

(2022) 04 SHI CK 0060

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 402 Of 2019

Sunita Potan And Others

APPELLANT

Vs

State Of HP And Others

RESPONDENT

Date of Decision : 29-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2022) 04 SHI CK 0060

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rakesh Chauhan, Desh Raj Thakur, Gaurav Sharma, Dilip Sharma, Manish Sharma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive reliefs:-

"i "That a writ in the nature of certiorari may be issued and the impugned order Annexure P-9 dated 28.10.2009 may kindly be quashed and set aside

ii) That a writ in the nature of mandamus may be issued directing respondents to grant seniority to the petitioner above respondent no.3 and thereby annexure P-7 may also be quashed and set aside with further directions to the respondents to hold the DPC after rectifying the seniority."

2. The case of the petitioner is that initially he was appointed as Clerk (LDC) in the Department of Census and had joined as such on 18.10.1979. As per policy decision of the State Government, staff of Census Department was absorbed in various Department of the State of Himachal Pradesh. Petitioner was ordered to be appointed as Clerk in the office of Chief Conservator of Forests. He was relieved from the Census Department on 17th March, 1982 and joined as Clerk in

the office of respondent No.2 on 18th March, 1982.

3. Petitioner qualified competitive examination and was resultantly promoted/appointed as Steno-Typist on 9.1.1986. Petitioner was further promoted as Senior Scale Stenographer through a competitive examination vide letter dated 1988 w.e.f. 28.07.1987, as there were no Recruitment and Promotion Rules in place for said post at any stage.

4. Respondent No.3 had also worked with the Census Department as daily wager. He had been retrenched in February, 1982. However, taking advantage of Government policy, he was also absorbed in the Department of Forest, Himachal Pradesh and had joined as Clerk on 17.03.1982. Since for promotion to the post of Senior Scale Stenographer, there were no Recruitment and Promotion Rules, respondent No.3 was also considered from the category of senior Clerks and was promoted as Senior Scale Stenographer along with petitioner.

5. In 1999, the cadre of Stenographers and ministerial staff was bifurcated in the respondent Department, the post of Personal Assistants were to be filled up from the post of Senior Scale Stenographers.

6. It is averred on behalf of the petitioner that respondent No.3, as per aforesaid Rules, was not eligible for Senior Scale Stenographer as he was not qualified to be Stenographer, petitioner had become Junior Scale Stenographer/Steno-Typist in 1986 after qualifying the requisite test, whereas respondent No.3 had never held such post. Petitioner, therefore, claimed seniority over respondent No.3 in the cadre of Stenographers on the basis of Recruitment and Promotion Rules in force in the year 1999.

7. Petitioner and respondent No.3 on 25.10.2000 were promoted as Personal Assistants. Respondent No.3, at that stage, was required to be placed below petitioner in seniority on the premise that he was not qualified to be Junior Scale Stenographer/Steno-Typist which as per 1999 Rules was feeder category for the promotional post of Senior Scale Stenographers.

8. In August, 2009, respondents No.1 and 2 circulated letter for making promotions to the post of Private Secretary (Gazetted Class-I) and at that stage, petitioner acquired knowledge that respondent No.3 was shown senior to him. Petitioner immediately represented to the respondents explaining all the facts. The representation of the petitioner was rejected by respondent No.2 on 28.10.2009 and thereafter petitioner immediately approached this Court by way of present petition.

9. In response, stand of the official respondents is that petitioner had joined service in the Forest Department on 18.03.1982, whereas respondent No.3 had joined on 17.03.1982, as such, respondent No.3 was senior to petitioner. Petitioner had claimed benefit of services rendered by him in the Census Department for the purposes of seniority, but his representation was rejected and conveyed to him vide letter dated 25.06.1983. The seniority list of Clerks

was prepared by the Forest Department and was circulated on 10.04.1986, wherein petitioner was below respondent No.3. Petitioner did not assail or challenge the seniority list of Clerks at any point of time. Further, it is contended that petitioner was given temporary appointment as Steno-Typist along-with two other persons with clear stipulation that such temporary appointment would not confer them any right in the matter of seniority. There was a clear caveat that the seniority would be maintained as in the lower cadre of Clerks. The seniority to further promotional post was to be maintained accordingly on the basis of seniority in the lower post of Clerk. Petitioner and respondent No.3 were promoted as Senior Scale Stenographers w.e.f. 27.08.1987. Their further promotion as Personal Assistants in the year 2000 was made in accordance with 1999 Rules. It is submitted that respondent No.3 was rightly ranked senior to petitioner as Personal Assistant and this position came to be reflected in subsequent list of Personal Assistants. Petitioner cannot be allowed to unsettle the settled position of seniority as Personal Assistants after a period of nine years. The allegation of the petitioner that he was not aware about the seniority position has specifically been denied.

10. Respondent No.3 has also contested the claim of petitioner by filing a separate reply. It has been submitted that respondent No.3 was shown senior to petitioner as Clerk. Petitioner had submitted representation dated 18.01.1983 claiming seniority by counting services rendered by him in the Census Department. His representation was rejected by the Government on 25.06.1983. Such rejection was not assailed by the petitioner. Petitioner never laid any challenge to the seniority position after 1983 save and except by belated representation dated 10.09.2009, which was recommended to be rejected vide letter dated 28.10.2009. Seniority list of Senior Scale Stenographers in the respondent Department as on 01.04.1988 was circulated on 13.02.1989. In such seniority list also, petitioner was below respondent No.3 and the petitioner did not make representation against said seniority list. In all subsequent seniority lists of Senior Scale Stenographers as it stood on 1.11.1992, 1.3.1994, 31.12.1998 and 31.12.1999, respondent No.3 was shown above petitioner. It is further submitted that in 1987, the Recruitment and Promotion Rules for the post of Senior Scale Stenographers framed in the year 1974 were applicable and as per these Rules, the feeder category was Clerk/Senior Clerk/Steno-Typist with three years regular service and passing of Stenography test with 100 words speed in English and 60 words speed in Hindi. Petitioner as well as respondent No.3 both being eligible and having passed above referred Stenography test were considered for promotion to the post of Senior Scale Stenographers w.e.f. 27.8.1987.

