

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2682-CWP-2019 IN RA-CW-21-2018 in CWP-6988-1998 (O&M)

Date of Decision: 14.05.2019

Pawan Kumar & Anr.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. SK Bhardwaj, Advocate for the applicant/petitioners

G.S. SANDHAWALIA, J. (Oral)

CM-2682-CWP-2019 in RA-CW-21-2018

The application under Order 9 Rule 9 CPC read with Section 151 CPC filed for recalling the order dated 21.01.2019 whereby the application for condonation of delay in review application was dismissed for non-prosecution is allowed. The order dated 21.01.2019 is recalled in view of the averments made and as also the fact that a sum of ₹ 5000/- has been deposited in compliance to the order dated 22.02.2019 with the Advocates' Benevolent Fund. The review application is restored to its original number and file.

Disposed of.

RA-CW-21-2018

The petitioner seeks a review of the order dated 27.09.2017.

The said order reads as under:-

“Petitioner seeks direction for appointing him as physical training instructor by quashing the appointments of respondent Nos. 3 to 10, who were lower in merit than the petitioner in the general category candidates.

The writ petition was admitted on 18.05.1998, at the initial stage. Petitioner No.2 has expired on 08.04.2006, as per his death certificate issued on 20.04.2006 (Annexure R/12).

Counsel for respondent No.7 has pointed out that the advertisement was in the year 1990 and as per the appointment orders appended with the affidavit filed by the State, the private respondents have joined way back in the year 1993. In the writ petition, it has been mentioned that the petitioner had made representation dated 15.07.1997 (Annexure P/3) claiming appointment on the basis of merit. The writ petition was filed, thereafter, in the year 1998, as noticed.

None has put in appearance on behalf of the petitioner.

At this stage, no specific relief can be granted to the petitioner No.1 after a period of 19 years. Even at the time of filing the writ petition, the petition was barred by the limitation as it is the settled principle that selection process is to be challenged immediately, whereas in the present case it was challenged after 5 years. The matter thus needs not to be further adjudicated upon.

In view of the above, the present writ petition is dismissed.”

Counsel for the petitioner could not point out any factual error in the order under review apart from pointing out that the writ petition was filed in view of the directions issued by the Division Bench on 19.11.1996 whereby it is alleged that on the basis of the same the petitioners had got a cause of action. It is thus contended that the writ petitioner was not belated at any point of time.

A perusal of the pleadings would show that on an earlier occasion the selection had been set aside by this Court but the Apex Court upheld the selection. However, directions were issued to appoint candidates against the existing vacancies in the cadre within one month from the date of preparation of the merit list which was to remain operative for a period of one year. The respondents instead of filling up the vacancies had issued advertisement again for filling up the same which action was subject matter

of challenge before the Division Bench. The same had been disposed of on 19.11.1996 in **CWP No.6248 of 1994 Ramesh Chander & Anr. vs. State of Haryana** (Annexure P1) in terms of the judgment of the Apex Court. It is thus in that context it is argued that the cause of action for the petitioners has occurred on the basis of which they had filed the writ petition.

Admittedly on an earlier occasion as such as noticed in the order under review no effort has been made from 1993 till 1997 claiming appointment on the basis of merit. The petitioner having slept over on an earlier occasion and not being an party to the earlier round of litigation thus cannot be said to have been vigilant about their rights as such. In such circumstances the order under review does not suffer from any infirmity which would warrant interference by this Court and would not come under the purview of the review jurisdiction.

Dismissed.

14.05.2019

vvishal

(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No