

LPA-47-2021

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

**LPA-47-2021 (O&M) IN
CWP-6620-2016
Date of decision : 18.01.2021**

Kamaldeep Kaur

...Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Kapil Kakkar, Advocate,
for the appellant.

Mr. Pradeep Bajwa, Addl.A.G., Punjab.

JITENDRA CHAUHAN J. (ORAL)

The matter has been taken up through video-conferencing in the light of the pandemic COVID-19 situation and as per instructions.

CM-130-LPA-2021

Allowed as prayed for, subject to all just exceptions.

CM-131-LPA-2021

Allowed as prayed for and the documents, Annexures A-1 to A-4, are taken on record subject to all just exceptions.

Main appeal

This intra-Court appeal under clause X of the Letters Patent is directed against judgment dated 21.10.2020 passed by the learned single

Judge dismissing the writ petition filed by the petitioner-appellant seeking appointment to the post of Teaching Fellow against the vacant post reserved for the category of 'Dependents of Freedom Fighters' in District SBS Nagar.

Heard.

Learned Single Judge, while dismissing the writ petition of the petitioner-appellant has observed as under:-

“Keeping in view the aforesaid facts, the State Government took a conscious decision and issued a public notice (Annexure P-7) on 29.07.2013 canceling the counseling held on 13.12.2011 and 20.12.2011.

The writ petitioner filed the present writ petition in April, 2016 claiming that she has a right to be appointed under Dependent of Freedom Fighter Category as she was the only candidate who had appeared for counseling on 13.12.2011. Pursuant to notice of writ petition, respondent has filed a detailed reply contesting the petition on the ground that it suffers from unexplained delay and laches. It has further been brought to the notice of this Court that the Government decided not to fill up 1133 posts and issued a fresh recruitment notice inviting applications for 4500 vacant posts of ETT on 09.11.2015. The Department further advertised 2005 posts of ETT vide Recruitment Notice dated 04.08.2016.

Keeping in view the aforesaid stand, the question as posed in the initial part arises for consideration. It must be noticed that it is not the case of the petitioner that anyone who has secured marks lesser than her, has been appointed in the category of Dependent of Freedom Fighter. The respondents have taken a stand that Poonam Sharma who had got 62.376 marks has been

appointed. Thus, it is safe to conclude that no candidate has been appointed from the category of the petitioner with lesser marks than the petitioner. In the present case, the Government took a conscious decision way back on 29.07.2013 abandoning to make the appointments pursuant to the recruitment notice issued in the year 2007. The writ petition was filed in April, 2016 particularly when a fresh recruitment notice has already been issued on 09.11.2015.”

Learned counsel for the appellant submits that despite the decision taken by the government on 29.07.2013, not to fill up 1133 posts, the recruitment has been made against this very post and out of these appointments have been given even in the year 2020. However, the argument is not tenable. The appellant has failed to show that Annexure A-1 is relatable to the appointment to the post of Teaching Fellow, pursuant to recruitment dated 05.09.2007 (Annexure P-1). The petitioner cannot derive any benefit from the information dated 12.01.2015 under the RTI Act, 2005 (Annexure A-1), whereby, appointment was given to one Smt. Rajni on 01.12.2013.

Learned counsel for the appellant further relies on Annexure A-2, order dated 04.12.2014 passed by the District Education Officer, SAS Nagar, whereby, the office letter issued to one Ms. Gurmohar Kaur was sustained, owing to a complete ban imposed by the government till further orders in the light of judgment passed by this Court in CWP-11071-2011, titled as ***Abhishek Rish Vs. State of Haryana, 2013(3) RSJ 464***. The plea

of the appellant is that she made a representation dated 02.12.2015 (Annexure P-10) after the dismissal of LPA-560-2015 on 19.05.2015 (Annexure P-9) and as such approaching this Court by the petitioner in the year 2016 cannot be termed as delay on her part. However, we are in agreement with the findings of learned Single Judge and find no merit in the contentions of learned counsel for the appellant. The writ petition was admittedly filed in April 2016 and fresh recruitment notice had already been issued on 09.11.2015. The appellant has no right to seek appointment on the post which was advertised in the year 2007. In ***Chairman, U.P. Jal Nigam Vs. Jaswant Singh, 2007 AIR (SC) 924***, Hon'ble the Supreme Court has held as under:-

“13. In view of the statement of law as summarised above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration that the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds

so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”

In *New Delhi Municipal Council Vs. Pan Singh and others*, 2007(2) SCT 601, Hon'ble the Supreme Court has laid down thus:-

“16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.”

It is further to be noticed that upon evaluation, the appellant was

assigned 41.209 marks. Learned counsel for the appellant has not been able to show that any candidate in the category of the appellant, lower in merit, was given appointment. The case law cited by learned counsel i.e. CWP-14735-2016, titled as **Vibha Mahajan and another Vs. State of Punjab and others**, decided on 02.07.2019 (Annexure A-4), is distinguishable on facts of the present case as in the cited case, candidates lower in merit than the petitioners therein, were given appointments. Similarly, the facts of the case law in CWP-11461-2016, titled as **Rajinder Kaur Vs. State of Punjab and others**, decided on 13.01.2020 (Annexure A-3), are also distinguishable from the facts of the instant case. In the present case, no such candidate (lower in merit than the appellant), was selected.

In view of the above, we do not find any error apparent on the face of the facts and record of this case committed by learned Single Judge while dismissing the writ petition. Thus, there is no scope of interference in the impugned judgment and the same is, hereby, affirmed.

Appeal stands dismissed.

The pending civil misc. applications shall stand disposed of, accordingly.

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

18.01.2021

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Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No