

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1928-2023 (O&M)
Date of decision:- 22.02.2024

Chander Bhan and another
...Appellant(s)

Versus

State of Haryana and another
...Respondent(s)

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

Present: Mr. Lajpat Sharma, Advocate,
for the appellants.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

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G.S. SANDHAWALIA, A.C.J. (ORAL)

1. The present appeal is directed against the order dated 21.09.2023 passed by the learned Single Judge in CWP-20358-2023 filed by the writ petitioners (appellants herein) challenging the order dated 16.11.2018 (Annexure P-6), whereby their claim for promotion to the post of Sub Divisional Engineer (S.D.E.) during the year 1985-1986 had been rejected.

2. The learned Single Judge was gracious enough as such to grant liberty to writ petitioner No. 2 to file a representation to claim notional benefits and consequential revision of pension. A perusal of the paper book would go to show that the appellants had retired from service on 31.12.2006 and 30.04.2012 having been appointed as Junior Engineers on 27.09.1973 and

12.12.1976 respectively. Apparently, on the strength of a decision of the Division Bench of this Court in CWP-10931-1990 titled as ***Gian Singh Vs The State of Haryana and another*** and other connected matters (decided on 18.01.2011), the appellants sought to raise the dispute for consideration of their promotion in view of the observations made therein. Apparently, on an earlier occasion in the year 2018 (P-5), the learned Single Judge without noticing this fact issued directions to consider the representation.

3. The Apex Court in ***The Government of India and another Vs P. Venkatesh*** 2019(15) SCC 613 has time and again held that ‘dispose of the representation’ mantra creates only a fresh round of litigation. The cause of the appellants had long died after retirement having not been raised during the period of their service. Merely because some other person got an order in his favour from this Court did not give any reason to the appellants to agitate for their grievances. The rejection of the representation, thus, on the basis that the writ petition was filed and claimed is all on mis-conceived notions and, therefore, we are of the considered opinion that the order as such of the learned Single Judge suffers from no infirmity.

4. The Apex Court in ***State of Uttar Pradesh and others Vs Arvind Kumar Srivastava and others***, 2015(1) SCC 347 has held that fence-sitters are not to be granted any relief and merely because some other person has been granted the relief would not give a fresh cause of action.

5. The relevant paragraphs, thus, read as under:-

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other

identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the

Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

6. In such circumstances, the judgement of the Apex Court relied upon by learned counsel for the appellants in *Union of India and another Vs Hemraj Singh Chauhan and others*, 2010(4) SCC 290, whereby the issue of review of the cadre has to be taken after every five years since it was not done, is of no help. Learned counsel for the appellants could not show from the judgement as such that the litigants in that case had superannuated long back and, therefore, the judgement is not applicable to the facts and circumstances of the present case.

7. The appeal being meritless, accordingly, stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

22.02.2024
Amodh Sharma

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