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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15958-2016 (O&M)

Date of Decision:20.11.2023

KARAN SINGH

..... Petitioner

Versus

CENTRAL UNIVERSITY OF HARYANA AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashwani Bakshi, Advocate
for the petitioner.

Mr. Puneet Gupta, Advocate and
Mr. Samir Rathaur, Advocate
for respondents No.1 and 2.

Mr. Jai Vir Yadav, Sr. Advocate with
Ms. Parul, Advocate and
Mr. Rohit Kumar Rana, Advocate
for respondent No.3.

Mr. R.K. Malik, Sr. Advocate with
Mr. Kartikey Chaudhary, Advocate with
Mr. Vijay Vardhan, Advocate
for respondent No.4.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of selection list dated 31.12.2013 (Annexure P-6) whereby respondents No.3 and 4 have been selected on the post of Associate Professor in the Department of English, Central University of Haryana, Mahendergarh.
2. The petitioner pursuant to an advertisement No.2/2011 dated 10.05.2011 applied for the post of Associate Professor in English in the school of Language, Linguistic, Culture and Heritage. The minimum

required qualification for the post was 'good academic record' with P.HD degree, 55 % marks or relevant grade in Master's degree, 8 years of teaching experience and minimum score of 300 marks as stipulated in the Academic Performance Indicator (for short 'API'). The Selection Committee considered application of the petitioner as well as other candidates. The Selection Committee recommended the name of respondent No.3 and 4 for the aforesaid post but the petitioner was not recommended for the post. The petitioner figured at serial No.1 in the waiting list. Accordingly, the University appointed respondents No.3 and 4 against the post of Associate Professor.

3. Learned counsel for the petitioner contends that respondent No.4 was holding the charge of Deputy Registrar of the respondent-University, thus, respondent-University manipulated marks in such a way that respondent No.4 came to be selected and petitioner came to be ignored. As per prescribed procedure, total API score had to be controverted into weighted average. 'Academic record and research performance' carried 20% weightage. The marks obtained under heading 'academic record and research performance' have been divided by 5. Bir Singh Yadav secured 19 marks under heading 'academic record' and his weighted percentage was calculated 3.8. The respondent considered 40 marks under heading 'academic record and research performance', however, for the purpose of calculating 20% weightage, the marks were divided by 5 instead of 2. Resultantly, the weightage reduced to 8% instead of 20%.

4. The petitioner had cleared National Eligibility Test (for short 'NET') conducted by UGC whereas respondent No.4 had cleared State

Level Eligibility Test (for short 'SLET') conducted by State. The NET and SLET can be treated at par for the purpose of eligibility, however, marks cannot be awarded to a candidate who has cleared SLET because as per advertisement, marks could be awarded only to a candidate who had cleared NET.

5. Per contra, learned counsels for the respondents submit that selection process was completed on 31.12.2013. The criteria was duly disclosed in the advertisement and entire process was available on website of the University. The petitioner knowing all the parameters prescribed for the selection, participated in the selection process and challenged the selection of respondents in July' 2016. It is settled proposition of law that a candidate cannot challenge selection process after participating in the same. The petition filed by petitioner is hit by principles of delay and laches. The respondent has divided marks obtained under heading 'academic background and research performance' by 5 and if for the sake of argument, the marks obtained by all the candidates are divided by 2 still the marks of respondent No.4 would be more than the marks of petitioner. There is no allegation of *mala fide* intention against the Selection Committee which as per its wisdom, considered 5 instead of 2 as dividing factor for the purpose of calculation of weightage.

6. For all purpose, NET and SLET is considered at par, thus, respondent No.4 was rightly granted 5 marks with respect to SLET.

This Court while adjudicating a Bunch of petitions in '**Ramesh Kataria Vs. State of Haryana and others**' in CWP No.14063 of **2008** decided on **12.08.2010** has categorically held that a candidate who

has cleared SLET would be entitled to equal marks as awarded to a NET qualified candidate.

7. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

8. From the perusal of record and arguments of both sides, it comes out that grievance of the petitioner is that respondent- University with intent to favour respondent No.4 has mis-calculated marks/weighted average. In the advertisement, the terms and conditions of selection were duly notified. A complete information with respect to selection process was uploaded on the website of the University. The petitioner with open eyes participated in the selection process and result was declared on 31.12.2013. The petitioner opted to remain silent till July' 2016 and he filed the present writ petition on 24.07.2016 before this Court.

It is settled proposition of law that a candidate after participating in the selection process cannot challenge criteria laid down in the advertisement or the rules unless and until selection is made contrary to statutory provisions or the advertisement itself.

A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others*** 2023 SCC OnLine SC 344 has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate.

In ***Ramesh Chandra Shah v. Anil Joshi*** , (2013) 11 SCC

309, after referring to a catena of judgments on the principle of waiver and estoppel, the Supreme Court did not entertain the challenge to the advertisement for the reason that the same would not be maintainable after participating in the selection process. The relevant extracts of the judgment read as:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

In ***Ashok Kumar v. State of Bihar***, (2017) 4 SCC 357, the Apex Court after referring to catena of judgments made an observation that having participated in the selection process without objection, precludes the candidate to challenge the process at a later stage.

