

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

L.P.A.No.1554 of 2010 in
Civil Writ Petition No.8070 of 2009
Reserved on : July 05, 2019
Date of decision: July 24, 2019

Sunil Chander

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the appellant.

Mr. Gagandeep Singh Wasu, Addl. A.G., Haryana.

Mr. Sushil Jain, Advocate for respondent No.2.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 24.7.2009 in CWP No.8070 of 2009 'Sunil Chander Vs. State of Haryana and another' whereby the writ petition filed by the appellant for quashing the order dated 11.5.2009, passed by respondent No.2, rejecting his representation to appoint/absorb him on the post of Waiter in the Haryana Tourism Corporation Limited, had been dismissed.

2. The appellant passed a 'Certificate Course in House Keeping' from the Food Craft Institute, Faridabad in June, 1990. He was appointed as a Job Trainee Waiter in the respondent- Corporation vide appointment letter dated 26.7.1991 for a period of two years. The training period was liable to be extended for another six months in the event of his failure to

complete the training satisfactorily. He was to be paid a fixed stipend @ Rs.850/- per month during the training. As per condition No.3 of the said letter, on completion of the training it was not obligatory on the part of the Management to offer any employment to the appellant. Likewise, it was not obligatory on the appellant to accept any employment in the Corporation. The appellant was, however, to be considered for appointment on same regular post on completion of training subject to availability of post.

3. On completion of their training period, the appellant and similarly situated trainees were not given regular appointment. They were asked to continue as job trainees. The appellant and similarly situated trainees filed CWP No.18474 of 1996 titled as 'Dharambir vs. State of Haryana and another' seeking a direction to the respondent Corporation to give them regular appointment. Taking note of the fact that during the pendency of the writ petition 139 posts of Waiters had been advertised, the petition was disposed of vide order dated 1.6.1999 with a direction to the Corporation to absorb petitioner No.1 to 51 therein against the advertised post if they were eligible for the same. Against the aforesaid order, the Corporation filed LPA No.866 of 1999 which was disposed of on 30.9.1999 with the following observations:-

“Without prejudice to the stand of the respondents on facts alleged in the appeal, by consent of parties, the impugned judgment dated 01.06.1999 is modified to the extent that the writ petition would stand allowed and a direction issued to the Corporation to consider the absorption petitioners No.1 to 51 against the advertised posts, if they are eligible for the

same.”

4. In accordance with the directions in the LPA the claim of the petitioner was considered against the available vacancies. However, on the ground that he did not fulfil the prescribed qualifications he was not found eligible for absorption as Waiter. Accordingly, his claim was rejected sometime in the year 2000. On 17.1.2001 the appellant was relieved from his duties. It may be pointed out that, neither the order whereby the claim of the appellant for absorption as Waiter was rejected nor the order vide which he was relieved from service, is on record.

5. It appears that some persons similarly situated as the appellant, who were also not absorbed on the ground of not possessing the required qualification, filed Civil Writ Petitions seeking quashing of the orders of the Corporation relieving them from service.

6. One such writ petition was **CWP No.8117 of 2001 Virender Singh Vs. Haryana Tourism Corporation Ltd.** [2005(1) PLR 830]. In this case, the petitioner had the requisite qualifications for the post of Counter Incharge as he had done diploma in 'Hotel Reception and Book Keeping' in April 1990. He had been appointed as Trainee Waiter. Like the appellant his case was also considered for absorption pursuant to the directions in LPA No.866 of 1999. But as he did not have the qualifications as per the criteria formulated by the Corporation his case was not considered. Immediately thereafter he filed the writ petition. The case was referred to a Full Bench. The Full Bench noticed that at the time when the petitioner therein had been recruited/appointed as a Trainee Waiter there was no requisite qualification provided under the Rules for the post of

Waiter. The qualifications for the post of Counter Incharge and Waiter came to be prescribed only in 1999 when the cases for absorption of the trainees were to be considered pursuant to the directions in LPA No.866 of 1999. The Court took note of the piquant situation of the petitioner therein. He possessed the qualifications that came to be prescribed for the post of Counter Incharge but lacked training experience for the post. He had the requisite training experience for Waiter having worked as such for nine long years but did not possess the qualification therefor i.e., 'Diploma/ Certificate in Hotel Restaurant and Counter Service'. Considering that the petitioner would be overage for any government or semi-Government job and that he was not at fault, the respondent Corporation was directed to either put him on training for the remaining period and then consider him for appointment on the regular job of Counter Incharge. Alternatively, it was also left open to the Corporation to consider him for appointment to the post of Waiter, if it considered that his not possessing the qualifications for that post could be held to have been balanced by his long training on the said post. The Corporation was positively directed to consider his case for regular appointment on either of the two posts ie., Counter Incharge or Waiter.

