

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.9459 of 2024

Reserved on : April 29, 2024

Pronounced on : May 14, 2024

Gurdev Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ish Puneet Singh, Advocate
for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing instant petition under Articles 226/227 of the Constitution of India seeking writ in the nature of *Certiorari* for quashing of the order dated 14.03.2024 (Annexure P-9) passed by Respondent No.3, whereby his claim for *ante* dated promotion to the post of Mandi Supervisor-cum- Fee Collector w.e.f. 25.01.2014, has been rejected and further a writ of *mandamus* has been sought directing the respondents to consider him for promotion to the post of Mandi Supervisor-cum- Fee Collector w.e.f. 25.01.2014, against a reserved category post, as per Roster Points and grant him further promotion to the post of Accountant by counting his experience as Mandi Supervisor-cum- Fee Collector w.e.f. 25.01.2014 and quash the resolution dated 28.05.2012 (Annexure P-3) whereby Respondent No.6 – Kulwant Singh was promoted against reserved category post.

2. The brief facts, as have been pleaded in the writ petition, are that the petitioner was appointed as Clerk in the Market Committee Lohian Khas, District Jalandhar, vide appointment letter dated 17.01.2008 (Annexure P-1) and joined, as such, on 22.01.2008. He was further promoted to the post of Auction Recorder vide order dated 24.01.2011 (Annexure P-2). Further promotion from the post of Auction Recorder is to the post of Mandi Supervisor-cum- Fee Collector and roster points no.1, 6, 11 and 16 of the reservation policy are reserved for scheduled caste category, to which the petitioner belongs. It has further been pleaded that in the Departmental Promotion Committee held on 07.03.2006, the 06th post of Mandi Supervisor-cum- Fee Collector was left vacant to be filled by a person belonging to reserved category. It has further been averred that vide resolution dated 28.05.2012, the Market Committee, Lohian, filled one post reserved for scheduled caste category by promoting the general category candidate namely Kulwant Singh to the post of Mandi Supervisor-cum- Fee Collector with the condition that in future in order to complete the backlog of scheduled caste category posts, Gurdev Singh (petitioner) – Auction Recorder, who belongs to scheduled caste category and who would complete the experience on 25.01.2014, shall be promoted to the post of Mandi Supervisor-cum- Fee Collector on its falling vacant.

3. It is further case of the petitioner that two posts of Mandi Supervisor-cum- Fee Collector became vacant on 31.03.2014 and 31.10.2015 on the retirement of Sh. Balwinder Singh and Hans Raj, respectively, however, the petitioner was promoted to the post of Mandi Supervisor-cum- Fee Collector, vide resolution dated 29.02.2016 (Annexure P-4).

4. It has further been pleaded that Kulwant Singh (Respondent No.6), who belongs to general category, was wrongly promoted against reserved

category vacancy, vide resolution dated 28.05.2012. It has further been stated that since the petitioner became eligible to be promoted on the post of Mandi Supervisor-cum- Fee Collector on 25.01.2014, therefore, he should have been promoted on the said date whereas he has been promoted to the post of Mandi Supervisor-cum- Fee Collector on 29.02.2016, and for claiming the said date of promotion i.e. 25.01.2014 alongwith consequential benefits, he has given various representations but to no avail. Thereafter, the petitioner served a legal notice dated 18.10.2022 (Annexure P-6) to which a reply dated 10.11.2022 was received from Respondent No.5, whereby the claim of the petitioner was neither accepted nor rejected and only factual averments were given in the said reply and aggrieved thereof, the petitioner filed CWP No.27266 of 2022, seeking promotion to the post of Mandi Supervisor-cum- Fee Collector w.e.f. 28.05.2012, against a reserved category, which was disposed of vide order dated 26.02.2024, on the statement made by learned counsel for Respondent Nos.2 and 3 therein that the claim of the petitioner would be considered and a speaking order would be passed . In compliance thereof, the claim of the petitioner for retrospective promotion to the post of Mandi Supervisor-cum- Fee Collector w.e.f. 25.01.2014, instead of 29.02.2016, has been rejected, vide impugned order dated 14.03.2024 (Annexure P-9).

5. It has further been averred that one Kuldeep Kumar also filed CWP No.23419 of 2015, claiming promotion to the post of Mandi Supervisor-cum- Fee Collector from the date, the vacancy became available, and during the pendency of the said writ petition, he alongwith the present petitioner were promoted to the post of Mandi Supervisor-cum-Fee Collector on 29.02.2016 and the claim of the Kuldeep Kumar, seeking promotion w.e.f. the date vacancy became available, was rejected by a Co-ordinate Bench of this Court, vide order dated 29.09.2022 and

the said order reads as under:-

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The petitioner is seeking promotion to the post of Mandi Supervisor-cum-Fee Collector from the date the post had fallen vacant.

