

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

CWP-13410-2016
Date of decision: 12.05.2023

RANJIT KAUR

..Petitioner

Versus

STATE OF PUNJAB & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurnam Singh, Advocate
for the petitioner.

Mr. R.K. Kapoor, Addl. A.G. Punjab.

Mr. Manish Prabhakar, Advocate
for respondent no.4, 5 and 7.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein prays for the issuance of a writ in the nature of mandamus to direct the respondents to consider and appoint the petitioner as a teaching fellow against the post of JBT/ETT teachers in pursuance of the recruitment notice dated 05.09.2007. Her grievance is that various candidates lower in merit have been appointed, whereas, the petitioner has been deprived of the same opportunity. A perusal of the file shows that this selection has faced multiple rounds of litigation. The first round took place in the year 2013 when a Full Bench of this Court in **Abhishek Rishi Vs. State of Punjab, 2013(3) RSJ 464**, held that the additional marks for studying in the rural area cannot be granted. Ultimately, another set of writ petitions were filed in the High Court challenging scrapping of the counselling which had taken place in the year 2011. That batch of writ petitions were allowed with the following order:-

“Resultantly, a writ of mandamus is issued to the respondents to reappoint the petitioners immediately when this order is made available in certified copy since all the formalities prior to appointment stood completed when the petitioners accepted offers of appointment and joined service in the year 2012. On joining by virtue of this order the petitioners would be entitled to full salary for the intervening period between termination and reinstatement. Their seniority will relate back to their direct recruit batch as per their individual merit determined by the recruiting agency. They will get notional increments and all other consequential benefits flowing from this order to bring their pay at par with those who might have been retained in service while they were wrongly thrown out. The petitioners are also held entitled to costs of litigation assessed at Rs.20,000/-.

CWP No.22086 of 2013, 7065, 23373, 25025 & 26130 of 2014

These petitions are allowed on the same reasoning as recorded in the above order. However, with the difference that the petitioners [who failed to secure appointments] would be offered appointment as Teaching Fellows since they were selected for appointment in the same recruitment process but were left out and not made to join service because of the fallacious and erroneous stand of the State on the Full Bench decision of this Court in Abhishek Rishi that it was law declared retrospectively. Since there is ample authority that the decision in Abhishek Rishi is prospective in operation, then rights which had accrued prior to the decision pronounced on April 3, 2013 are reactivated and revived and these petitions are accordingly allowed. However, in these batch of cases, the monetary benefits will accrue from the date of appointment by virtue of the instant order. Needless to say, their seniority will relate back to their batch mates inter se as per merit, but they would be granted increments notionally to bring their pay and allowances at par with juniors. Let the needful on this score be done within three weeks from the date of receipt of a certified copy of this order after completion of formalities including character verification, medical clearance etc. The impugned orders wherever they are placed in the petitions will stand quashed. The petitioners are also held entitled to costs of litigation assessed at Rs.20,000/- in each of the petitions. No orders are required to be passed in the pending applications, if any.”

2. The petitioner, after the decision of the government to scrap the

entire selection in the year 2011, did not chose to file any writ petition. She

came to the Court for the first time in May, 2016 claiming that candidates who are lower in merit have been appointed.

3. It may be noted here that similar writ petition i.e. **Parminder Kaur and others Vs. State of Punjab and others, CWP-11597-2016, decided on 02.06.2016** was dismissed on the question of delay and laches.

The Hon'ble Single Judge while dismissing the writ petition observed as under:-

“11. the petitioners appear to be devotees of the fictional protagonist, rip van winkle. it is rather late to wake them from slumber. if they have not been able to reorganise their lives after surrender of rights, waiver and acquiescence for five to nine years, the court will not come to their rescue. their rights, if any, have become unenforceable in law. their remedy taken away by passage of time. these are the axioms of direct recruitment precesses which has become a dead ball and where everyday's delay matters since the rights of candidates becoming eligible meanwhile cannot be ignored by virtue of mandates in articles 14 and 16 of our constitution which is just as much for them, if not more, as anyone elses.

12. the petition relates to a defunct claim and is hereby dismissed at the threshold as not meriting admission for any further consideration.”

4. Letter Patent Appeal filed against the judgment of the learned Single Judge was also dismissed with the following observations:-

*“5. It would be relevant to mention here that prior to Mamta Thakur's case (supra), Jaspreet Kaur and others had filed CWP No.21619 of 2013 which was allowed on 17.2.2016. All along the appellants maintained a stoic silence and did not bother to project their claim before a Court of law and invoked the jurisdiction of the Writ Court only by way of CWP No.11597 of 2016 in case titled as **“Parminder Kaur and others versus State of Punjab and others”** on 31.05.2016. It is a clear case of the appellants being fence sitters and invoking the jurisdiction of the Court after a number of years from date of accrual of cause of action firstly, when appointments were not issued pursuant to the counseling conducted on 13.12.2011 and secondly, on 4.12.2012 when directions were issued by respondent No.2 to*

*District Education Officer in the State of Punjab to issue appointment to candidates who had attended the counseling on 13.12.2011, even thereafter, on 29.7.2013 when the counseling conducted on 13.12.2011 and 20.12.2011 was cancelled and the candidates including the appellants who were selected in the counseling were not issued appointment orders and the writ petition was filed only on 31.05.2016 whereas the writ petition filed by Mamta Thakur and Jaspreet Kaur and others respectively was allowed in 2014 and 2016 respectively. The Writ Court by relying on the decision of Hon'ble the Supreme Court in **State of U.P and others versus Arvind Kumar Srivastava and others, 2015(1) SCC 347** has rightly held the writ petition filed by the appellants to be hit by delay and laches and being fence sitters, could not be allowed the benefit of the judgments relied upon by them. The Writ Court also relied upon the decision of Hon'ble the Supreme Court in **P.S. Sadasivaswamy versus State of Tamil Nadu (1975) 1 SCC 152** to hold that a person who did not approach the Writ Court for relief expeditiously and stood by and allowed things to happen and then approached the Court to put forward stale claims and tried to unsettle settled matters, was not entitled to relief. Reliance was also placed by the Writ Court upon the decision of Hon'ble the Supreme Court in **State of Madhya Pradesh versus Bhailal Bhai, AIR 1964 SC 1006** holding that where a suit was barred, a writ would ordinarily not lie. In view thereof the writ court held that in the instant case if a suit was filed in the Civil Court claiming the same relief and on the same cause of action, it would definitely be barred by limitation.*

6. Reference can also be made to the decision of Hon'ble the Supreme Court in **Gulam Rasool Lone vs. State of Jammu & Kashmir and another, 2009 (15) SCC 321** in support of the proposition that fence sitters cannot be allowed to take advantage of judgments rendered in the case of other similarly situated persons where they had chosen to let their claim be barred by delay and laches and had not taken any steps to agitate their claim at the appropriate time.

7. In the light of the position as noted above, we are of the considered view that the decision rendered by the Writ Court does not warrant any interference. Accordingly, the appeal being bereft of merit is dismissed in limine. Consequently, the application seeking condonation of delay in filing the appeal is also dismissed.”

5. Keeping in view the aforesaid facts, the question which arises for adjudication is “whether the petitioner deserves to be granted any relief at this stage or not?”
6. As noticed, the recruitment notice was issued 15 years ago. In the year 2011, the selection was scrapped. She, for the first time, filed the writ petition in the year 2016. The judgment of the learned Single Judge in the identical writ petition has been upheld by the Division Bench.
7. With these observations, the present petition is dismissed.
8. All the pending miscellaneous applications, if any, are also disposed of.

May 12th, 2023
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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>