

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CWP-8826-2019 (O&M)
Decided on :23.04.2024

DR MONIKA SACHDEVA

.PETITIONER

Versus

STATE OF HARYANA AND OTHERS

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Vivek Aggarwal, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

Mr. J. S. Dahiya, Advocate
for respondents No. 4, 17, 18, 24, 27,61,
66, 87, 88, 101, 104 and 106.

Mr. R. K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate for respondents No.
5,10,12,13,16,19 to 23,26,29,30,33,34,36,37,39,40,41,45 to
49, 51 to 53, 55,56,60,62,63,65,68,70 to 73, 76 to 79, 85,86,87,
91 to 95, 97 to 99, 102,103, 105, 110 to 116, 118,119 and 120.

Mr. Chander Pal Tiwana, Advocate for respondents No.
8, 28, 75, 82.

Mr.Naveen Kumar, Advocate for respondents No. 15, 25, 38, 58,
83, 107.

Ms. Pooja Chhabra, Advocate for
Mr. Rahul Deswal, Advocate for respondent No. 31.

Mr. Gaurav Gaur, Advocate for respondent No. 32.

HARSIMRAN SINGH SETHI , J. (Oral

1. In the present petition, the challenge is to the selection which has been made on the post of the Female Supervisor as advertised vide advertisement No. 1 of 2011 dated 19.03.2011 (Annexure P-1).

2. Learned counsel for the petitioner submits that the challenge to the selection for the post of female supervisor is on the ground that certain

candidates were not eligible for the post in question keeping in view the qualification prescribed in the advertisement but they still have been selected despite the fact that they did not had a graduation degree from recognized university.

3. Learned counsel for the petitioner further submits that without adjudging the eligibility of the candidates, the selection for the post in question has been made which needs to be set-aside as selecting the candidates who are ineligible keeping in view the essential qualification prescribed amounts to injustice for the other eligible candidates.

4. Learned counsel for the respondents on the other hand submits that all the candidates who have been selected for the post in question fulfill the requisite qualification prescribed in the advertisement and the claim raised by the petitioner that the selected candidates were having diploma rather than the degree is incorrect. Learned counsel for the respondents further submits that all the candidates selected for the post in question fulfills the qualification of graduation which is the essential qualification required as per the advertisement so as to be eligible for the post in question and it is only by way of preference i.e. the graduation in Home Science or Child Development or Nutrition which was mentioned in the advertisement itself, which only came into play in case, two candidates are similarly situated and one is to be given preference over the other.

5. Learned senior counsel for the private respondents reiterate the arguments raised on behalf of the respondents-State and submits that not even a single fact qua the ineligibility of the selected candidates has been mentioned and in the absence of specific allegation qua the specific selected candidate, the general allegations cannot be accepted.

6. The learned Senior counsel appearing on behalf of the

respondents further submits that the selection process for the post in question was over in the year 2013 whereas, the present petition has been filed in the year 2019 i.e. after six years, hence, the same is liable to be dismissed on the ground of delay itself, as, by the time, the present writ petition was filed, the selected candidates were even confirmed on the post in question.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. It is a conceded position that the present writ petition has been filed after a period of six years of the selection for the post in question and at the time when the writ petition was filed, the selected candidates had already been confirmed by the respondents. As per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 5027 of 2024 titled as Mrinmoy Maity v. Chhanda Koley and others, decided on 18.04.2024, while entertaining a writ petition, the question of delay raised on behalf of the respondents needs to be appreciated with serious view. The delay in raising the dispute so as to take away the crystallize right, should be taken into consideration while passing an order in a writ petition. The relevant paragraph of the said judgment passed in Mrinmoy Maity's case (supra) is as under:-

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the

*applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of **Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768** has held to the following effect:*

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled

or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

9. In the present petition, the challenge to the selection for the post in question was raised in the year 2019 however, the selection for the post in question stool finalized in the year 2013. By the time, the selection process for the post in question was challenged, the selected candidates stood confirmed on the post in question. It could be a possibility that the certain candidates might have left other jobs so as to join the present post and setting aside their appointment after a delay of six years even without the allegations being proved, will be causing a hardship to them.

10. Even otherwise, on merit, the only ground raised is that the selected candidates do not fulfill the requisite qualification for appointment

on the post in question.

11. A bare perusal of the advertisement would show that the candidates in order to become eligible for the post in question were required to be a graduate from the recognized university. The preference was to be given to a candidate who is graduate in Home Science or Child Development or nutrition. Hence, all the candidates who are graduate are eligible to compete for the post in question. Learned counsel for the petitioner has not been able to show the detail of any selected candidate who was ineligible as per the qualification required in the advertisement.

12. At this stage, learned counsel for the petitioner submits that one candidate, namely, Smt. Neelam, has a diploma done from MDU in the year 2011.

From a bare perusal of the application form of the Neelam in column No.11 it has been already mentioned that she has done her degree in BAMS, which makes it clear that she is a graduate. Similarly, with regard to the grievance being raised by the learned counsel for the petitioner against one Sudesh, whose application form has been attached at page No. 90 of the paper book, it may be noticed that as per her application form, she has done her degree in the year 2011 and in column No. 11, she has mentioned that she has a bachelor degree in physical education as well, which shows that the both the candidates namely, Neelam and Sudesh were eligible to compete for the post in question.

13. Further with regard to the argument of the learned counsel for the petitioner is that the qualification required for the post in question is degree in home science or child development or nutrition, the said argument is incorrect. The essential qualification for the post in question as mentioned in the advertisement is as under:-

“(i) Graduation from a recognized university preferably in Home Science or Child Development or Nutrition.

(ii) Hindi, Sanskrit upto Matric Standard. ”

14. A bare perusal of the above would show that the graduation is the basic qualification and the preference was to be given to the candidates who have done graduation in home science or child development or nutrition, which means that the preference is to be given in case, two candidates are at same footing and only one of them is to be appointed. The said view being taken by this Court is also supported by the judgment of the Co-ordinate Bench of this Court in CWP No. 10101 of 2014, titled as Pinky v. State of Haryana and others, decided on 04.10.2017.

15. Learned counsel for the petitioner has not been able to rebut the said contention keeping in view the judgment of the Co-ordinate Bench of this Court passed in Pinky's case (supra).

16. No other argument has been raised.

17.. Hence, keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for interference in the present petition, hence the same stands **dismissed.**

18. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

23.04.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No