

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.28818 of 2017(O&M)

Reserved on:10.03.2023

Pronounced on:03.05.2023

Pooja Chaudhary

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Birender Singh Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate and
Mr. Hardeep Singh Poonia, Advocate
for respondent No.3.

Mr. Ashok Sharma Nabhewala, Advocate and
Ms. Gauri Sharma, Advocate
for respondent No.4.

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JAISHREE THAKUR J.

1. This writ petition has been filed under Article 226/227 of the
Constitution of India with the following prayers:-

- (i) Quashing order dated 29.05.2017 (Annexure P-10) passed by
respondent No.3 vide which respondent No.4 has been promoted
to the post of General Manager (Marketing).
- (ii) Quashing proceedings of the Administrative Committee of
HAFED dated 26.05.2017 (Annexure P-11) qua Agenda Item
No.138/12 against which resolution was passed whereby seniority
of the cadre of Additional General Manager (Marketing) was
finalized.

- (iii) Quashing orders dated 12.12.2008 (Annexure P-5) and 23.01.2009 (Annexure P-6) passed by respondent No.3 whereby respondent No.4 stood promoted to the post of Additional General Manager (Marketing) from the post of Deputy General Manager (Marketing) retrospectively i.e. w.e.f. 11.01.2005.
- (iv) Directing respondents No.1 to 3 to promote the petitioner to the post of General Manager (Marketing) and decide the seniority of the petitioner as well as respondent No.4 in the cadre of Additional General Manager (Marketing).

2. Brief facts, which led to the filing of the instant writ petition, are that petitioner herein was appointed as Deputy General Manager (Marketing) in Haryana State Cooperative Supply & Marketing Federation Ltd. (hereinafter referred to as respondent No.3) on 22.11.2004 against an advertisement issued on 06.02.2002. Respondent No.4, who was working as Sales Officer in respondent No.3, obtained his degree of MBA through distance education mode on 20.11.2000. Vide memo dated 15.01.2003, it was communicated that the post of Sales Officer shall carry the pay scale of Rs.5500-9000 and the qualification for the said post shall be graduation having at least 60% marks with Post Graduate Diploma in Marketing/Sales and at least 1 year practical experience in the field of marketing after acquiring the basic qualifications. On 08.11.2004, the post of Sales Officer was re-designated as Assistant General Manager and respondent No.4 was promoted as Deputy General Manager (Marketing) on 16.12.2004 against the post vacated by one S.C. Malik, who had been promoted as Additional General Manager (Marketing) from the post of Deputy General Manager (Marketing). Thereafter, respondent No.3 vide letter dated 29.12.2004 circulated final seniority list of Deputy General Managers (Marketing) wherein respondent No.4 was placed at the

bottom. However, respondent No.4 filed CWP No.19518 of 2005 in this Court for issuance of a writ in the nature of mandamus directing the respondents therein to consider and promote him to the post of Additional General Manager (Marketing) from the date he was entitled to, in accordance with the amended Rules of 2004, which was disposed of vide order dated 15.12.2005 directing the respondents to take a decision on the representation of respondent No.4 by passing a speaking order. In pursuance to the order dated 15.12.2005 passed by this Court, respondent No.3 decided the representation of respondent No.4 by passing a speaking order dated 14.06.2006, holding him ineligible for promotion to the post of Additional General Manager (Marketing) on two counts; firstly, he did not have five years' experience as Deputy General Manager (Marketing) and secondly, he was appointed against the post vacated by S.C. Malik on his promotion to the post of Additional General Manager (Marketing), which promotion stood challenged in CWP No.3369 of 2005 titled as *V.K. Sangwan and others Vs. Hafed and others* and show cause notice had been issued to Mr Malik for reversion to the post of Deputy General Manager (Marketing). However, the said show cause notice had been challenged by him by way of filing CWP No.13538 of 2005. Order dated 14.06.2006 has not been challenged by respondent No.4 and therefore, the same has attained finality.

3. Thereafter, respondent No.4 filed CWP No.5495 of 2008 for quashing the proceedings of 289th meeting convened on 20.03.2008 issued vide letter dated 24.03.2008 and further proceedings dated 24.03.2008 of 127th meeting of Board of Directors held on 20.03.2008 and to reconsider the claim of respondent No.4 for promotion to the post of Additional General Manager (Marketing). In pursuance to the filing of CWP No.5495 of 2008, case of respondent No.4 was again considered for promotion to the post of Additional General Manager (Marketing) and he was promoted to the post of Additional

