

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

CWP-14808-2020(O&M)

Date of decision:23 .09.2020

Jawahar Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.K.K.Goel, Advocate for the petitioner

ANIL KSHETARPAL, J.

This writ petition has been filed under Article 226/227 of the Constitution of India, with the following prayers:-

“(a) issue an appropriate Writ Order or direction especially in the nature of Certiorari quashing the impugned orders dated 1.8.2014 and 27.9.2013, Annexure P4 and P5, passed by the respondent nos. 3 & 4 respectively being illegal, arbitrary, discriminatory and non-speaking on the point of applicability of the rules called the Haryana School Education Rules 2003 framed under the Haryana School Education Act, 1995 and the Haryana State Secondary Education Field Offices (Group D) Service Rules 1998 in the case of the petitioner for the purpose of grant of regular pay scale and other service benefits and thus unconstitutional being in violation of 18 the settled proposition of law by the Hon’ble Apex Court in ‘Orxy Fisheries Pvt Ltd Vs UOI and others’ 2010 (13) SCC 427 that recording of reasons is must for all the judicial and even quasi

judicial authorities and thus the impugned orders, Annexure P3 & P4 having been passed by the respondent nos. 3 & 4 are not sustainable in the eyes of law

(b) by issuing a Writ in the nature of Mandamus the respondent no. 4 be directed to grant the regular pay scale of Rs.1200-2040 w.e.f 1.1.986 with all the consequential benefits, arising therefrom and to release the arrears of pay with interest 9 % p.a. from the due date till its actual realization. for which the petitioner is legally entitled.

(c) to issue any other appropriate writ order or direction which this Hon'ble Court deem fit and proper in view of the facts and circumstances of the case.”

This Court has heard the learned counsel for the petitioner and with his able assistance, perused the paper book. The petitioner has primarily challenged the correctness of order dated 27.9.2013 and 1.8.2014. The writ petition has been filed on 16.9.2020. There is no explanation for the delay of six years. Learned counsel for the petitioner, on being requested to explain the reasons for delay, has submitted that the petitioner has a recurring cause of action. In this regard, he has referred to the pleadings in para 17 of the writ petition, which are extracted as under:-

“17. That there is no delay on the part of the petitioner for challenging the impugned orders, Annexure P-4 and P-5 as the cause of action is continuous and recurring. The petitioner is claiming the relief of regular pay scale and other consequential

benefits w.e.f 1.1.1986 by claiming the equitable benefits by granting him the benefit of various judgments and orders passed by this Hon'ble court."

In the present case, CWP-11115 of 2013 filed by the petitioner alongwith certain others was decided on 9.3.2013, while issuing certain directions. The petitioner also filed COCP no.697 of 2014, complaining about the non-compliance of the directions issued vide order dated 9.3.2013. Pursuant to the directions, the impugned orders were passed on 27.9.2013 and 1.8.2014. Thus, there is delay of a period of more than 6 years in filing the present writ petition. It is well settled that the extraordinary remedy under Article 226, cannot be invoked, if the Court finds that there is an unexplained delay and latches or the claim made in the petition is stale. Still further, if the Court finds that even a civil suit would have been barred by the time, the High Court would be reluctant to entertain a writ petition. No doubt, in appropriate cases, the High Court for the reasons to be stated is well within its jurisdiction to entertain such belated claims. However, in the present case, this Court finds that there is no explanation for delay of six years. Learned counsel, further, failed to convince the Court that the petitioner has recurring cause of action. The petitioner is assailing correctness of the specific orders passed by the authorities.

Even on merits, the petitioner claims that he is entitled to grant of regular pay scales w.e.f. 1.1.1986. From the reading of the order passed on 27.9.2013, by Honorary Secretary and Manager of Mukand Lal National Senior Secondary School, Yamunanagar and the order passed by District Education Officer, Yamunanagar, dated 1.8.2014, it is

clear that the petitioner is working as a Chowkidar, on a unsanctioned post under a self-finance scheme. The petitioner has not factually controverted this fact in the writ petition. Still further, while declining the relief, the respondent has placed reliance on Rule 162 of Haryana School Education Rules, 2003. Learned counsel for the petitioner although has not referred to Rule 162, however, this Court has examined Rule 162 of Haryana School Education Rules, 2003. It provides that with regard to un-sanctioned post of non-teaching staff, the employer is bound to pay minimum wages. It is not disputed that the petitioner is being paid minimum wages.

The petitioner has also relied upon judgments passed in CWP 17448-2006 and CWP-7744-2007. CWP-17448-2006 is a writ petition filed by a Lecturer working with Dev Samaj College for Women, Chandigarh. The Court in the facts of the aforesaid case found that the petitioner therein was appointed as a Lecturer on full time regular basis. It was in these circumstances, the Court held that the petitioner in the aforesaid case is entitled to the same grades of pay as provided by UGC/DPI norms.

Second judgment relied upon by the petitioner is in CWP-7744-2007. In that case, the writ petitioner was appointed as Social Studies Master in Hindu Senior Secondary School, Kaithal. After examining the rules as applicable to the teachers, it was ordered that the petitioner in the aforesaid writ petition, be reinstated in service with all consequential benefits. The aforesaid writ petition was filed when the services of the petitioner, in the aforesaid writ petition, were terminated by the Management.

Keeping in view the aforesaid discussion, this Court is of the considered view that the present writ petition filed by the petitioner suffers from unexplained delay and latches. Otherwise also, there are no merits in case.

Hence, the present writ petition is dismissed.

23 .09.2020

rekha

Whether speaking/reasoned Yes /No

Whether Reportable Yes / No

(ANIL KSHETARPAL)
JUDGE