

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

220

CWP-9112-2018**Date of decision :25.11.2024**

Dharam Pal

.....Petitioner

VS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE NAMIT KUMAR

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

Mr. Saurabh Mohunta, DAG, Haryana
for respondents No. 1 to 4.

Mr. Pankaj Bali, Advocate
respondents No.5 and 6.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the order dated 19.07.2012 (Annexure P-3), whereby respondents No.5 & 6 were promoted to the post of Junior Engineer and reply dated 27.12.2016 (Annexure P-13) to the legal notice dated 27.10.2016 (Annexure P-12), whereby the claim of the petitioner for promotion to the post of Junior Engineer (Civil) has been rejected. Further a writ of mandamus has been sought for directing the respondents to promote the petitioner to the post of Junior Engineer (Civil) w.e.f. the date persons junior to him were promoted along with all consequential benefits. Further promotion of respondents No.5 and 6 to the post of Junior Engineer (Civil) has also been challenged.



CWP-9112-2018

2

2. The undisputed facts of the case are that the petitioner joined the Department as Motor Mate on 20.12.1979 on work charge basis and he was promoted to the post of Work Mistry on 04.07.1981 on work charge basis. His services were regularized w.e.f. 01.01.1987 and he was further promoted to the post of Work Inspector on regular basis and retired as such on attaining the age of superannuation on 31.01.2013.

3. The grievance of the petitioner is that respondents No.5 and 6, who were junior to the petitioner have been promoted to the post of Junior Engineer (Civil), vide order dated 19.07.2012 (Annexure P-3), while ignoring the claim of the petitioner.

4. Written statement on behalf of respondents No.1 to 4 has been filed, wherein it has been stated as under:

“1. That the present writ petition has been filed by petitioner for quashing the order dt. 19.07.2012 (Annexure P-5), office order dated 27.12.2012 (Annexure P-12) and order dated 27.12.2016 (Annexure P-13) passed by the respondent no.2 and for issuance of direction to the respondents to promote the petitioner to the post of Junior Engineer (Civil) along with all consequential benefits like arrears of salary w.e.f. 27/11/2012 to 31/01/2013 and pension as that of JE from the date of retirement which the petitioner is entitled to along with interest @ 18% P.A.

It is pertinent to mention that the cause of action, if any arose in the year 2011 (i.e. on 25.11.2011 when, the tentative seniority list circulated in field offices) and later on 26.2.2012 (when seniority was finally circulated) and he retired w.e.f. 31.1.2013 on attaining the age of superannuation and after a gap of almost 6 years has approached this Hon'ble Court with wrong legal notice and he filed legal notice dated 27.10.2016, which was replied on 27.12.2016.

2. That it is further humbly submitted that as per



seniority list of 2012, he was at the S.No.62 and no junior to him was earlier promoted during his service time i.e. upto 31.1.2013.

3. *That the petitioner joined in this department as Motor Mate on 20.12.1979 on work charge basis and he has been promoted to the post of Work Mistries i.e. on 04.07.1981 on work charge basis. His services were regularized w.e.f. 01/01/1987 and further promote to the post of Work Inspector on regular basis.*

4. *The services of the Junior Engineer are governed by the Haryana Public Works Department, Buildings and Raod Branch, Juniuro Engineers (Group-C) Services Rules, 1998, following provision has been contained in Rule-9:-*

Rule-9:- Method of recruitment

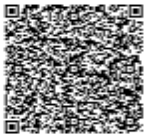
(1) In case of Junior Engineers(Civil)

- (i) 10% by promotion amogst Road Inspector, Wrok Inspectors, Work Mistries, Work Supervisors or Surveyors and*
- (ii) 90% by direct recruitment, or*
- (iii) By transfer of Junior Engineer (Civil) already in the services of any State Government or Government of India.*

5. *That the requisite qualification for promotion to the post of Junior Engineer (Civil) is given in Rule-7 of the Haryana Public Works Department, Buildings and Roads Branch, Junior Engineers (group-C) Services Rules, 1998. The provisions under rule-7 are as under:-*

“No person shall be appointed to any post in the Service unless he is in possession of qualifications and experiences specified in column 3 of Appendix B to these rules in the case of direct recruitment and theses specified in column 4 of the aforesaid Appendix in case of persons appointed otherwise than by the direct recruitment.

Provided that in the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of the Commission in case of sufficient number of candidates belonging to scheduled casts backward classes other backward classes, ex-servicemen & physically handicapped categories, possessing the requisite experience, are not



available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.”

