

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

106

CWP-29497-2023

Date of Decision :25.01.2024

Devender Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K Nehra, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 29.08.2019 (Annexure P-8) passed by the respondents by which, the claim of the petitioner for the grant of appointment to the post of conductor from the waiting list was declined by the respondents.

2. As per the averments made in the petition, respondent-State had issued an advertisement No.03/2009 for appointment to the post of conductor in the year 2009 and the petitioner had competed in the said selection. After completion of the selection process for the post in question, recommendations were made by the respondents on 01.02.2012 however, the name of the petitioner did not find mention in the list of the selected candidates but his name was kept in the waiting list. The petitioner did not raise any grievance with regard to his non-appointment out of the waiting list at the relevant time.

3. Certain candidates, who were similarly situated as petitioner in the waiting list, filed a writ petition in the year 2017 being CWP-14235-2017 claiming that a candidate lower in merit list than them has been appointed hence, once the candidate lower in merit has been appointed, they should also be considered for the appointment to the post in question. The said writ petition was allowed by the Coordinate Bench of this Court vide order dated 09.10.2018 and a direction was issued to the respondents to grant the benefit of appointment to the candidates from the waiting list.

4. As the candidates similarly situated as the petitioner got the relief, the petitioner also approached this Court by way of filing CWP-37768-2018 claiming the benefit of the said judgment of the Coordinate Bench of this Court, which writ petition was disposed of vide order dated 20.12.2018 with the direction to the respondents to decide the representation of the petitioner in a time bound manner. In pursuance to the order dated 20.12.2018 of this Court, claim of the petitioner which was raised for the first time by way of filing representation dated 05.12.2018 after the judgment of the Single Bench of this Court, came to be rejected by the respondent-department vide order dated 29.08.2019 (Annexure P-8) and, thereafter, petitioner did not take any action so as to challenge the said order.

5. Judgment of the Single Bench of this Court in the case of similarly situated employees in CWP-14235-2017 was challenged by the respondent-State by way of filing LPA-548-2019, which LPA came to be dismissed by the Division Bench of this Court on 22.12.2022 upholding the judgment of the Single Bench of this Court.

6. The petitioner has filed the present petition in December, 2023 claiming that he should also be considered for appointment to the post in

question out of the waiting list being similarly situated as the candidates, who were respondents in LPA No.548-2019, which LPA was dismissed by the Division Bench of this Court on 22.12.2022.

7. Learned counsel for the petitioner argues that once the name of the petitioner was in the waiting list and similarly situated candidates in the waiting list, have already been allowed the benefit of appointment by the coordinate bench of this Court while deciding their writ petition in the year 2018 and even the appeal filed by the respondent-State has already been dismissed on 22.12.2022, the petitioner also becomes entitled for the grant of benefit of appointment hence, the claim of the petitioner which was rejected by the respondent vide impugned order dated 29.08.2019 (Annexure P/8) is liable to be set aside so as to grant the benefit of appointment to the petitioner.

8. Keeping in view the advance copy served, Mr. Harish Nain, AAG, Haryana has put in appearance on behalf of the respondent-State and has raised the objection qua the claim of the petitioner for appointment to the post in question from the waiting list on the ground of delay and laches.

9. Learned counsel for the respondent-State submits that though, no written statement is being filed as of now but it is a conceded fact that the advertisement relates to year 2009 and recommendations to the post in question were made in February, 2012 and the petitioner has raised grievance for the first time by way of filing a representation in the year 2018, which is after the expiry of more than 06 years of the selection for the post in question. Learned counsel for the respondent-State further submits that even otherwise, after the petitioner approached the respondents, his claim was rejected vide impugned order dated 29.08.2019 (Annexure P-8)

and the present petition has been filed after the expiry of three and a half years of passing the said order hence, on the ground of delay and latches alone, the petitioner should be stopped from claiming the said benefit.

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

11. It is a settled principle of law that the posts are to be filled in accordance with law and procedure prescribed. It is also a settled principle of law that waiting list has a surviving period of 06 months from the date of recommendations. Keeping in view the said fact, this Court is to adjudicate as to whether the present petition is to be entertained or to be rejected on the ground of delay and latches itself or not.

12. The argument of the learned counsel for the petitioner is that once the similarly situated candidates have already been granted the benefit of appointment by the Coordinate Bench of this Court in the year 2018, which judgment has already been upheld by the division bench of the this Court in December, 2022, the petitioner also becomes entitled for the said benefit being similarly situated to the respondents therein and there cannot be any difference between the petitioners as well as respondents in LPA-548-2019.

13. The question which arises before this Court is as to whether the petitioner is to be treated similarly situated as the respondents in LPA-548-2019 or not. It may be noticed here that petitioner did not raise any claim with regard to the grant of appointment from the waiting list for a period of six and a half years from the date of recommendation and the petitioner has agitated his claim for the first time after the claim of the similarly situated candidates was allowed by the Coordinate Bench of this Court in favour of

the petitioners in CWP-14235-2017. Thereafter, the claim of the petitioner was considered and rejected in August, 2019 by the respondent-department on the ground of delay but the petitioner did not raise any grievance against the said order for a period of another more than three and a half years and the present petition has now been filed by the petitioner after the LPA filed by the respondent-State has been dismissed by the Division Bench of this Court and order has been passed in favour of the respondents therein granting them the benefit of appointment from the waiting list.

14. In the facts and circumstances of the present case, even a civil suit will not lie against the impugned order at this stage as the same is time barred.

15. Further, the question whether a fence-sitter is to be allowed the benefit, which has been given to the similarly situated persons or not has already been decided by the Hon'ble Supreme Court of India in **Civil Appeal No.9849-2014 titled as State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others decided on 17.10.2014** wherein, it has been held that benefit of the judgment to the similarly situated fence-sitter cannot be given and the delay and laches has to be taken into account and merely that the similarly situated employees, who had approached the Court within time frame prescribed got the relief, a fence-sitter cannot be allowed the said benefit. Relevant paragraphs of the judgment is 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 recognised 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 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.”

16. In the present case also, the petitioner approached this Court for the first time after the judgment was passed by the competent Court of law in favor of the similarly situated candidates. Thereafter, when his claim was rejected by the respondents in the year 2019, the petitioner did not avail any remedy up to three and a half years and now the present petition has been filed by the petitioner after the LPA filed by the respondent-State has been dismissed by the Division Bench of this Court and the benefit has been granted in favour of the other conductors hence, the claim of the petitioner is squarely covered against him by the judgment in Arvind Kumar Srivastava

(supra) on the ground of delay & laches and no relief can be granted in

favour of the petitioner in the year 2024 qua the selection, which was made in the year 2012.

17. Keeping in view the facts and circumstances of the present case, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.

January 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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