

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

Letters Patent Appeal No.106 of 2018 (O&M)

Date of Decision: 06th March, 2019

Karamveer

.....Appellant

versus

State of Haryana and others

.....Respondents

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

Present : Mr. Tribhuvan Dahiya, Advocate with
 Mr. Deepak Kundu, Advocate for the appellant.

Ms. Shruti Jain, Deputy Advocate General, Haryana.

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 24.11.2017 passed by the learned Single Judge dismissing the petition filed by the appellant herein on the ground of delay and latches.

2. Relevant facts required to be noticed are as under:-

Writ petition seeking a writ of certiorari to quash the advertisement dated 20.02.2016 was filed by the appellant herein on the ground that only those having two years ITI course in Electrician/Electronics/Wireman trade or Lineman & Electrician were treated to be eligible for making application for appointment on the post of Shift Attendant.

3. The case of the petitioners was that since they have a diploma in Electrical Engineering which is higher than the ITI course, they were wrongly treated as not having prescribed qualification for the post. The case

set up by the respondent-Commission was that there was no bar on the persons having qualification to apply and as a matter of fact a corrigendum was issued and the last date for submission of the last date was extended but the appellants-petitioners never applied. The appellants-petitioners relied upon a judgment of the learned Single Judge dated 23.05.2016 rendered in Civil Writ Petition No. 10014-2016 *Rajesh Kumar and others v. State of Haryana and others* to submit that in similar circumstances identically situated persons were allowed to submit hard copies of the application form and their candidature was directed to be considered.

4. Learned Single Judge finding that the entire process of selection was over and the final result was declared on 30.04.2017 and the petitioners-appellants having approached the Court with delay of 1 ½ years were not entitled for any relief at the belated stage and accordingly their writ petition was dismissed.

5. Much stress has been laid down by learned counsel for the appellants on the fact that identically situated persons were permitted to participate in the selection process under the orders passed by this Court in Civil Writ Petition No. 10014 of 2016 and based on the same the appellants cannot be discriminated.

6. We are afraid that this argument is of no help to the appellants herein and they cannot claim parity with those approached who approached the Court at the earlier point of time.

7. In the case of ***A.P.Steel Re-Rolling Mill Ltd. v. State of Kerala and others (2007) 2 SCC 725***, the same issue was considered and answered as under:-

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation

obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

8. In ***State of T.N. v. Seshachalam (2007) 10 SCC, 137***, the Hon'ble Apex Court testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits has held as under:-

"... 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."

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in ***Ghulam Rasool Lone v. State of Jammu and Kashmir and another (2009) 15 SCC 321***.

20. In ***New Delhi Municipal Council v. Pan Singh and others (2007) 9 SCC 278***, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in ***P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152***, wherein it has

been laid down that 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 there 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 extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the 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.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality

has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

[Emphasis supplied]

9. In a more recent judgment in case of **Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T.Murali Babu 2014(4) SCC, 108**, it has been held by the Hon'ble Apex Court as under:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

10. Thus, it stands well settled that the doctrine of delay and laches should not be lightly brushed aside. While exercising an extra ordinary writ jurisdiction, the Courts are under obligation to protect the rights of citizens but similarly the Courts have to remain alive to the primary principles that when an aggrieved person without adequate reason invokes the jurisdiction of the Court at his own leisure, there is always a legal obligation to

scrutinize whether the lis at a belated stage is liable to be entertained or not. Needless to say that delay stands in the way of equity. Delay in approaching the Court is not liable to be ignored without any justification.

11. In view of the facts of the case and the settled legal proposition discussed hereinabove, no illegality has been committed by the learned Single Judge in non-suiting the appellants on the ground of delay and laches and thus the impugned judgment does not require any interference.

12. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

6th March, 2019
ravinder

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