Learned counsel for the petitioner submits that the petitioner, who was working as an Auction Recorder, was fully eligible for promotion to the post of Mandi Supervisor-cum-Fee Collector w.e.f. 01.04.2014, the date when the post had fallen vacant as he was the senior most eligible person at that time.

*Learned counsel for respondent No.3, while referring to the reply filed by the respondents, submits that during the pendency of this petition, the petitioner has been promoted to the post of Mandi Supervisor-cum-Fee Collector on 29.02.2016, after following due procedure. A copy of the resolution is appended as Annexure R-2 along with the reply. She also submits that mere vacancy of a post would not give any right for promotion to the petitioner. She has relied upon the judgment of the Supreme Court in the case of **Union of India and another versus Manpreet Singh Poonam etc., (2022) 6 SCC 105.***

Heard.

*The petitioner was working as an Auction Recorder. He had been promoted to the post of Mandi Supervisor-cum-Fee Collector on 29.02.2016. It is not a case of the petitioner that any person junior to the petitioner had been promoted ahead of him. Merely because the post had fallen vacant and some time had passed while ordering the promotion would not give a right to the petitioner for promotion from the date the vacancy had arisen. The Supreme Court in the case of **Union of India and another versus Manpreet Singh Poonam etc. (supra)** has held that the promotion cannot be granted retrospectively and extended to give benefit and seniority from date of notional vacancy. Mere existence of vacancy per se will not create any right in favour of an employee for retrospective promotion.*

In view of the above, I do not find any merit in the claim of the

petitioner for retrospective promotion from the date the vacancy had arise.

Consequently, the petition stands dismissed.

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6. Learned counsel for the petitioner *inter-alia* submits that the resolution dated 28.05.2012 (Annexure P-3), whereby Kulwant Singh belonging to general category was promoted against reserve category post as Mandi Supervisor-cum-Fee Collector on the basis of seniority-cum-merit, was totally illegal and arbitrary, as the said post can only be filled by promoting the reserve category candidate as per roster point and no person belonging to general category has right to be promoted against said post and, therefore, the resolution dated 28.05.2012 (Annexure P-3) is liable to be set aside. He further submits that although the petitioner has been promoted on 29.02.2016 but he is entitled to be promoted either from 28.05.2012, when Kulwant Singh was promoted, or w.e.f. 25.01.2014, when the petitioner became eligible on completion of 03 years experience as Auction Recorder.

7. On the other hand learned State counsel, who has caused appearance on the strength of advance copy served upon him, submits that the claim raised by the petitioner is liable to be rejected outrightly on the ground of delay and latches as the petitioner cannot claim promotion to the post of Mandi Supervisor-cum-Fee Collector either w.e.f. 28.05.2012 or 25.01.2014 at this stage. He further submits that the claim of the petitioner itself is contradictory, as in the earlier writ petition i.e. CWP No.27266 of 2022, the petitioner was claiming promotion to the post of Mandi Supervisor-cum-Fee Collector w.e.f. 28.05.2012 and now in the present writ petition, he is claiming promotion on the said post w.e.f. 25.01.2014 as well.

8. I have heard learned counsel for the parties and perused the record.

9. Firstly, the preliminary objection raised by learned State counsel with

regard to delay and laches is required to be considered.

10. The cause of action accrued to the petitioner on 28.05.2012, when vide resolution dated 28.05.2012 (Annexure P-3) Kulwant Singh (Respondent No.6) was promoted as Mandi Supervisor-cum-Fee Collector and since the petitioner was not eligible on the said date, as he was not having required experience of three years for promotion to the post of Mandi Supervisor-cum-Fee Collector, however, the said resolution was never questioned by the petitioner so far and the same is now being challenged after a period of more than 12 years. However, the petitioner was promoted to the said post on 29.02.2016 as mentioned in the order dated 29.09.2022 passed in CWP No.23419 of 2015 and if the petitioner was still aggrieved and wanted to claim promotion either w.e.f. 28.05.2012 or 25.01.2014, again the cause of action for second time accrued to him, however, he did not take any step in this regard.