Appendix-B to Rule-7 Haryana Public Works Department, Building and roads Branch, Junior Engineers (Group-C) Service Rules, 1998 provides as under:-

Sr. No.	Designation of Post	Academic qualification and experience, if any, for direct recruitment or for appointment by transfer	Academic qualifications and experience, if any, for appointment by promotion.
1.	Junior Engineer (Civil)	(1) Has passed three years National Certificate (Theoretical) course in Civil Engineering conducted by the State Board or has qualified the same from any other recognized Institution; and (ii) Hindi upto Matric	i) For employees with certificate course. ii) Two years experience on the post of Road Inspector, Work Mistries, Work Supervisors or surveyors who have passed three years National Certificate (Theoretical) course in Civil Engineering conducted by the State Board or has qualified same from any Institute OR i) For employees without certificate course (a) matric of its equivalent (b) 8 years experience as R.1 or 12 years experience as Work Inspector, Work Mistries, Work Supervisor or Surveyors and ii) Hindi upto Matric Standard

6. That in this regard, it is humbly submitted that the petitioner is illegally, wrongly and falsely claiming for promotion to the post of Junior Engineer (Civil) when his name was not existing in the seniority list. It is further submitted that when final seniority list was circulated amongst all field officers, the petitioner has not made any objection. If the petitioner had any objection that any officer, junior to him is promoted then he could raise objection in this regard at the time but he has not done so,



CWP-9112-2018

5

which means that the petitioner has admitted said seniority list.

7. *That it is further submitted that on 25.11.2011, a tentative seniority list was circulated vide office Memo No.8280-94/EII, dated 25.11.2011 (P-1) in which the name of the petitioner was mentioned at Sr. No.62, who was much Junior to the employees who were promoted to the post of Junior Engineer (Civil).*

8. *That in the final seniority list dated 26.06.2012 a number of 40 senior most Road Inspectors, Work Mistries, work supervisors and surveyors etc. to fill up the posts of Junior Engineer (Civil) was circulated vide office Memo No.4405/15/EII, dated 26.06.2012 (P-2), in which the name of petitioner, now retired, was not include due to the fact that he was much junior to the employees shown in the seniority list.*

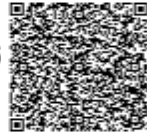
9. *That it is also further submitted that the forwarding the name of the petitioner to Head office does not mean that the petitioner comes in the zone of promotion, his seniors were also available and suitable were promoted on the basis of final seniority list finalized on 26.06.2012 to which the petitioner has not raised any objection.*

10. *That it is submitted that the promotions are made by giving due to regard to employees, whereas, the petitioner was not senior to the employees who were promoted to the post of Junior Engineer (Civil). Thus the action of the department is legal and justified.*

So, in view of the facts narrated above, it is humbly submitted that the order dated 19-07-2012 (Annexure P-3), Office order dated 27.11.2012 (Annexure P-12), and order dated 27-12-2016 (Annexure P-13) have been legally and rightly passed.

It is, therefore, respectfully prayed that the present writ petition is devoid of merit and deserves to be dismissed."

5. In nutshell, the stand of the respondent-Department is that there is inordinate delay in filing the present petition and no person junior to the petitioner has been promoted till his date of retirement i.e. 31.01.2013 and so far as respondent Nos.5 and 6 are concerned, they were much senior to the petitioner and were rightly promoted to the post of



CWP-9112-2018

6

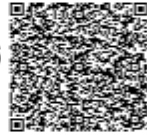
6. I have heard learned counsel for the parties and perused the record.

7. The only question which arises for determination in the present case is as to whether the claim of the petitioner is liable to be rejected on the ground of delay and laches and further whether the petitioner has a right of promotion to the post of Junior Engineer.

8. The instant petition has been filed by the petitioner on 06.04.2018 impugning the promotion of respondents No.5 & 6 made vide order dated 19.07.2012 i.e. after a period of about 06 years. No satisfactory explanation for delay has been given in the petition except that representation dated 15.06.2016 and reminder dated 28.07.2016 followed by legal notice dated 27.10.2016 was served upon the respondents which has been replied on 27.12.2016. Since there is undue and unexplained delay in approaching this Court, therefore, the instant petition deserved to be dismissed on the ground of delay and laches.

9. The Hon'ble Supreme Court in ***Yunus (Baboobhai) A Hamid Padvekar Vs. State of Maharashtra Through its Secretary and others : 2009 (2) SCT 24***, while referring to the issue of delay and laches, had held as follows:-

*“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the ‘Constitution’). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prasad v. Chief Controller of***



Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

9. What was stated in this regard by Sir Barnes Peacock in ***Lindsay Petroleum Company v. Prosper Armstrong Hurde etc. (1874) 5 PC 221*** at page 239 was approved by this Court in ***Moon Mills Ltd. v. Industrial Courts (AIR 1967 SC 1450)*** and ***Maharashtra State Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329)***, Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

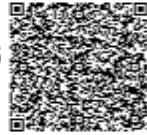
10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in ***R.N Bose v. Union of India (AIR 1970 SC 470)*** that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.



