

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

224

LPA No. 794 of 2017 (O&M)

Jugesh Chander

... Appellant

Versus

The United India Insurance Company Limited and others

... Respondents

(2)

LPA No. 883 of 2017 (O&M)

Vinod Kumar

... Appellant

Versus

The United India Insurance Company Limited and others

... Respondents

Decided on : 28.07.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Jagdish Manchanda, Advocate for the appellant
in LPA-794-2017.

Mr. Ish Puneet Singh, Advocate for the appellant
in LPA-883-2017.

Mr. D.R. Bansal, Advocate for the respondents.

G.S. Sandhawal, J. (Oral)

Present letters patent appeals arise out of a common order dated 24.03.2017 passed in **CWP Nos.6816 and 9888 of 2016**, whereby the learned Single Judge dismissed the writ petitions on the ground of delay and laches, wherein the claim for promotion to the post of Administrative Officers Scale-I had been prayed for.

2. The reasoning given by the learned Single Judge was that the principles laid down in **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347**, would be applicable as the appellants herein/writ petitioners were fence-sitters. They were seeking the benefit of promotion on account of judgment dated 05.08.2015 passed in **CWP No.16493 of 2013 'Sunita Sharma & others Vs. The United India Insurance Company Ltd. & others'** (Annexure P-12) and had decided to approach the writ Court in the year 2016. Resultantly, while placing reliance upon the judgment of the Apex Court passed in **State of Madhya Pradesh Vs. Bhailal Bhai, AIR 1964 SC 1006** and **P.S. Sadasivaswamy vs. State of Tamil Nadu, 1975 (2) SCR 356**, it was held that the principle is one of prudence and where there was unreasonable delay as in the present case which is of 3 years, the benefit of consideration for promotion is not liable to be granted. The right to promotion being not a fundamental right and only a civil right to which limitation would apply, the writ petitioners having waited and watched others litigate were held not entitled for the similar relief and it was held that in case of promotion, the redressal has to be sought within six months. Another aspect which was noticed by the learned Single Judge that persons likely to be affected had not been impleaded as respondents.

3. Counsels for the appellants have submitted that their valuable rights are involved and they should have been granted the same

relief as granted in the case of **Sunita Sharma (supra)**. Mr. Ish Puneet Singh has further sought to distinguish his case that he had filed the representations before passing of the judgment in the case of **Sunita Sharma (supra)** on 06.03.2014 and 26.02.2015 now placed on record as Annexures A-1 and A-2 and which were not part of the writ petition. He, thus, argued that the judgment of the learned Single Judge is liable to be modified and necessary benefit may be granted.

4. Counsel for the respondent-Insurance Company submits that the learned Single Judge has not committed any illegality or error, which would require interference in the present letters patent appeals and the same is passed on the settled principles laid down by the Apex Court.

5. It is to be noticed that from the pleadings it would be clear that on 26.04.2013 (Annexure P-1) 55 posts of Administrative Officer Scale-I were declared to be filled up. Eventually a written test was held on 09.06.2013, result of which was declared on 28.06.2013 (Annexure P-2) and interviews were held in July, 2013. A clarification was issued on 15.07.2013 (Annexure P-6) that the benefit of MBA Degree of two years would be given, but not in the case where the degree had a duration of less than two years. The writ petitioners did not have the requisite degree of longer duration and, therefore, an order dated 21.08.2013 (Annexure P-5) was passed in the case of appellant-Jugesh Chander, whereby he was denied the benefit of MBA mark list/certificate and, thus, did not make the cut, as his total marks came below the prescribed cut

off.

6. It is not disputed that he chose not to challenge the said order. Similar is the case of other appellant-Vinod Kumar that instead of contesting the non-promotion, he only chose to file representations dated 06.03.2014 and 26.02.2015 (Annexures A-1 and A-2) in support of his case. It is to be noticed that Sunita Sharma alongwith others in the meantime had approached this Court and got interim order in their favour on 31.07.2013, whereby their cases were to be considered subject to the decision of the writ petition and the promotion, if any, was to be subject to the result of writ petition. Relevant portion of the said order reads as under:-

“Learned counsel has argued that 15 marks granted to the petitioners for MBA have been wrongly excluded and thereby the petitioners have been removed from the zone of consideration.

Notice of motion for 06.01.2014.

Promotion, if any, will be subject to the result of this petition and this condition will be incorporated in all such orders of promotion which may be made in a case where the petitioners have been excluded.”

7. Eventually as noticed, the writ petition was allowed on 05.08.2015 (Annexure P-12) by giving the said benefit and LPA No.1392 of 2015 filed by Insurance Company was dismissed on 23.09.2015 (Annexure P-13). Appellant-Jugesh Chander then filed a representation thereafter on 22.10.2015 (Annexure P-16) seeking the said benefit. On 21.03.2016 (Annexure P-14) the benefit was given to Pardeep Kumar

Sharma, who was a co-petitioner in the case of **Sunit Sharma (supra)**. Thereafter, the present writ petitions were filed in the year 2016, resultantly which led to the dismissal of the same on the ground of delay and laches.

8. It is, thus, apparently clear that the writ petitioners were indolent about their own cases and now cannot turn around to say that they are entitled for the benefit as granted to the writ petitioners in the case of **Sunita Sharma (supra)**, as in the year 2013 they chose to sit back and watch the proceedings initiated by others who had got interim orders in their favour and have become successful as the writ petition was decided in their favour. Rather the appellant-Vinod Kumar in his representation dated 26.02.2015 (Annexure A-2) mentioned the factum of pendency of the said writ petition and sought consideration but had never chosen to initiate legal proceedings.

9. The stand of the respondent-Insurance Company is that they had participated in the promotion exercise thereafter of 2014 and 2015 and could not be promoted as they could not make the merit during that promotion exercise also and other candidates who had made place in the final ranking list were promoted.

10. At this stage granting them benefit of promotion would, thus, seriously affect the persons who were already granted the benefit and the request to implead the persons who had been granted the benefit of promotion in the year 2013 cannot be permitted now. The clock cannot

be allowed to roll back in the manner the appellants wish to do so, keeping in view the settled principles of law as discussed by the learned Single Judge. The appellants had taken a calculated risk by not impleading the juniors also and, therefore, it would not be appropriate at this point of time to reopen the whole issue at the hands of the employees who were not vigilant enough for their rights at the relevant time.

11. Reliance can be placed on the judgment of the Apex Court passed in **H.C. Kulwant Singh and others Vs. H.C. Daya Ram and others, (2015) 3 SCC 177**, which also relates to the dispute regarding the seniority and non impleadment of the necessary party. The relevant portion of the same be read as under:-

“42. In Kailash Chand Mahajan’s case the Court ruled that if a decision is rendered which affects a party, it would amount to clear violation of the principles of natural justice and an order passed in violation of the salutary provision of natural justice would be a nullity.

43. In Mamta Bisht’s case, a two-Judge Bench, reiterating the principles stated in **Udit Narain Singh Malpaharia V. Board of Revenue, AIR 1963 Supreme Court 786** opined that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. Reliance was placed on **Prabodh Verma & Ors. V. State of U.P. & Ors., (1984) 4 SCC 251** and **Tridip Kumar Dingal & Ors. V. State of W.B. & Ors., 2009 (1) S.C.T. 440 : (2009) 1 SCC 768** to express the view that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

12. Keeping in view the above, we do not find any ground to entertain the present letters patent appeals and the same are dismissed. All the pending civil miscellaneous applications, if any, are also disposed of.

(G.S. SANDHAWALIA)
JUDGE

July 28, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No