

(2018) 07 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : Latter Patent Appeal No. 1073 Of 2018 (O&M)

Sat Narain And Another

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Citation : (2018) 07 P&H CK 0148

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Balkar Singh

Final Decision : Dismissed

Judgement

Krishna Murari, C.J

CM Nos. 2878-LPA of 2018 & 2877-LPA of 2018

1. Heard. For the reasons set out in the delay condoning application duly supported by affidavit, 14 days delay in filing and 197 days in re-filing the appeal is hereby condoned. Both the application stands disposed of.

LPA NO. 1073 OF 2018 (O&M)

This intra-court appeal has been filed by the appellants-petitioners under Clause X of the Letters Patent challenging the judgment and order dated 04.10.2017 passed by the learned Single Judge dismissing the writ petition filed by them seeking a writ of mandamus commanding the respondents to permit them to join the services as constables/wireless operators in Haryana Police/Haryana Armed Police.

2. Two appellants herein alongwith certain other persons made the aforesaid claim seeking parity with the persons given such an appointment vide orders dated 21.11.2012 passed by the Superintendent of Police (Telecommunications), Haryana in compliance of the orders dated 21.11.2012 passed by the Director

General of Police, Haryana. The aforesaid directions were issued by the Director General of Police, Haryana, on the basis of the judgment and order dated 15.02.2012 passed by this Court in Civil Writ Petition Nos. 11129 of 2006 and 2116 of 2007.

3. The appellants-petitioners were appointed on the posts of Constables/Wireless operators (male and female) in Telecommunication Wing of Haryana Police on the basis of a regular selection held for the purpose. The services of the appellants-petitioners and other similarly situated constables were dispensed with on the pretext that they were recruited for appointment in Haryana State Industrial Security Force and their services were dispensed with on the ground that Haryana State Industrial Security Force Act, 2005 was repealed on 29.06.2005.

4. Various such constables filed Civil Writ Petition Nos. 11129 of 2006 and 2116 of 2007 (Satya Narayan and others v. State of Haryana and others) challenging the orders terminating the services. It is an admitted fact that the appellants-petitioners herein did not challenge the order of termination at that stage. The aforesaid two writ petitions came to be allowed vide judgment and order dated 15.02.2012 by the learned Single Judge relying upon a Division Bench judgment dated 01.09.2009 rendered in LPA No. 96 of 2009 (Mohan Lal and others v. State of Haryana and others) which was already affirmed by the Hon'ble Apex Court.

5. Learned Single Judge after detailed analysis of the facts as culled out from the pleadings of the parties and various judgments on the basis of which the parity was being claimed by the appellants-petitioners came to the conclusion that the cases of Satya Narayan and others (supra) and Mohan Lal and others (supra) on which a reliance was being placed pertain to selection of the constables/wireless operators (male and female) vide advertisement dated 25.07.2004 and the earlier litigation in the case of Mohan Lal (supra) pertained to the post of Sub Inspector and the process was through the Staff Selection Commission and that the case of Satya Narayan's (supra) relates to the advertisement dated 25.07.2004 for appointment of temporary constables/wireless operators whereas the petitioners were selected and appointed under advertisements dated 06.02.2004 and 10.07.2004 which was done by the recruitment centres set up by the Director General of Police at the district level and thus they were not entitled to claim parity on the basis of aforesaid two judgments.

6. Learned Single Judge has also taken note of the fact that some similarly situated persons filed Civil Writ Petition Nos. 22455 of 2012 and 25957 of 2012 which were dismissed on 04.11.2004 on the ground of delay and laches.

7. Reliance was also placed on the pronouncements of the Hon'ble Apex Court in cases Bharat Sanchar Nigam Ltd. v. Ghanshyam Dass and others (2011) 4 SCC 374 and State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others 2013(6) SLR 629.

8. Admittedly, the appellants-petitioners alongwith various other similarly situated employees filed a writ petition seeking a writ of certiorari for quashing

the orders dated 06.07.2005 and 07.07.2005 terminating their services. A further writ of mandamus was claimed to command the respondents to permit the petitioners to serve as constables in Haryana Police as has been allowed to other colleagues vide order dated 21.11.2012. Thus the impugned orders dated 06.07.2005/07.07.2005 were sought to be challenged by the appellants-petitioners by filing a writ petition in the year 2017 after about 12 years.

9. The issue regarding delay in invoking extra ordinary jurisdiction of this Court and basing the claim on the earlier judgments passed in the case of similarly situated persons is no longer res-integra and stands settled by catena of decisions by the Hon'ble Apex Court. Reference may be made to the judgment of the Hon'ble Apex Court in U.P.Jal Nigam and another v. Jaswant Singh and another (2006) 11 SCC 464. In the said case certain employees raised the issue that they were not liable to be retired at the age of 58 years and were entitled to continue in service till they attain the age of 60 years. Reliance was also placed on the earlier judgments of the Hon'ble High Court allowing the writ petitions filed by certain similarly situated persons. The writ petitions were allowed by the High Court in terms of its earlier judgments. Hon'ble Apex Court noticing the fact that the employees in earlier writ petitions had approached the Court while they were still in service whereas subsequent writ petitions were filed after delay and laches and after they had retired on attaining the age of 58 years held that the persons who approached the Court at a belated stage placing reliance upon an order passed in some other case earlier are not entitled to the discretionary relief on account of delay and laches. It may be relevant to quote the following observation from the said judgment:-

"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?

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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]

10. Again in the case of A.P.Steel Re-Rolling Mill Ltd. v. State of Kerala and others (2007) 2 SCC 725, the same issue was considered and answered as under:-

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

11. In State of T.N. v. Seshachalam (2007) 10 SCC, 137, the Hon'ble Apex Court testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits has held as under:-

"... 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. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another (2009) 15 SCC 321.

20. In *New Delhi Municipal Council v. Pan Singh and others* (2007) 9 SCC 278, the 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.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivaswamy v. State of Tamil Nadu* (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time." [Emphasis

supplied]

12. In a more recent judgment in case of Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T.Murali Babu 2014(4) SCC, 108, it has been held by the Hon'ble Apex Court as under:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a 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 limitations, 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."

13. Thus, it stands well settled that the doctrine of delay and laches should not be lightly brushed aside. While exercising an extra ordinary writ jurisdiction, the Courts are under obligation to protect the rights of citizens but similarly the Courts have to remain alive to the primary principles that when an aggrieved person without adequate reason invokes the jurisdiction of the Court at his own leisure, there is always a legal obligation to scrutinize whether the lis at a belated stage is liable to be entertained or not. Needless to say that delay stands in the way of equity. Delay in approaching the Court is not liable to be ignored without any justification.

14. In the case in hand, from a perusal of the pleadings of the parties, we find that not only the appellants-petitioners invoked the jurisdiction of this Court after 12 years but also there is no explanation even worthy namesake for inordinate delay and laches.

15. In view of the settled canons of law we find no illegality in the impugned judgment passed by the learned Single Judge non-suited the appellants-petitioners in dismissing the writ petition on the ground of delay and laches. The appeal is thus devoid of any merits and accordingly stands dismissed in limine.