

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

CWP-694-2023 (O&M)

Date of decision: 13.01.2023

Baljinder Kaur and others

....Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Shagundeeep Singh, Advocate for the petitioners
Mr. Inderpreet Singh Kang, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner prays for issuance of a writ in the nature of Mandamus to consider granting the service benefits of pay fixation, crossing proficiency bar and proficiency step up, Assured Career Progression Scheme, promotion, seniority, pension etc. They want the service benefits from June 1994, i.e the date of their joining.

2. Pursuant to the recruitment notice dated 12th July, 1992 to appoint 150 Multipurpose Health Worker (Female), the respondents appointed workers more than the posts advertised. This led to the filing of a writ petition in the High Court on 3rd April, 1998, the High Court quashed the selection of candidates. The aforesaid judgment was modified by the Supreme Court on 7th November, 2000 while permitting the State to make selection to the extent of 150 posts, as advertised in the recruitment notice.

3. In the meantime, the employees who were permitted to join the service were sought to be relieved by the concerned

Department. This led to the filing of the various writ petitions. Keeping in view the facts of the case, the employees were permitted to continue till the regular selection pursuant to the directions of the Supreme Court was finalized by the Department.

4. The petitioners are admittedly recruited beyond the advertised posts i.e 150. In order to save the services of the candidates who have been selected and appointed pursuant to the advertisement dated 12th July, 1992, the Government issued Punjab Ordinance No. 3 of 2001 on 6th July 2001. This Ordinance was then replaced by the Punjab Recruitment of Multipurpose Health Workers (Female) Act, 2001 (hereinafter referred to as '2001 Act'), which reads as under:-

*“An Act to provide relief and remove hardships to those multipurpose Health Workers (Female), who were selected and appointed on regular basis in pursuance of their selection on the basis of advertisement dated the 12th July, 1992, but whose services were terminated after they had rendered nearly three years, service on the ground that their appointments were beyond the advertised posts. It is, however, made clear that **these appointments are being made as a one time** measure in peculiar facts and circumstances considering the extreme hardships of these Multipurpose Health Workers (Female) and their families.*

1.Short title and commencement:- (1) This Act may be called the Punjab Recruitment of Multipurpose Health Workers (Female) Act, 2001.

(2) It shall be deemed to have come into force on and with effect from the 12th day of July, 1992.

2.Definitions:- In this Act, unless the context otherwise requires, -

(a) “advertised posts” means the actual vacancies on the date of advertisement made on the 12th July, 1992, and shall deem to include anticipated vacancies, which may fall vacant between the date of advertisement and the date of first appointment made in pursuance of the selection process;

(b) “appointing authority” means the Director, Health Services, Family Welfare, Punjab; and

(c) “Multipurpose Health Workers (Female)” means the Multipurpose Health Workers (Female), who were selected in pursuance of the advertisement, dated the 12th July, 1992, issued by the Department of Health and Family Welfare, Punjab, and who were appointed on regular basis in pursuance thereto, but whose services were terminated on the 27th March, 1997.

3. Appointment to the advertised posts- *The appointment of Multipurpose Health Workers (Female) against the advertised posts shall be made by the appointing authority.*

4. Date of joining- *The date of joining of the Multipurpose Health Workers (Female) shall be the date, on which they actually join the posts in pursuance of this Act.*

5. Seniority- *The seniority of the Multipurpose Health Workers (Female) shall be determined from the date of their joining.”*

5. In essence, the petitioners claim that the period spent by them pursuant to their selection in the year 1992 should be counted for grant of the service benefits.

6. Learned counsel representing the petitioners submits that the Ordinance which was replaced by 2001 Act, was applied retrospectively i.e it was applied from 12th July, 1992. Hence, he contends that the recruitment of the petitioners would be deemed to have been regularized from the date of their initial appointment.

7. This Court has considered the submission of the learned counsel representing the petitioner. On a careful reading of Section 3 of the 2001 Act, it is evident that it envisages appointments pursuant to the advertisement. It is also provided in Section 4 of the 2001 Act that the date of joining of the Multipurpose Health Workers (Female) shall be the date on which they actually joined to the post pursuant to the Act. In

Section 5 of the 2001 Act, it is provided that their seniority shall be determined from the date of their joining under the Act.

8. From the careful reading of the order passed by the Government on 29th, June 1994, also substantiates the conclusion that such candidates were treated as the new recruits. On reading of the appointment letter, it is evident that the candidates were placed under probation for a period of two years. The provision was also made where the completion of the probationary period was made a requirement for considering a candidate for promotion. They were also required to get themselves medically examined like the new recruits. They were to give an affidavit on oath. The appointment letter does not provide that their services shall stand regularized from 1992 i.e the date of their joining. The petitioners accepted the terms of offer and completed the formalities. The petitioners never challenged the correctness of the aforesaid appointment orders issued in the year 2001. After having served as such for a period of nearly 22 years the petitioners for the first time sent a notice on 12th December, 2022, claiming the relief, sought in the present writ petition. The previous writ petition of the petitioners was disposed of with direction to the respondents to consider the petitioners' representation and decide. The petitioners complain that the aforesaid representation has not been decided by the concerned authority.

9. It is important to note that the Supreme Court in **C.Jacob vs. Director of Geology and Mining and Another (2008) 10 SCC 115** has noticed the ill effects of the directions issued by the Courts without examining the case on merits. It has been held that the Court in such

circumstances will examine the original cause of action to file the previous writ petition and will not place its decision only on the basis of the subsequent rejection, if any, pursuant to the order of the Court to decide representation. The relevant discussion is to the following effect:-

“The modus of “representation”

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is

considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action”.

10. A similar view was followed in **Union of India and others**

Versus M.K.Sarkar (2010) 2 SCC 59. Hence, the claim of petitioners,

besides being a stale claim, also suffers from an unexplained delay and

laches. In view of the reasons recorded in para 7 and 8, the petitioners do not deserve the relief prayed for, even on the merits.

11. Keeping in view, the aforesaid facts, no ground to issue the writ, as prayed for, is made out.

12. Hence, dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

13.01.2023
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No