

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1402 of 2018 (O&M)
Date of Decision :8.3.2019

Kanwar Singh

.....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. Kanwar Singh-appellant in person.

ARUN PALLI, J.

This is an *intra court* appeal under clause X of the Letters Patent against an order and judgment dated 06.08.2018, rendered by the learned Single Judge vide which the writ petition preferred by the appellant was dismissed being devoid of merit as also for it suffered from an inordinate delay and laches.

In brief the case set out by the appellant was that in response to the advertisement dated 21.01.1988, issued by the Haryana Subordinate Selection Board (now called the Staff Service Selection Commission), the appellant was selected and appointed as Assistant Sub Inspector of Police. He had served for about 4 years when the entire selection was quashed by the Supreme Court in **Pritpal Singh Vs. State of Haryana and others, AIR 1995 SC 414**. However, directions were issued to the respondents to re-conduct the examination, accordingly vide advertisement dated 31.08.1994, the same number of posts were re-advertised i.e. 98 (General-35, SC-24,

BC-14, ESM-25, Total 98). The appellant competed for selection again and obtained 105 out of 200 marks in the written examination. Whereafter, he qualified the physical test and appeared in the interview that was held on 13.12.1994. The Board published the final results on 16.12.1994. The appellant failed to qualify. The grievance of the appellant has been that the candidates who had obtained 41, 80, 82, 85, 86 and 75 marks in the written examination were selected and appointed, whereas the appellant had secured 105 marks in the written examination itself and since the interview/viva voce was of 25 marks only so even if he was awarded the bare minimum marks in the interview he would have still made a cut. Thus, the appellant repeatedly represented to the respondent authorities and even personally met the then Director General of Police (respondent No.2) and was assured that one post has since been kept reserved for him against which he would be accommodated. Even though two posts lay vacant, one owing to non-joining of one Baljeet Singh and the other that was ostensibly kept reserved for the appellant, but subsequently the authorities expressed their helplessness to appoint the appellant. And, thus, he approached this Court vide a writ petition, referred to above.

On a consideration of the matter and the material on record, the learned Single Judge concluded:-

“It may also be mentioned that the first recommendations was made by the Board on 15.12.1994 of 75 candidates and an additional 22 General category candidates were recommended by the Board on 16.12.1994.

Mr. V.K.Jindal, learned senior counsel, submits that 2 General category vacancies are still available, but it

has been counter explained by Ms. Shruti Jain Goyal from the pleadings that these 2 vacancies were filled up prior to the filing of the writ petition from 22 vacancies. Even assuming that 2 vacancies are available, the petitioner will not get the desired relief because his petition deserves to be dismissed on the short ground of delay and laches. The cause of action accrued to the petitioner on 15.12.1994 or 16.12.1994, as the case may be, and the petition was filed in February, 2001 after huge delay and unexplained laches as to what kept back the petitioner for so long in approaching court for legal redress of his grievance while others were litigating. This slumber has not been explained in the petition. The last candidate appointed was Varinder Singh on 28.08.1997. It is well settled that once limitation starts to run in civil law or the issue of delay and laches arises in the extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution, it does not stop. Therefore, the delay and laches clearly falls between December, 1994 and February, 2001. Even assuming that limitation would start running again on 28.08.1997 with the appointment of Varinder Singh, even then the petitioner is well beyond 3 years prescribed for bringing a suit. In case a suit is barred by time, then it would ordinarily be prudent for the writ court not to interfere in the discretionary writ jurisdiction. For this proposition see: State of Madhya Pradesh Vs. Bhailal Bhai & others, AIR 1964 SC 1006: 1964 SCR (6) 261. Moreover, the issue can be examined also from the stand point of the directions of the Supreme Court in State of U.P. & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347. Delay is apparent and laches remain unexplained as to what held back the petitioner for so long sleeping over his perceived rights and he will be deemed to have waived his rights and acquiesced in a state of things.

The right may exist, but the remedy taken away. The claim is rather a stale and dead one by passage of time. Even if 2 vacancies remain unfilled, which is not the case; those would have to go for fresh recruitment”.

We heard the appellant appearing in person and perused the records.

Ex facie, the process of selection was concluded and consequent appointments were made in December 1994. Thus, if the appellant had any issue as regards the veracity/validity of the selection process or any other grievance he could assail the selection immediately. But he never chose to. Records show that the first recommendation was made by the Board on 15.12.1994, of 75 candidates (General-35, SC-10, BC-14, ESM-16, Total=75). Subsequently, an additional 22 general category candidates were also recommended by the Board on 16.12.1994. Thus, the cause of action, if any, accrued to the appellant on 15.12.1994/16.12.1994, whereas the writ petition was preferred by him 7 years later in the year 2001, which apparently suffered from inordinate and unexplained delay and laches. Still further, as observed even by the learned Single Judge the last candidate namely Varinder Singh was appointed on 28.08.1997, whereas the appellant filed the writ petition on 14.02.2001 i.e. after over three (3) years, by which time even a suit under the general common law would have been time barred. The plea that two vacancies still existed and therefore the authorities ought to have considered the claim of the appellant for appointment against one of those also remained unproved. Undoubtedly, out of the first recommendation dated 15.12.1994,

vide which 35 candidates belonging to the general category were recommended by the Board, one Sh. Rakesh Rao did not join, whereas Sh.Satpal Chawla joined, but subsequently left the job. Hence, two out of 35 posts had fallen vacant. However, record shows that said posts were filled by two other candidates, out of the subsequent recommendation on 16.12.1994. Nothing could be shown either if any candidate, who had obtained lesser marks than the appellant was given appointment. As indicated above, the process of recruitment stood concluded in the year 1994, and thus, 25 years have gone by, and as observed by the learned Single Judge **“that the petitioner is today 55 years of age as admitted by him in Court when the matter was heard”**. Thus, in the wake of the above, we are dissuaded to interfere with the impugned order and judgment.

On being pointedly asked, the appellant could not refer to anything on record to show if the conclusion arrived at by the learned Single Judge was either contrary to the record or suffered from any material illegality. Hence, the appeal being devoid of merit and is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

8.3.2019

Manoj Bhutani

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