

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

LPA-375-2023 (O&M)
Decided on : 06.02.2024

Kartar Singh Dalal

Versus

.....Appellant(s)

State of Haryana & another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present:- Mr.Vikas P.Singh, Advocate for the appellant.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-1051-LPA-2023

1. Allowed as prayed for.

CM-1052-LPA-2023

2. Application for condoning the delay of one day in filing the appeal is allowed in view of the averments made in the application, duly supported by affidavit of the appellant and in view of the nominal delay. Accordingly, the delay of one day in filing the appeal is hereby condoned.

3. CM stands disposed of.

CM-1053-LPA-2023

4. Application for condoning the delay of 115 days in refiling the appeal is allowed in view of the averments made in the application, duly supported by affidavit of the appellant. Accordingly, the delay of 115 days in refiling the appeal is hereby condoned.

5. CM stands disposed of.

LPA-375-2023

6. Consideration in the present Letters Patent Appeal is sought against the order passed by the Learned Single Judge dated 09.02.2021 and the review order dated 19.09.2022.

7. Prayer in the writ petition was to consider the services rendered by the appellant from 20.01.1997 to 07.08.2000 when he had earlier served as Junior Engineer apart from the retrenchment period from

07.08.2000 to 21.06.2006. Resultantly, benefit of seniority w.e.f. 20.01.1997 and promotion on the basis of length of service was sought.

8. The Learned Single Judge noticed that the appointment at a subsequent point of time on 31.08.2006 (Annexure P-6) was a fresh appointment and the appellant herein had been promoted in the year 2017 and had never made any claim on the ground that he was appointed earlier on 20.01.1997. In the absence of any rules, the benefit was declined on 09.02.2021.

9. LPA-442-2021 was filed before the Co-ordinate Bench wherein an argument was raised that the rules had not been brought to the notice of the Learned Single Judge and the prayer made was that the appellant be relegated to seek review of the said order as the application for recall of the order passed would be permissible after reference to the rules. In the review order dated 19.09.2022, the Learned Single Judge had noticed that the counsel representing the employee could not bring to the notice of the Court the rules applicable which were sought to be projected before the Division Bench and declined the review application.

10. Even today, position remains the same as counsel has not been able to project or show any rule(s) in favour of the appellant whereby benefit of service, firstly from 20.01.1997 to 07.08.2000 can be granted and subsequently for the intervening period of almost 6 years when the fresh appointment was done on 21.06.2006 when the appellant was not even in service. The writ petitioner was seeking a Mandamus for consideration of the said prayer. The basic underlying principle for issuance of Writ of Mandamus is that there has to be a public duty or a rule which can be enforced by the Court. In the absence of the same, we are of the considered opinion that no fault can be found in the order of the Learned Single Judge.

11. Even if we look at the paperbook, it transpires that the initial appointment was on the basis of an application and a subsequent interview held for the post of Junior Engineer which was done by the Commissioner. When the services were dispensed with though may be illegally by way of an order of retrenchment dated 07.08.2000 by applying the principles the Industrial Disputes Act, 1947, as argued by the

Counsel, it was noticed that the State Government had not sanctioned the post of Junior Engineer and the appellant was working in excess of the sanctioned strength.

12. Apparently, on 21.06.2006, there was a consideration for giving fresh appointments which was done by issuing the appointment letters dated 31.08.2006 wherein the appellant’s tenure of service was to be governed by the Haryana Municipal Corporation Employees (Recruitment & Conditions) Service Rules, 1998 and other relevant service rules as adopted by the Corporation. The issue of delay would also come into consideration as the appellant apparently chose to sit quiet on the fresh appointment and never agitated for his grievances regarding the continuity of his earlier service. He was also promoted on 20.06.2017 (Annexure P-8) as Assistant Engineer (Mechanical).

13. It was only in the year 2021, after 4 years, he agitated for the benefit of the earlier service. Accordingly, we are also of the view that in service matters, a person who slept over his rights cannot be permitted to agitate for his grievances after a decade as any benefit now granted would seriously jeopardize the interests of other persons to be considered for promotion.

14. In such circumstances, keeping in view the above cumulative discussion, we do not find anything wrong to interfere in the orders of the Learned Single Judge. Resultantly, the present appeal is hereby dismissed in limine.

(G.S. SANDHAWALIA)

ACTING CHIEF JUSTICE

February 6th, 2024

Sailesh

(LAPITA BANERJI)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No