

1. Short point involved in the present case is whether the petitioner to whom the cause of action accrued in the year 2014 when select list was declared can challenge the same after four years despite the fact that earlier writ petition filed by the petitioner was dismissed and review application was also dismissed as withdrawn by her without liberty to come back. And, therefore the petition is within the teeth of Order 23 Rule 1 & 2 of the Code of Civil Procedure, 1908.

2. The petitioner had filed CWP No.6277 of 2018 challenging the selection of Senior Scale Stenographers pursuant to the advertisement dated 09.09.2013 in the establishment of this Court and seeking directions to appoint her to the said post. The said writ petition was dismissed on 15.03.2018 on the ground of delay and laches. Relevant part of the said order reads as follows:-

“(2) The process of selection and appointment was over long back. For seeking writ of mandamus, petitioner has also not produced any material to show that she had demanded her grievance timely before the competent authority. Any person approaching seeking a writ of mandamus, she/he must establish her/his statutory right that she/he had demanded her/his grievance before the appropriate authority so as to entertain petition relating to writ of mandamus. No such demand is placed on record. That apart there is a delay and laches on the part of the petitioner having regard to the fact that process of recruitment commenced in the year 2013 and it was over by issuing order of appointment to the selected candidates. Petitioner is not in a position to appraise this Court dates and events of recruitment and appointment except date of advertisement. Therefore, petition is to be rejected for want of materials like demand of grievance and so also delay and laches. Petitioner has not made out a case so as to seek writ of mandamus.”

3. Review application filed by the petitioner against the above order dated 15.03.2018 was dismissed as withdrawn vide order dated 25.05.2018.

4. Learned counsel for the petitioner submits that during the pendency of the review application, the representations submitted by the petitioner were rejected by the High Court by an administrative order dated 26.04.2018. Therefore, a fresh cause of action has accrued in favour of the petitioner to challenge the order. She says that she had brought this fact to the notice of the Court by way of review application urging that it may be pleased to allow her to withdraw the application as fresh cause of action has arisen with the passing of the impugned order dated 26.04.2018, which request was accepted. But this statement is contrary to the contents of the

order as it is silent on this aspect and no such thing can be read into it except to have filed an affidavit before the Hon'ble Judges who passed the order. No much attempt was made.

5. On the other hand, learned counsel appearing for the High Court argues that the present petition is barred by the principle of res-judicata because the earlier petition has rightly been dismissed on the ground of delay and laches. No fresh cause of action has in fact accrued in favour of the petitioner. No liberty was granted by this Court to file a fresh petition in the order dated 25.05.2018, when Review application was dismissed as withdrawn. A perusal of order dated 25.05.2018 passed by this Court in Review application confirms that no liberty was granted to file a fresh petition on the same cause of action. The said order dated 25.05.2018 reads as follows:-

*“Learned counsel for the applicant-petitioner seeks permission to withdraw the review application. He is permitted to do so.
Accordingly, review application stands dismissed as withdrawn.”*

It may be noticed that the petitioner has been selected on the same post in the subsequent selection and is working on the establishment of the High Court as a Senior Scale Stenographer.

6. Learned counsel for the petitioner argues that the earlier writ petition was not decided on merits; therefore, the present petition is not barred by res-judicata. In support of his contention, he relies on two judgments in ***Moiranthem Basanta Singh vs. Thokchom Mangol Singh and others***, 2019 SCC OnLine Mani 63 (Manipur High Court) and ***Shrikant Waman Pawaskar vs. Mrs. Deepali Dinanath Pawaskar***,

SA No.795 of 2005 decided on 16.04.2019 by the Bombay High Court to contend that if the first suit was dismissed predominantly on the ground that it was premature, the latter suit was not barred by res-judicata. The above judgments are far removed from the facts of the present case and bear no semblance. Even if the first petition is treated as a suit with reference to the date of accrual of the cause of action, it would have been barred by limitation on the date of presentation.

7. I am of the view that the present petition is barred by the principle of res judicata and it would be farcical exercise to decide the matter on merits as the earlier petition for the same cause of action has been dismissed on the ground of delay and laches. That order has attained finality. Normally, when a writ petition is dismissed on grounds of delay and laches, merits of the case are not to be visited for the basic principle that a right may continue to exist but the remedy is extinguished. Unreasonable delay and laches by inactivity in a writ petition and the relentless bar of limitation for a suit stand almost on the same footing although the constitutional court has no such fetters like the civil court and for it, it is a rule of prudence or a self imposed limitation and judicial discipline not to interfere belatedly in a case or cause as explained by the constitution bench of the Supreme Court in ***State of Madhya Pradesh v. Bhailal Bhai***, AIR 1964 SC 1006.

8. Moreover, once the earlier petition had been dismissed, even if for whatever reason it was, and the stage of review had presented itself, it was wholly otiose and redundant for the office to communicate the order to the petitioner without anything new before the authorities to decide in the

face of dismissal of the writ petition. It appears to have been issued in routine without due thought paid or it may have been conveyed by someone to try and help the petitioner to stand on fresh ground.

9. I would not pay any legal regard to it to change the fate of the case, the final chapter having been written and signed by the High Court. The impugned order may be non-speaking but at the same time it has to my mind no legal effect and deserves to be ignored. At best, it can be treated as a reminder to the petitioner that she has no case left on the point covered by an earlier decision between the same parties which cannot be revived or reopened to permit the petitioner to play a third innings in Court.

10. Hence, no ground for interference is made out. The petition is dismissed accordingly.

(RAJIV NARAIN RAINA)
JUDGE

08.11.2019

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*