

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-15309 of 2022 (O&M)
Date of decision: 09.03.2023

Nirmala Kohli and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunny Singla, Advocate
for the petitioners.

Mr. R.S.Pandher, Sr. DAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. The petitioners pray for the issuance of a writ in the nature of certiorari to quash the order passed on 09.02.2022. As per the impugned order, their claim for the grant of benefit of placing them in higher pay scale on completion of 24/32 years of service, as per the instructions dated 25.09.1998, has been declined on the ground that when offered, they had foregone their promotion to the post of Head Teachers. The petitioners rely upon the judgment passed in *Rachhpal Singh and another vs. State of Punjab and others*(Civil Writ Petition No.25236 of 2014, decided on 02.07.2019) to contend that the petitioners are also entitled to the same benefit.

2. On the other hand, the respondents while contesting the writ petition rely upon the Civil Service Rules Volume-I, Part-I Rule 4.8 (a) to contend that a government employee, who foregoes promotion, shall not be eligible for benefits granted under the Assured Career Progression Scheme.

3. This court has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. This court has carefully examined the judgment passed by the learned Single Judge in *Rachpal Singh's case (supra)*. This judgment is based on the judgment passed in *Shashi Kiran and others vs. State of Punjab and others, 2003(1) SCT 340*. With the highest respect, even *Shashi Kiran's judgment (supra)* is wholly based on the order passed in *Tipan Chand Sharma and another vs. State of Punjab and others (Civil Writ Petition No.6049 of 1997 decided on 06.05.1998)*. The relevant extract of the judgment in *Teepan Chand Sharma's case* has been reproduced in *Shashi Karan's case*. It is evident that in both the cases, Rule 4.8, proviso (a) has not been brought to the notice of the Court. The Courts are expected to interpret the relevant statute including the rules, regulations or policy instructions that govern the particular subject. In legal terms, a decision that does not take into account the applicable statute is referred to as "per incuriam and is considered not binding. This means that the decision is not authoritative and legally binding because it has not followed the relevant law.

5. Keeping in view the aforesaid facts, the learned counsel representing the petitioners was called upon to make out his case independent of the judgments relied upon. However, he failed to assist the court on the relevant issue.

6. Moreover, it is evident from the careful perusal of the order dated 09.02.2022 which was passed pursuant to the directions of the court in the previous writ petition that the petitioners were de-barred from grant of benefit under the Assured Career Progression Scheme in 1993 and 1994, whereas the petitioners after attaining the age of superannuation retired between 2001 and 2005. The first writ petition was filed by the petitioners

in the year 2020 i.e. after a minimum delay of 15 years in view of the

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judgment passed by the Supreme Court in **C.Jacob vs. Director of Geology & Mining & Anr., (2008) 10 SCC 115.** The petitioners claim is stale and the petitioners have failed to furnish any justifiable explanation for the delay in filing the writ petitions. The cause of action, if any, arose in favour of the petitioners in 1993 and 1994, hence there was no justifiable reason to wait for a period of 26 years to file the writ petition and that also after a period of 15 years from the date of superannuation. Hence, additionally the writ petition suffers from unexplained delay and laches.

7. Keeping in view the aforesaid facts and discussion, finding no merit, the writ petition is dismissed.

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

March 09, 2023

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*