

224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
2023:PHHC:166540

CWP-8570-2019 (O&M)
DECIDED ON: 9th AUGUST, 2023

KULBIR SINGH WALIA

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Saurabh Bajaj, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. Deepak Balyan, Advocate
for the respondent No.2.

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SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Articles 226 of the Constitution of India has been invoked seeking a writ in the nature of *Mandamus* directing the respondents to award the increment to the services of the petitioner right from the date of his appointment as Clerk in the respondent-Department w.e.f. 03.02.2004 and further the benefit of Assured Career Progression Scheme, benefit of which was given to every employee of the respondent-Department except the petitioner and also to direct the respondents to refix the salary/pay scale of the petitioner after granting the afore-said benefit retrospectively and also grant the arrears of refixation of the pay scale along-with the damages and penal interest (compounded) to the petitioner.

2. The brief facts of the case are that the petitioner was working as Tube-well operation in Municipal Council, Ambala Sadar and his services were regularized vide order dated 31.10.2022 by the Deputy Commissioner, Ambala. Thereafter, he was transferred to Public Health Department as per the policy/instructions of the Government but the Public Health Department has not accepted the transfer order of the petitioner and he was directed to join duty in Municipal Council, Ambala Sadar till the acceptance by the Public Health Department vide order dated 23.12.2002 by the Deputy Commissioner, Ambala. As such he performed his duties in the Municipal Council, Ambala Sadar.

3. Learned counsel for the petitioner has contended that the petitioner is entitled to increments and ACP scale as he has been working as a 'Clerk' ever since his appointment in the year 2004. The petitioner has not been extended the benefit of ACP by the respondent-Department, as he has not cleared the type test for the post of Clerk but no such test was ever conducted by the respondent-Department after the promotion of the petitioner on the post of Clerk.

4. In pursuance to the notice of motion, respondent No.2 has filed written statement stating that the petitioner has moved an application dated 20.11.2003 to the Executive Officer, Municipal Council, Ambala Sadar for change of his cadre as Clerk and the condition of passing of type test within a period of one year after the date of joining as Clerk, has been prescribed in the letter dated 20/21.01.2004 issued by Deputy Commissioner, Ambala. It has further been averred in the reply that the petitioner failed to pass the typing test within the prescribed period of one year after joining as Clerk, as mentioned in the letter dated 20/21.01.2004. As such, the annual increment has not been awarded to him.

5. Learned counsel for the respondents has argued that the petitioner was

promoted to the post of Clerk vide order dated 20/21.01.2004 wherein, a specific condition of passing of type test was imposed and on accepting the same, he cannot file the present writ petition now after a lapse of more than 10 years. The condition of type test is strictly in accordance with the amended Recruitment and Promotion Policy of the respondents and the petitioner is bound by the same.

6. No other point has been argued by either of the parties.

7. Heard learned counsel for the respective parties.

8. In **State of M.P. and others vs. Nandlal Jaiswal and others, (1986) 4 SCC 566**, the Supreme Court has held that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and that the High Court in the exercise of its discretionary power would not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there was inordinate delay on the part of the petitioner in filing of the writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The relevant portion of the judgment in ***Nandlal Jaiswal's case (supra)*** reads as under:-

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may

intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramanna Dayaram Shetty v. International Airport Authority of India, (1979)3 SCR 1014 and the other in Ashok Kumar v. Collector, Raipur, (1980)1 SCR 491 . We may point out that in R.D. Shetty's case (supra), even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.”

9. In Ex. Capt. Harish Uppal vs. Union of India and others, (1994) Supp 2 SCC 195, the Supreme Court went on to hold that even if no third party rights had intervened the High Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India at the instance of persons who do not pursue their rights and remedies properly and sleep over them. Paragraph 8 of the judgment reads as under:-

“8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”

10. The petitioner was working on the post of Tube-well Operator in the office Municipal Council, Ambala and his services were regularized vide order No. 1688092/LFA dated 31.10.2002 w.e.f. 01.02.1996 by the Deputy Commissioner, Ambala (Annexure R-1). The petitioner was promoted to the post of Clerk vide order dated 20/21.01.2004 (Annexure P-3) with a specific condition that he shall pass the typing test within a period of one year from the date of joining as Clerk otherwise, he is not entitled to annual increment. At this stage, he cannot raise a

grievance that on account of non-passing of type test, he has not been granted the benefit of ACP right from the date of his appointment as Clerk. In fact, at the same time, respondents could have reverted him if he had not cleared the type test within one year from the date of joining of the Clerk but this has not done.

11. In the light of the afore discussed law laid down by the Supreme Court the inordinate delay in the filing of the instant petition cannot be brushed aside especially when for the same the petitioner does not offer any reasonable explanation.

12. In view of discussions made hereinabove, this Court does not find any merit in the present petition. As such the same is dismissed with no order as to costs.

13. Pending civil misc. application, if any, shall also disposed of.

9th AUGUST, 2023

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

(SANDEEP MOUDGIL)
JUDGE