

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

124

CWP-5125-2021

Decided on : 22.04.2021

Astha Sharma & others

... Petitioners

Versus

State of Haryana & another

... Respondents

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

Present: Mr.Rajeev Godara, Advocate, for the petitioners.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

The petitioners who are the legal representatives of Uma Rani, since deceased, who retired on 31.03.2019 as Senior Librarian, seeks deemed promotion w.e.f. 13.05.1996 for her from the date when her juniors were promoted. The stepping-up of the pay of the Government employee is, thus, sought and further direction is sought to decide the legal notice dated 30.09.2020 (Annexure P-8).

On 04.03.2021, the following query was put to counsel for the petitioner:

“Legal representatives of Uma Rani (since deceased) have filed the instant petition seeking a Mandamus for directing the respondents to grant a deemed date of promotion to Uma Rani as Senior Librarian with effect from 13.05.1996.

Pleadings on record indicate that Uma Rani retired on 31.03.2019 and subsequently died on 04.05.2020.

On a specific query having been put counsel concedes that Uma Rani (since deceased) has not raised such claim during her life time and during her service tenure.

List on 22.04.2021.

On the adjourned date counsel to address submissions as regards the aspect of delay.”

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

124 **CWP-5125-2021**

-2-

In response, counsel has submitted that writ petition had been filed by similarly situated person in CWP-14206-2015, which was disposed of on 07.03.2018. A perusal of the said order would go on to show that the writ petition had been disposed of on the ground that the petitioners therein were in service and had been given similar treatment.

As noticed, the claim is from 1996. During the service tenure of the deceased employee, the claim was never raised. A perusal of the legal notice dated 30.09.2020 (Annexure P-8), filed by the counsel, would go on to show that the claim was made before the death of the employee but 1 ½ years after her retirement.

The Apex Court in the case of **Government of India and another Vs. P. Venkatesh 2019 (2) SCT 173** has held that directions issued by the Court to decide representations are leading to fueling of litigation and the said principle was in a case of compassionate appointment. Relevant part of the said judgment reads as under:-

“8. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the

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

124

CWP-5125-2021

-3-

dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee.”

The said principle can also be held applicable in the present facts and circumstances. Merely because some persons who had contested at an earlier point of time and were successful in their litigation would not as such entitle the petitioner to invoke the extra-ordinary jurisdiction of this Court. The Apex Court in the case of **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others 2015 (1) SCC 347**, has also held to the same effect that the persons who were fence-sitters cannot be permitted to litigate at the asking. Relevant part of the said judgment reads as under:-

“23 ----- 2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

The Coordinate Bench in **Nathu Ram Sharma & another Vs. State of Punjab & others 2015 (2) SCT 631** while dealing with the relief of service benefits and arrears which were claimed after delay of 6 years and after similarly situated persons had been granted relief, keeping in mind the judgments of the Apex Court in **State of M.P. & others Vs. Nandlal Jaiswal & others AIR 1987 SC 251, State of Karnataka & others Vs. S.M.**

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

124

CWP-5125-2021

-4-

Kotrayya & others (1996) 6 SCC 267, Jagdish Lal & others Vs. State of Haryana & others (1997) 6 SCC 538, Government of W.B. Vs. Tarun K. Rov & others (2004) 1 SCC 347, Chairman, U.P. Jal Nigam & another Vs. Jaswant Singh & another 2006 (11) SCC 464, Chennai Metropolitan Water Supply and Sewerage Board & others Vs. T.T. Murali Babu 2014 (2) SCT 193 & Suraj Mal Vs. State of Haryana 2015 (1) SCT 31 dismissed the petition. Thus, keeping in view the fact that the attitude of the Government employee was that of a Rip Van Winkle and there was acquiescence and acceptance of the benefits granted to similarly situated employees wayback in 2002, delay would come in the way of equity and the Writ Court would chose not to address the same on merits, in view of the above settled position of law.

In such circumstances, this Court is of the opinion that the claim as such by the legal representatives of the deceased-employee, is not made out on account of delay and laches. Resultantly, the writ petition stands dismissed in limine.

APRIL 22, 2021

sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No