General Manager (Marketing) vide order dated 23.01.2009 w.e.f. 11.01.2005. Aggrieved against the order dated 23.01.2009 promoting respondent No.4 to the post of Additional General Manager (Marketing), petitioner herein made various representations and the matter with regard to seniority dispute of petitioner and respondent No.4 was taken up by respondents on many occasions and placed before the Administrative Committee in its meetings held on 21.01.2013 and 07.08.2014. However, no decision was taken thereon by official respondents, despite sending the matter to the Legal Remembrancer, Haryana for advice. Respondent No.4 again filed CWP No.15560 of 2015 before this Court seeking direction to be issued to the official respondents to consider his claim for seniority and further promotion to the post of General Manager (Marketing) w.e.f. 01.08.2011 with all consequences wherein petitioner herein was not made a party and on coming to know about the pendency of said writ petition, petitioner filed C.M. No.9688-CWP of 2016 for impleading her as party respondent. During the pendency of the aforesaid writ petition, the Administrative Committee of respondent No.3 in its 138th meeting held on 26.05.2017 ordered respondent No.4 to be promoted to the post of General Manager (Marketing) without finalizing the seniority in the cadre of Additional General Manager (Marketing). Ultimately, respondent No.4 was promoted as General Manager (Marketing) vide order dated 29.05.2017. Aggrieved against the action of official respondents, the instant writ petition has been filed.

4. Learned counsel appearing on behalf of the petitioner would contend that amendments were carried out in Hafed Common Cadre Rules vide memo dated 25.04.2006 issued by the Registrar, Cooperative Societies, Haryana and minimum qualification for promotion to the post of Additional General Manager (Marketing) from the post of Deputy General Manager (Marketing)

was prescribed as 5 years' experience as Deputy General Manager (Marketing) with MBA (Specialty in marketing) and therefore, at the very first place, respondent No.4 was not eligible for promotion w.e.f. 11.01.2015 as admittedly, he did not fulfil the condition of 5 years' experience as Deputy General Manager (Marketing). The official respondents gravely erred in relying upon the judgment rendered by Hon'ble Supreme Court in *Y.V. Ranagiah and others Vs. J. Sreenivas Rao and others (1983) 3 SCC 284* while granting promotion to the petitioner to the post of Additional General Manager (Marketing) from retrospective date i.e. 11.01.2005. In support of his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in *Deepak Aggarwal and another Vs. State of Uttar Pradesh and others (2011) 6 SCC 725* wherein while considering the *ratio decidendi* culled out in *Y.V. Ranagiah's case (supra)*, the Hon'ble Supreme Court held that rules which are prevalent at the time when consideration takes place for promotion would be applicable and there is no rule of universal or absolute application that vacancies are to be filled invariably by law existing on date when vacancy arises. In *State of Himachal Pradesh and others Vs. Raj Kumar 2022 (3) SCT 131*, the Hon'ble Supreme Court has held that appointments to public posts that fell vacant prior to amendment of rules will not be governed by old Rules. Reference has also been made to the judgment passed by Hon'ble Supreme Court in *State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others AIR 1991 SC 1244* to contend that promotions cannot be made from retrospective dates when the persons were not even born in the cadre so as to adversely affect others. In the said case as well, direct recruits appointed earlier against vacancies meant for direct quota, were made juniors to those promoted later on from retrospective dates. It was further argued that petitioner joined respondent No.3 as direct recruit on the post of Deputy General Manager

(Marketing) on 22.11.2004 whereas respondent No.4 was promoted to the said post on 16.12.2004, therefore, petitioner being senior to respondent No.4 ought to have been promoted to the post of Additional General Manager (Marketing) and thereafter to the post of General Manager (Marketing) prior to respondent No.4.

5. Per contra, learned counsel appearing for respondent Nos.1 to 3 would argue that in Restructuring Plan of Hafed in 2004, the post of Sales Officer was re-designated as Assistant General Manager (Marketing) w.e.f. 18.10.2004 and according to Restructuring Plan, requisite qualification and experience for promotion to the post of Additional General Manager (Marketing) was *5 years' experience as Dy. GM (Mkt) with MBA (Spl in Mkt) or DGM (Mkt) with MBA (Spl in Mkt) and 10 years' experience in Mkt.* The petitioner filed CWP No.1185 of 2007 wherein an interim order was passed by the Division Bench on 11.11.2008 directing respondent No.3 to pass a speaking order within a period of three weeks as and when the representation of the petitioner is received, in the light of the judgment of Hon'ble Supreme Court in *Y.V. Rangaiah's case* (supra), further directing for revival of the post which was available at the time when the petitioner was eligible. In compliance of the aforesaid order passed by this Court, respondent No.3 passed a speaking order dated 12.12.2008 vide which respondent No.4 was considered for promotion to the post of Additional General Manager (Marketing) w.e.f. 11.01.2005 (i.e. the date when he became eligible) on the basis of old Rules by reviving the post of Additional General Manager (Marketing) w.e.f. 31.03.2008. It was further argued that the interim order dated 11.11.2008 had not been challenged by the petitioner herein till date and therefore, the same has attained finality. It was also argued that agenda to decide/fix seniority in the cadre of Additional General Manager (Marketing) and to fill up the vacant post of General Manager