11. On the other hand, Kuldeep Singh, who was aggrieved at that point of time, filed CWP No.23419 of 2015 by claiming following relief:-

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- “(i) *Summon the all relevant records of the case;*
- (ii) *issue appropriate writ, order or direction especially in the nature of Mandamus directing the respondent-authority to consider the claim of the petitioner for promotion as Mandi Supervisor-cum-Fee Collector as per the Statutory Rules his conditions of service, under general category against the sanctioned post of Mandi Supervisor-cum-Fee Collector at Lohian Khas being senior most amongst the feeder cadre post of Auction Recorder w.e.f. the date of his rights when the post became vacant w.e.f. 01.04.2014 on the superannuation of Balwinder Singh alongwith all consequential benefits and interest on the delayed payment of arrears etc.*
- (iii) *Further to issue the directions to the respondents to consider*

and decide the issue in hand and not dilly dally the matter as is apparent from the reply undated (ANNEXURE P-4) and letter dated 08.09.2015 (ANNEXURE P-5). ”

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12. During the pendency of the said writ petition, Kuldeep Singh was promoted to the post of Mandi Supervisor-cum-Fee Collector on 29.02.2016 alongwith the petitioner and his claim for promotion w.e.f. 01.04.2014 was rejected by this Court vide order dated 29.09.2022 by holding that merely because the post has fallen vacant and some time had passed while ordering the promotion to the petitioner would not give a right to the petitioner for his promotion from the date the vacancy had arisen while relying the Judgement passed by the Hon'ble Supreme Court in ***Union of India and another versus Manpreet Singh Poonam etc., (2022) 6 SCC 105.***

13. The petitioner, had served a legal notice dated 18.10.2022 (Annexure P-6) and thereafter filed CWP No.27266 of 2022 before this Court after a span of six years. Although the claim of said Kuldeep Singh for promotion from earlier date was rejected, however, fact remains that he approached the Court immediately in the year, 2015 and whereas the petitioner remained silent for substantial period and has now woken up from his deep slumber and is claiming *ante* dated promotion to the post of Mandi Supervisor-cum-Fee Collector and further also to the post of Accountant.

14. The Hon'ble Supreme Court in ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others, 2013(6) SLR 629***, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting

a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. An order promoting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon

day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another, (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

15. In **Union of India and others v. M. K. Sarkar, (2010) 2 SCC 59**, the Hon’ble Supreme Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. From the aforesaid authorities, it is clear as crystal that even if the

court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another***, (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

17. In ***State of Orissa v. Pyarimohan Samantaray***, (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. To the same effect is the judgment in ***State of Orissa v. Arun Kumar Patnaik***, (1976) 3 SCC 579.

18. In ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others***, (2011) 4 SCC 374, a three-Judge Bench of the Hon'ble Supreme Court reiterated the principle stated in ***Jagdish Lal v. State of Haryana***, (1977) 6 SCC 538 and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

19. In ***State of T. N. v. Seshachalam***, (2007) 10 SCC 137, the Hon'ble Supreme Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

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“... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a

government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

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20. In ***New Delhi Municipal Council v. Pan Singh and others***, (2007) 9 SCC 278, the Hon’ble Supreme Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. In ***“Union of India & Anr vs Manpreet Singh Poonam Etc.”***, 2022(4) SCT 550, the Hon’ble Supreme Court, has held as under:-

“16. It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a "golden handshake" between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, sans the prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time. The High Court has committed an error in relying upon a circular, which has got no application at all, particularly in the light of our finding that we are dealing with a case of promotion simpliciter as against upgradation of any nature.”

22. To the same effect is the judgment of this Court in ***“Suraj Mal vs The State of Haryana and others”***, 2015(1) SCT 31, wherein the petitioner was claiming the benefit of ACP scale, after completion of 10 years of regular service, revised pension and other retiral benefits, after nearly 05 years, after his

retirement and the said claims were rejected on the ground of delay and latches.

23. In view of the above authoritative enunciation of law by Hon’ble the Supreme Court and this Court, the aforesaid issue as raised in the present writ petition filed by the petitioner after about 10 /12 years from the date of accrual of the cause of action, cannot be allowed to be agitated, at this stage and consequently, the present petition is liable to be dismissed on the ground of delay and latches.

24. Even otherwise, the petitioner cannot claim promotion to the post of Mandi Supervisor-cum-Fee Collector w.e.f. 28.05.2012, when Kulwant Singh (Respondent No.6) was promoted as on the said date he was not eligible as he was not having requisite experience of 03 years. Further, no employee can claim promotion w.e.f. the date of occurrence of vacancy or w.e.f. the date he became eligible for promotion. Further, it is not the case of the petitioner that any of his junior has been promoted prior to 29.02.2016, when the petitioner has been promoted to the post of Mandi Supervisor-cum-Fee Collector, therefore, in this view of the matter finding no merit in the writ petition, the same is hereby dismissed.

May14, 2024

(NAMIT KUMAR)

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JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*