11. It was stated in ***State of M.P. v. Nandlal (AIR 1987 SC 251)*** that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.”

10. Further the Hon’ble Supreme Court in ***State of Uttaranchal and another Vs. 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 revived even if such a representation has been decided either by the authority or 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

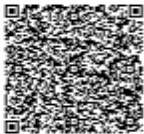


CWP-9112-2018

9

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.”

14. xx xx xx xx

15. xx xx xx xx

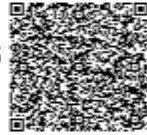
16. xx xx xx xx

17. *In **Bharat Sanchar Nigam Limited Vs. 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 Vs. State of Haryana, (1997) 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 07.07.1992.*

18. *In **State of T. N. Vs. 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:-*

“... 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.

19. xx xx xx xx



20. *In New Delhi Municipal Council Vs. 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."*

11. In a recent judgment by the Division Bench of this Court in ***"Ram Kumar Vs. State of Haryana and others"***, 2022 (3) SCT 346, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition filed by him suffered from gross, inordinate and unexplained delay in approaching the High Court. In the said judgment, it has been held as under:-

*"10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 01.04.1997. And, he was assigned a specific seniority position in the cadre. Whereafter, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a stale and dead claim. The Supreme Court, in **New Delhi Municipal Council v. Pan Singh & Ors., 2007(9) SCC 278**, observed:*

"15. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at



*the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See **Govt. of W.B. v. Tarun K. Roy And Others [(2004) 1 SCC 347]**, **Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr. [2006 (12) SCALE 347]** and **Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another v. K. Thangappan and Another [(2006) 4 SCC 322]**”*

11. Similarly, in **Jagdish Lal & Ors. Vs. State of Haryana & Ors., (1997) 6 SCC 538**, it was held by the Supreme Court:

“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios..... Therefore, desperate attempts of the appellants to redo the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”

12. *In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned single Judge. The appeal being bereft of merit is, accordingly, dismissed.”*

12. The Co-ordinate Bench of this Court in **“Prem Nath and others Vs. State of Punjab and others”, 2018(2) SCT 687**, while



CWP-9112-2018

13

rejecting the claim of additional increments on acquisition of higher qualifications has held as under:-

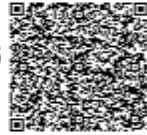
*“3. It is the case set up on behalf of the petitioners that they had all been appointed before 19.02.1979 and had even improved/acquired higher qualifications before 19.02.1979 and as such there would be no difference between the employees working with the Punjab Government, holding corresponding post and the employees like the petitioners who have worked for Punjab Privately Managed Recognised Aided Schools. It is also the assertion made by counsel representing the petitioners that their claim would be covered in terms of decision dated 02.07.2013 rendered by this Court in a bunch of writ petitions including **CWP No.8083 of 1989 titled as Radha Krishan Narang and others vs. State of Punjab and others.***

4. Having heard counsel for the petitioners at length, this Court is of the considered view that the claim of the petitioners would not require any consideration on merits and the writ petition deserves to be dismissed on the sole ground of delay and laches.

5. Placed on record and appended at Annexure P-1 are the particulars of the petitioners. The tabulation at Annexure P-1 would show that all the petitioners stand retired on various dates between the years 1995 to 2012. Out of 32 petitioners in all, 22 petitioners superannuated more than 10 years back.

6. There is no justification coming forth as regards the inordinate delay in having approached the Writ Court. There is also no explanation put forth by the petitioners as to why the claim raised in the instant petition was not agitated by the petitioners while they were in service. The entire thrust of the submissions advanced by counsel is that similarly situated employees had approached this Court and have been granted relief.

*7. The issue regarding delay in invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India was considered by the Hon'ble Supreme Court in **Chairman, U.P. Jal Nigam and another v. Jaswant Singh and another (2006)11 SCC 464.** In such case, certain employees raised the issue that they were not*



*liable to be retired at the age of 58 years but should be permitted to continue in service till they attain the age of 60 years. Such employees were still in service when the writ petitions were filed. The writ petitions were ultimately allowed. Placing reliance upon such judgment, some of the employees, who had already superannuated, filed writ petitions seeking the same benefit. Even such petitions were allowed by the High Court in terms of following the earlier judgment. The judgment of the High Court was challenged before the Apex Court and wherein while referring to earlier judgments in **Rup Diamonds v. Union of India, (1989)2 SCC 356**; **“Jagdish Lal v. State of Haryana, (1997)6 SCC 538 and Government of West Bengal v. Tarun K. Roy, (2004)1 SCC 347**, it was opined that persons who approached the Court at a belated stage placing reliance upon the order passed in some other case earlier, can be denied the discretionary relief on the ground of delay and laches. The relevant observations made by the Supreme Court are contained in Paras 5, 6 and 16 of the judgment and are extracted here under:-*