(Marketing) was placed before the Administrative Committee of Hafed in the meeting held on 26.05.2017 and upon consideration of submissions/objections made by both the petitioner and respondent No.4, it was resolved that as per Rule 11 of the Haryana State Cooperative Supply and Marketing Cooperative Service (Common Cadre) Rules, 1988 and the legal advice received from Ld. Legal Remembrancer and Administrative Secretary to Govt. of Haryana, Law and Legislative Department, respondent No.4 is senior most in the cadre of Additional General Manager (Marketing) and therefore, he was promoted to the post of General Manager (Marketing) vide order dated 29.05.2017.

6. Learned counsel appearing on behalf of respondent No.4 would argue that the writ petition is barred by delay and laches as the petitioner has challenged orders dated 12.12.2008 and 23.01.2009 in the year 2017 i.e. after almost 9 years. In support of his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in *P.S. Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152*. It was argued that on account of implementation of Restructuring Plan-2004, respondent No.4, who was working as Sales Officer w.e.f. 15.09.1993, was re-designated as Assistant General Manager (Marketing) on 18.10.2004 and therefore, since he had 10 years experience, he was rightly given promotion to the post of Deputy General Manager (Marketing) on 16.12.2004. It was further argued that petitioner herein had obtained her MBA degree in the major area of specialization of Human Resources Development and minor area of specialization was Information Technology. She does not have specialization in Marketing as is required under the Rules of 1988 for promotion to the post of Deputy General Manager (Marketing). It was further argued that even if S.C. Malik was to be reverted to the post of DGM (Marketing), still 4 posts remained vacant in the cadre of Additional General Manager (Marketing) and therefore, there was no

impediment in promoting respondent No.4 to the post of Additional General Manager (Marketing) w.e.f. 11.01.2005. Moreover, reversion order of S.C. Malik was stayed by this Court vide order 30.08.2005 passed in CWP No.13539 of 2005. It was also argued that vide interim order dated 11.11.2008 passed by this Court, case of the petitioner was considered for promotion to the post of Additional General Manager (Marketing) in terms of the judgment passed by the Hon'ble Supreme Court in *Y.V. Rangaiah's case* and since at the time of existence of vacancy, Hafed Common Cadre Rules (2nd Amendment) 2004 were in vogue and respondent No.4 being the only eligible candidate at that time, having 10 years experience in Marketing with MBA (Spl in Marketing), he was promoted vide order dated 23.01.2009 to the post of Additional General Manager (Marketing). It was also argued that petitioner herein was given adequate opportunity to bring forth her version while determining the seniority in the cadre of Additional General Manager (Marketing) and only thereafter, respondent No.4 was given promoted to the post of General Manager (Marketing).

7. I have heard learned counsel for the parties and have perused the pleadings of the case as well as the case laws cited by parties. Admittedly, respondent No.4 challenged the promotion order dated 20.03.2008 of the petitioner to the post of Additional General Manager (Marketing) by filing CWP No.5495 of 2008 in which an interim order dated 11.11.2018 was passed and in compliance of the said order, representation of respondent No.4 was considered and he was promoted to the post of Additional General Manager (Marketing) w.e.f. 11.01.2005 vide order dated 23.01.2009 by reviving one post of Additional General Manager w.e.f. 31.03.2008. That was the first time that the petitioner submitted her first representation against the said order to respondent No.3 on 27.11.2009 and thereafter, representations dated

07.03.2011, 29.04.2013, 07.10.2014, 07.08.2014, 27.02.2015, 13.08.2015, 08.06.2016, 17.05.2017 and 23.05.2017. The matter was placed before the Administrative Committee of the respondent No.3-department on 21.01.2013 and thereafter on 07.08.2014 but the issue of seniority was not decided. In 2015, respondent No.4 filed CWP No.15560 of 2015 seeking direction to the official respondents to consider his claim for seniority and further promotion to the post of General Manager (Marketing) in which petitioner herein also filed an application for impleadment. The matter was thereafter considered by the respondent No.3 and respondent No.4 was promoted to the post of General Manager (Marketing) on 29.05.2017. Aggrieved against the said promotion order, petitioner filed the instant petition.