In ***Union of India v. S. Vinodh Kumar***, (2007) 8 SCC 100, the Apex Court held that it is well settled principle that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

The Apex Court in ***Sadananda Halo v. Momtaz Ali Sheikh***, (2008) 4 SCC 619 has noted that the only exception to the rule of waiver is the existence of *mala fide* on the part of the Selection Board.

A two Judge Bench of Supreme Court in ***State of Uttar Pradesh v. Karunesh Kumar and Others*** 2022 SCC Online SC 1706 has clearly held that a candidate who has participated in the selection process

is estopped and cannot challenge the selection process.

The Apex Court in *Madan Lal v. State of Jammu and Kashmir AIR 1995 SC 1088* has held that if a candidate takes a calculated chance and participates in the selection process, he cannot challenge the selection process on being found unsuccessful.

9. In the case in hand, the petitioner participated in the selection process. The result was declared in December' 2013 and he approached this Court in July' 2016. The petitioner was precluded to challenge criteria after participating in the selection process and he has further filed writ after 2 years. The petitioner has filed writ petition after more than 2 years from the date of selection. It is liable to be dismissed on the ground of delay and laches.

In *Eastern Coalfields Ltd. v. Dugal Kumar (2008) 14 SCC 295*, supreme court has considered scope of interference in case of delay and laches. Court has held:

“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise

discretion in favour of the applicant.”

In ***Tilokch and Motich and v. H.B. Munshi (1969) 1 SCC 110*** and ***Rabindranath Bose v. Union of India (1970) 1 SCC 84***, Supreme Court has ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court and if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner.

In ***Chennai Metropolitan Water Supply & Sewerage Board V. T.T. Murali Babu (2014) 4 SCC 108***, Supreme Court has ruled:

‘16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest

thief of time’ and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.’

In ***Union of India v. N. Murugesan, (2022) 2 SCC 25***, court has observed that a neglect on the part of a party to do an act which law requires must stand in his way for getting the relief or remedy. The Court laid down two essential factors i.e. first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. Relevant extracts of the judgment read as:

“20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

21. The word “laches” is derived from the French language meaning “remissness and

slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

10. The respondent has divided marks obtained under ‘academic background and research performance’ by 5 and as per petitioner, it should be 2. Firstly, the respondent has adopted criteria for all the candidates, thus, it does not seem manifestly arbitrary, warranting interference of this Court. Secondly, as per chart submitted by respondents even if marks obtained under aforesaid head are divided by 2, the total marks secured by petitioner would be less than marks secured by respondent No.4.

11. The petitioner has raised another question i.e. question relating to 5 marks awarded to respondent No.4 who was ‘SLET’

qualified. A Coordinate Bench of this Court in **Ramesh Kataria** (supra) has adverted with this issue and held that a 'SLET' qualified candidate is at par with NET qualified candidate for the purpose of weightage. The relevant extracts of the judgment read as under:

“From the bare perusal of the aforesaid memo, it appears that State Government had adopted the norms of UGC as far back in February, 2002 and SLET qualified candidates were declared eligible for the post of Lecturer in the University/Colleges belonging to the State. The advertisement as also the criteria (Annexure P-1) specifically provide for eligibility as per the UGC norms. Though in the detailed criteria, 8 marks are allocated for NET qualified candidates, however, the SLET qualified candidates being at par with NET qualified candidates cannot be denied the weightage of 8 marks. Petitioners were granted weightage of 8 marks on the basis of their SLET qualification by the Selection Committee constituted under the rules. The Selection Committee comprises of the nominees of the Higher Education Department of the State and two nominees of the Vice Chancellor besides subject experts chosen by the Government. The Expert Committee made selection by applying the criteria and prescribed qualifications. The petitioners have been selected. The impugned order came to be passed after their selection. Even though selectees have no right of appointment if the employer do not want to fill up the post, however, this principle is not attracted in the present case. Vide the impugned order, a direction has been issued to deduct 8 marks allotted to the petitioners and to re-determine the merit. This order has been passed even without giving any opportunity of hearing to the petitioner and is thus in gross violation of principles of natural justice apart

being contrary to the laid down norms. There is express admission in the reply to the effect that SLET qualified candidates are eligible for appointment in the State of Haryana.

The impugned order is, thus, totally illegal and unjust. Same is hereby quashed. Consequently, these petitions are allowed.

Respondents are directed to make appointments on the basis of selection made by the competent Selection Committee. Such of the petitioners, who have qualified SLET and have been selected by the Selection Commission, are entitled to be appointed to the post of Lecturer in their respective disciplines. Let the consequential appointment orders be issued within a period of one month.”

12. In view of categoric findings recorded by this Court in **Ramesh Kartaria** (supra), the contention of the petitioner that respondent No.4 was not entitled to 5 marks as he was ‘SLET’ qualified, cannot be countenanced.

13. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be dismissed on delay as well merits and accordingly dismissed.

14. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

20.11.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No