11. Petitioner and respondent No.3 both were promoted as Personal Assistants vide office order dated 25.10.2000 in which also, name of respondent No.3 was shown at Serial No.3 in the promotion list, whereas name of petitioner was shown at Serial No.4. Subsequently, in the provisional list of Personal Assistants as it stood on 31.12.2001, respondent No.3 was shown at Serial No.3 and

petitioner was shown at Serial No.4. Petitioner never raised any objection against such seniority.

12. I have heard learned counsel for the parties and have also gone through the record carefully.

13. The facts as emerge from the pleadings as well as documents placed on record by the parties undisputedly reveal that respondent No.3 joined the Department of Forest on 17.03.1982 and the petitioner joined a day later on 18.03.1982 as Clerk. The benefit of past service of petitioner with the Department of Census was clearly denied to him right from inception. The representation of petitioner for grant of benefit of his past service with the Census Department was rejected by the Government vide letter dated 25.06.1983, the contents of which read as under:-

"I am directed to refer to your letter No.Ft.426-419/82(E-II), dated the 28th March, 1983, on the above subject, and to say that the representation of Shri M.R. Potan, Clerk, has been considered and it has been decided that the benefit of the service rendered by him in the Census Department cannot be given as he has been absorbed as a new entrant in the Forest Department after having been declared as surplus in the Census Department."

Thus, there was no reason for the petitioner to have entertained any belief regarding conferment of benefit of his past service with the Department of Census by respondents No. 1 and 2. It was categorically mentioned in the letter dated 25.06.1983 that petitioner was absorbed as a new entrant in the Forest Department after having been declared as surplus in the Census Department.

14. In view of aforesaid factual position, respondent No.3 was rightly placed above the petitioner in the seniority list of Clerks. Petitioner did not challenge the seniority list of Clerks as on 01.01.1986 circulated by the respondent Department on 10.04.1986.

15. Petitioner remained silent till 2009 when he made representation to respondent No.1 on 10.09.2009. The subject of such representation was mentioned as under:-

"Representation against the wrong seniority list of PAs as stood on 31.12.2001, prepared by the Principle Chief Conservator of Forests, Shimla."

16. In representation dated 10.09.2009, petitioner did not aver even a single word that he was not aware about the seniority position of respondent No.3 above him till 2009. Rather, it was mentioned that higher placement of respondent No.3 in promotion order dated 25.10.2000 to the post of Personal Assistants above petitioner was without any basis.

17. It is evident from the records that the respondent Department had neither represented nor promised to the petitioner that he was considered senior to respondent No.3 at any stage of his career. In the promotion order of petitioner

and respondent No.3 to the post of Stenographers dated 20.09.1988, it was clearly mentioned that the seniority of the officials would be regulated from the date of appointment as Clerk in the Department.

18. Thus, it is clearly inferable from the records that throughout his career, petitioner was aware that respondent No.3 was senior to him and it was only on 10.09.2009 that petitioner made a representation for the first time. The question, therefore, arises as to whether such a belated claim of the petitioner in respect of seniority vis-à-vis respondent No.3 can be entertained?

19. In *Union of India and others vs. C. Girija and others*, (2019) 15 SCC 633, the legal position has been summarized 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 Vs. Director of Geology and Mining and Another*, (2008) 10 SCC 115 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 paragraph No.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 the case of *Union of India and Others Vs. M.K. Sarkar*, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-

"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 and Another Vs. Shiv Charan Singh Bhandari and Others*, (2013) 12 SCC 179 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 following was laid down:-

“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*, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

“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.”

19. This Court referring to an earlier judgment in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, (1975) 1 SCC 152 noticed 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. In Paragraph No. 26 and 28, following was laid down:-

“26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152, wherein it has been laid down that: (SCC p. 154, para 2)

“2. ... 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 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.”

28. 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.”

20. On the preposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim.

Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.”

20. In view of the aforesaid exposition of law, the claim of the petitioner as regards his seniority is clearly not maintainable. Even otherwise, petitioner has failed to make out any case on merits. Petitioner joined respondent Department after respondent No.3 and hence respondent No.3 was rightly placed above petitioner in seniority in the initial grade of Clerk and thereafter on every promotional post. The claim made by the petitioner on the basis of Recruitment and Promotion Rules framed in the year 1999 is also without any merit. The promotions made prior to enforcement of such Rules were not to be affected by 1999 Rules as such Rules were to operate prospectively and not retrospectively.

21. Learned counsel for the petitioner has tried to persuade this Court by referring to certain inter-office correspondence of respondent Department entertained in the year 2014, whereby some recommendations were made to grant benefit of past service of petitioner with the Department of Census for the purposes of pension and leave etc. In the considered view of this Court, petitioner cannot succeed even on such basis as finally the recommendations so made were not accepted by the competent authority. Even otherwise, there is marked distinction between grant of benefit of past service for the purposes of pension and leave etc. and the grant of such benefit for the purposes of seniority.

22. In the light of the discussion made above, there is no merit in the petition

and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.