*“5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in **Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300**. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?*

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be

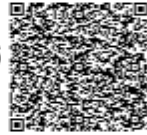


heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

xx xx xx

16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.” [Emphasis supplied]

*8. The issue of delay was also dealt with by this Court in **Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013 (3)SLR 314**. In the case of Tarsem Pal(supra), the petitioner was serving as a Clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant to him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e. just one*



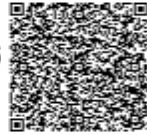
month prior to superannuation. While non-suiting the petitioner on account of delay and laches it was held as follows:-

“11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give a cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

12. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

13. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.”

*9. At this stage, counsel appearing for the petitioners would make an attempt to overcome the obstacle of delay by placing reliance upon a Full Bench Judgment of this Court in **Saroj Kumar vs. State of Punjab, 1998(3) SCT 664**. Counsel would argue that as per dictum laid down in Saroj Kumar's case(supra), matters of pay fixation involve a recurring cause of action and as such, writ petitions for*



such claim cannot be dismissed on the ground of delay and laches and the Court at the most, may restrict the arrears upto 38 months from the date of filing of the petition and disallow the arrears for the period for which even a suit had become time barred.

10. *The reliance placed by counsel upon the judgment in Saroj Kumar's case, is wholly misplaced. The observations and aspect of delay in Saroj Kumar's case, were in the light of the judgment of the Supreme Court in **M.R. Gupta vs. Union of India and others, 1995(4) RSJ 502**. In M.R. Gupta's case(supra), it had been categorically held that so long as an employee "is in service" a fresh cause of action arises every month when he is getting his monthly salary on the basis of a wrong calculation made contrary to rules. It was further held that the claim to be awarded the correct salary on the basis of a proper pay fixation "is a right which subsists during the entire tenure of service".*

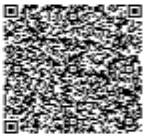
11. **In the present case, however the petitioners choose not to agitate their claim while in service. It is much subsequent to their superannuation that they have woken up and seek to gain impetus from certain decisions that may have been rendered in the case of similarly situated employees.**

12. *Considering the dictum of law as laid down in Chariman, U.P. Jal Nigam's case (supra), **the petitioners herein are not entitled to any relief as prayed for and the petition deserves to be dismissed on the sole ground of delay and laches.***

13. *Ordered accordingly."*

13. The Division Bench of this Court in "**H.S. Gill vs Union of India and others**", 2016(2) SCT 477, has held that an employee cannot claim the revised pay scale after retirement once he has been receiving the pay scale granted by the employer for the last 09 years. The relevant portion from the said judgment, reads as under:-

"14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs.6500-10500 right from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For



the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale.”

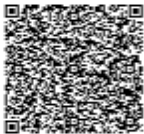
14. So far as the question whether the petitioner has a right of promotion to the post of Junior Engineer is concerned, the facts are not in dispute that respondents No.5 and 6 are much senior to the petitioner as Work Mistry, which is a feeder post for promotion to the post of Junior Engineer as is clear from the following chart :-.

Sr. No.	Name	Date of Promotion with Post
1.	Dilbag Singh (Respondent No.6)	Work Mistry 13.04.1981
2.	Ramphal (Respondent No.5)	Work Mistry 23.04.1980
3.	Dharam Pal (Petitioner)	Work Mistry 04.07.1981

15. A tentative seniority list was circulated vide memo dated 25.11.2011 (Annexure P-1), wherein the name of the petitioner is at Sr. No.62 and that of respondent No.5-Rampal and respondent No-6 Dilbag Singh at Sr. No.42 and 27, respectively. Thereafter, the said tentative seniority list was finalized vide memo dated 26.06.2012, wherein respondent No.5 namely, Ramphal is at Sr. No.32 and respondent No.6- Dilbag Singh is at Sr. No.40. However, the name of the petitioner was not reflected in the said seniority list.

16. As per settled law, promotion is not a fundamental right, however, consideration for promotion is a fundamental right. The Hon’ble Supreme Court in its judgment *Ajit Singh Vs. State of Punjab : 1999 (4) S.C.T. 1* has held as under :-

“27. In our opinion, the above view expressed in Ashok Kumar Gupta, and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guaranteed



CWP-9112-2018

19

to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta, right from 1950."

17. In the present case, no person junior to the petitioner has been promoted till the petitioner was in service i.e. 31.01.2013 and respondents No.5 & 6 were much senior to the petitioner.

18. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

25.11.2024
Nisha-I/Kothiyal

(NAMIT KUMAR)
JUDGE

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