7. In **CWP No.1964 of 2001 'Hans Raj Yadav Vs. State of Haryana, etc.'** the petitioner possessed a 'Diploma in Hotel Reception and Book Keeping' from the Haryana Institute of Catering and Hotel Management, Panipat in the year 1991. He had been appointed as a Waiter Trainee on 25.05.1992. His claim for absorption as a waiter was rejected on the ground that he did not possess 'Diploma/ Certificate in Hotel

Restaurant and Counter Service' which was an essential qualification for being appointed as a Waiter. He was relieved from service on 17.01.2001. He immediately filed the said writ petition, which was allowed in terms of the decision in Virender Singh (supra).

8. However, the appellant did not take such a recourse. It was for the first time on 14.3.2008, that the petitioner and two others submitted a representation (Annexure P-10) requesting that they be appointed and absorbed on the post of Waiters relying upon the cases of Virender Singh and Hans Raj Yadav (supra). As no order was passed on the said representation, the petitioner filed CWP No.19742 of 2008 Sunil Chander vs. State of Haryana and others which was disposed of vide order dated 20.11.2008, directing the respondent Corporation to pass a speaking order on the representation filed by the petitioner in the light of various judgments referred to therein.

9. Vide order dated 11.5.2009, the said representation was rejected. It was noticed that pursuant to the directions passed in LPA No.866 of 1999, the eligibility of the trainees including the appellant for absorption as Waiter was examined, but it was found that he did not fulfil the prescribed qualification. It was also observed that the Government of Haryana had withdrawn all policies for regularization of services of ad hoc/ daily wages/ contract workers after the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others vs. Uma Devi and others (2006) 4 SCC 1**.

10. The learned Single Judge noticed that the facts of the appellant were not similar to the instances referred to by him. The petitioners in

cases of Virender Singh and Hans Raj Yadav (supra) possessed the qualification of 'Diploma of Hotel Reception and Book Keeping' and thereby were qualified for appointment as Counter Incharge. However, the appellant does not possess that qualification. We may further note that he also does not possess a 'Diploma/ Certificate in Hotel Restaurant and Counter Service' which is an essential qualification for the post of Waiter. Though the petitioner claimed that he was holding a Diploma in House Keeping yet the only document relied on by him is 'Certificate Course in House Keeping' from the Food Craft Institute, Faridabad. Thereby, the Ld. Single Judge rightly concluded that the appellant had not been able to demonstrate that at the time when his claim was rejected he was eligible and qualified for appointment on the regular post of Waiter.

11. The learned Single Judge further noticed that after the rejection of his claim for absorption and his being relieved he chose to remain silent for 8 years and filed a representation on 14.03.2008 which was rejected vide order dated 11.05.2009. Merely filing of representation would not revive a stale claim. Accordingly, the petition was dismissed.

12. Mr. Ashok Sharma Nabhewala, Ld. Counsel for the appellant strenuously contended that as per the qualification prescribed the requirement is of "Certificate/ Diploma" in the relevant subject. Merely because the appellant possesses a certificate and not a diploma he cannot be considered disqualified. That may be so. But it has not been disputed and could not be disputed by Mr. Sharma because even in the decision of Full Bench of this Court in Virender Singh which he relied upon the qualifications for the post of Waiter is "Diploma/ Certificate in Hotel

Restaurant and Counter Service”. For Counter Incharge the qualification was “Diploma/ Certificate in Hotel Reception & Book Keeping”. The appellant has not been able to show that 'Certificate Course in House Keeping' which he possesses is equivalent to the qualification prescribed for the post of Waiter or Counter Incharge.

13. In all the cases relied on by the appellant, the aggrieved persons had approached the Court soon after they were relieved from service. However, the appellant chose to remain silent for eight years.

14. It is well settled that delay and laches on the part of a government servant may deprive him of the benefit which had been given to others and further, that decision on a representation does not revive a stale claim.

15. The Hon'ble Supreme Court has recently in **Union of India and Others vs. C. Girija and Others, 2019 SCC Online SC 187** reiterated the above proposition as under:

“13. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the Tribunal, which was entertained and order was passed. In the above context, in paragraph No. 9, following has been held:—

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little

do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

14. *This Court again in the case of Union of India v. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:—*

“15. 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 cannot 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.”

15. *Again, this Court in State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:—*

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale

claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

23. *In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)*

“16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.””

16. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 24, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No