8. Now the question that arises for consideration is whether promotion of respondent No.4 to the post of General Manager (Marketing) on 29.05.2017 is justified or not? Before advertng to the said issue, it is apt to mention few relevant dates, which are tabulated as under:-

Petitioner	Respondent No.4
06.12.2002 – appointed as DGM(Marketing)	18.11.2004 – designated as Assistant General Manager.
20.03.2008 – promoted as Additional GM (Marketing)	16.12.2004 – promoted as DGM (Marketing)
	23.01.2009 – promoted as Addl. GM (Marketing) w.e.f. 11.01.2005 by reviving one post of Addl. G.M (Marketing) w.e.f. 31.03.2008.
	29.05.2017 – promoted as General Manager (Marketing).

9. A perusal of the aforesaid tabulation would reveal that there was no bone of contention as far as the petitioner was promoted as Additional General Manager (Marketing) on 20.03.2008. A feud germinated the moment respondent No.4 was promoted to the post of Additional General Manager

(Marketing) w.e.f. 11.01.2005 vide order dated 23.01.2009, which followed a series of representations dated 27.11.2009, 07.03.2011, 29.04.2013, 07.10.2014, 07.08.2014, 27.02.2015, 13.08.2015, 08.06.2016, 17.05.2017 and 23.05.2017 at the behest of petitioner. From the year 2008 till 2017, petitioner did not challenge order dated 23.01.2009 whereby respondent No.4 was promoted as Additional General Manager (Marketing) with retrospective effect i.e. w.e.f. 11.01.2005, consequent to which he became senior to the petitioner in the said cadre, as petitioner herein was promoted as Additional General Manager (Marketing) on 20.03.2008. Respondent No.4 was promoted to the post of General Manager (Marketing) on 29.05.2017, that too, after taking into consideration the version of the petitioner and respondent No.4 regarding fixation of seniority in the cadre of Additional General Manager (Marketing) by respondents and aggrieved against said promotion order, the instant writ petition has been filed wherein challenge has also been made to the order dated 23.01.2009 first time after a period of 8 years. The respondent authorities duly considered the objections/representations of the petitioner as well as respondent No.4 regarding fixation of seniority in the cadre of Additional General Manager (Marketing) and in this regard, advice of Legal Remembrancer, Haryana was also sought. The respondent authorities after undertaking the aforesaid exercise came to the conclusion that respondent No.4 was senior to the petitioner in the cadre of Additional General Manager (Marketing) and therefore, was further promoted to the post of General Manager (Marketing).

10. Instead of challenging order dated 23.01.2009 vide which respondent No.4 was promoted to the post of Additional General Manager (Marketing) w.e.f. 11.01.2005, the petitioner chose to make representations to the respondent authorities from the year 2009 till 2017. The petitioner has delayed challenging the order by 8 years, which is bone of contention. Merely making

representations to the authorities is not sufficient to condone the laches on the part of the petitioner. In the case of ***Karnataka Power Corporation Ltd v. K. Thangappan, (2006) 4 SCC 322***, the Hon'ble Apex Court has held as under:

"10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K. V. Rajalakshmia v. Setty v. State of Mysore, (AIR 1967 Supreme Court 993). This was reiterated in Rabindranath Bose case, (AIR 1970 Supreme Court 470) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation, the making of another representation on similar lines will not explain the delay. In State of Orissa v. Pyarimohan Samantaraya, (1977) 3 SCC 396 making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone (see State of Orissa v. Arun Kumar Patnaik also (AIR 1976 Supreme Court 1639))."

11. The Hon'ble Supreme Court in the case of ***R & M Trust v. Koramangala Residents Vigilance Group and others, (2005) 3 SCC 91***, held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution of India; delay defeats equity and it cannot be brushed aside without any plausible explanation. Para 34 of the said judgment is reproduced herein:

"34. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third-party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant of his rights?"

It would also be apt to reproduce para 39 of the judgment rendered by the Apex Court in ***Bhakra Beas Management Board v. Kirshan Kumar Vij & Anr AIR 2010 Supreme Court 3342:-***

"39. Yet, another question that draws our attention is with regard to delay and laches. In fact, respondent No. 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal."

12. The petitioner herein challenged order dated 23.01.2009 whereby respondent No.4 had been granted promotion on the post of Additional General Manager (Marketing) w.e.f. 11.01.2005 after a delay of 8 years, which she has miserably failed to explain, despite a preliminary objection of delay and laches had been raised by respondent No.4 and therefore, this Court is not inclined to interfere with the orders dated 23.01.2009 and 29.05.2017, as valuable rights have been accrued in favour of respondent No.4, which cannot be disturbed at this stage.

13. Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

May 03, 2023
Pankaj*

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