

Nishan Chand

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Yashpal Markan, Advocate
for the petitioner.

Mr. Aman Dhir, DAG., Punjab.

PANKAJ JAIN, J. (ORAL)

1. The present petition has been filed seeking writ in the nature of mandamus directing the official respondents to consider the claim of the petitioner for the arrears of wages, seniority of benefit, continuous period of service etc. on the ground that one Ashwani Kalia who was junior to the petitioner already stood promoted on 22.03.2012 whereas the petitioner has been promoted on 25.04.2022.

2. In somewhat similar circumstances, the Apex Court in the case of **P. S. Sadasivaswamy Vs. State of Tamil Nadu reported as (1975) 1 SCC 152** held as under:-

“2. Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would

be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

3. Same was further relied upon by the Apex Court in the case of **Union of India and others Vs. Chaman Rana reported as (2018) 5 SCC 798.**

“8. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt (supra) be considered, the cause of action based thereon accrued on 12.05.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such orders of promotion.

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16. In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the government. The order of the High Court is therefore held to be unsustainable and is set aside. “

4. Keeping in view the fact that the person junior to the petitioner was promoted in the year 2012 and the petitioner opted not to agitate his claim for promotion till the year 2022 when he was promoted.
5. In the considered opinion of this Court, no mandamus as claimed by the petitioner can be granted and this won't be a case wherein this Court would interfere while exercising writ jurisdiction under Article 226 of the Constitution of India.
6. Accordingly, the writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

May 17, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No