

(2020) 09 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7093 Of 2020

Prahlad Narain Awasti

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2020) 09 RAJ CK 0044

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : Kailash Chand Darji

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner with the following prayer:-

"It is, therefore, most respectfully prayed that your lordship may graciously be pleased to accept and allow this writ petition and call for the entire record relating to the case and after examine the same-

(I) By issuing an appropriate writ, order or direction in the nature thereof and thereby the Respondents that work out as to how many posts out of 41000 notified for the year 2012 recruitment remain unfilled as today on account of the fact that the candidates who were offered appointment did not join or after joining resigned or left the service and all of them would be treated as vacant posts and give the appointment to the petitioner on the post of Teacher Grade-III, level-II in the larger interest of justice in favour of petitioner. (II) By issuing an appropriate writ, order or direction in the nature thereof and thereby the respondents may be directed to issued a appointment letter for the post of Teacher Grade-III, Level-II in favour of petitioner in the light of judgment dated 08.01.2020 passed by Hon'ble Division Bench Jaipur Raj.

(III) Issue any other writ order or direction, which this Hon'ble Court deems fit and proper, may kindly be passed in favour of the petitioner."

2. Brief facts of the case are that pursuant to the advertisement issued by the respondents in the year 2012 for direct recruitment on the post of Teachers in Primary and Upper Primary Level-II, the petitioner applied for the post of Teacher Grade-III Level II. The result of said examination was declared in 2012 and the revised result was declared in the year 2013. However, the petitioner has filed the present writ petition on 03.07.2020 after a delay of seven years.

3. Counsel for the petitioner submits that the petitioner has submitted representation to the respondents on 30.01.2020 with regard to his appointment in which he has also mentioned the judgments passed by this court. Counsel further submits that the persons who are less meritorious have been given appointment and lastly prayed for allowing the writ petition.

4. Heard counsel for the petitioner and perused the record.

5. The Hon'ble Supreme Court in the matter of Union of India & Ors. Vs. C.Girija & Ors. reported (2019) 15 SCC 633 in paras 16, 17 & 18 has held as under:-

"16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C. Jacob v.

Director of Geology and Mining had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the Tribunal, which was entertained and order was passed. In the above context, in para 9, following has been held:

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

17. This Court again in Union of India v. M.K. Sarkar on belated representation laid down following, which is extracted below:

(SCC p.66, para 15) "15. 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."

18. Again, this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari* had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In Paras 19 and 23 following was laid down: (SCC pp. 184-85) "19. 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.

23. In *State of T.N. v. Seshachalam*, this Court, testing the equality Clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16) '16. ... 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.' "

6. This writ petition filed by the petitioner deserves to be dismissed firstly for the reason that the petitioner has approached this court after a delay of seven years; secondly, in view of the judgment passed by the Hon'ble Supreme Court in the matter of *Union of India Vs. C. Girija & Ors.* (supra), no relief can be granted to the petitioner.

7. Hence, this writ petition stands dismissed.