(2013) 04 P&H CK 0171

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 809 of 2013 (O and M)

Satya Pal Sharma		APPELLANT
	Vs	
Punjab and Haryana High Court and Another		RESPONDENT

Date of Decision: April 29, 2013

Citation: (2013) 172 PLR 89

Hon'ble Judges: G.S. Sandhwalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Munish Jolly, for the Appellant;

Judgement

G.S. Sandhwalia, J.

The present letters patent appeal is directed against the order of the Learned Single Judge dated 15.02.2013 passed in CWP No. 6903 of 2010. Vide the said order, the writ petition filed by the petitioner-appellant was dismissed on the ground that there was inordinate delay and an effort was made to revive a dead issue. Since primarily, the writ petition had been dismissed on the question of delay, it would necessarily have to be examined as to what was the order which the petitioner-appellant was challenging which warranted the writ Court to take such a view. The orders which are subject matter of challenge in the writ petition are tabulated below:

(i) Order dated 29.01.1991 (Annexure P-3), passed by the District & Sessions Judge, Sonepat whereby the services of the petitioner as Ahlmad were terminated w.e.f. 31.01.1991.

(ii) Order dated 20.12.1993 (Annexure P-5) whereby the service appeal of the writ petitioner-appellant was accepted and he was held to have been reverted to the substantive post of Daftri from which post he had been promoted to the post of Ahlmad and accordingly, a direction was issued to take him back in service.

(iii) Order dated 05.11.1997 (Annexure P-9), passed by the District & Sessions Judge, Sonepat whereby one increment of the writ petitioner-appellant, with cumulative effect, was stopped on account of the fact that he remained on strike and absented himself from duty on 22-23.11.1990.

(iv) Order dated 26.10.1998 (Annexure P-10), passed by the District & Sessions Judge, Sonepat whereby the service period of the writ petitioner-appellant from 01.02.1991 to 02.02.1994 was treated as period on extraordinary leave.

(v) Order dated 27.05.2002 (Annexure P-11) whereby the representation against the period which was treated as extraordinary leave was rejected by the Learned Administrative Judge.

2. Admittedly, the genesis of the dispute started wayback in the year 1990 when the writ petitioner-appellant took part in a strike and absented himself from the duty which initially led to his termination on 29.01.1991 by the District & Sessions Judge, Sonepat. However, in view of the fact that the writ petitioner appellant had been promoted to the post of Ahlmad, it saved him from dismissal and he had only been reverted to the post of Daftri. The said order became final and was never challenged by the writ petitioner-appellant. Liberty had been given to proceed with the disciplinary proceedings against the employee and in view of the enquiry report, an order of punishment regarding his absence was passed and punishment of stoppage of one annual increment, with cumulative effect, was imposed upon the petitioner vide order dated 05.11.1997. The period of absence was treated as period on extraordinary leave and his representation was dismissed. Thus, the basic order of termination was modified on 20.12.1993 and it was ordered that he would be reverted which was never, thereafter, challenged and the writ petitioner-appellant had accepted the said status.

3. The writ petition was filed in April, 2010, after a period of more than 16 years, challenging the said order of his reversion. Similarly, the other orders of stoppage of increment and treating the period of absence as extraordinary leave passed on 05.11.1997 and 26.10.1998 were challenged. It is settled that in matters pertaining to service rights, the employee is to challenge the orders at the earliest.

The Hon''ble Supreme Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, initially held that writ petition has to be filed within 6 months or at the most, in a year and that the stale claims cannot be entertained. Relevant observations read as under:

2. ...Not only respondent 2 but also respondents 3 and 4 who were the appellant''s juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. 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 extra-ordinary 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. The petitioner''s petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant''s petition as well as the appeal.

4. Merely because the writ petitioner-appellant had filed a representation by way of mercy petition against the order dated 27.05.2002 which was eventually decided on 18.09.2009 would not give him a fresh cause of action to file the writ petition in April, 2010, as has been contended by the counsel for the writ petitioner-appellant. The issue had become final wayback as noticed, firstly, in the year 1993 at the time of reversion and thereafter, the last representation was rejected on 22.05.2002. Merely by filing repeated representations, the petitioner cannot keep the issue alive and seek a fresh cause of action and the Learned Single Judge had rightly dismissed the petition on the ground of delay and laches. We are also supported in the aforesaid view by the observations of the Hon''ble Apex Court in High Court of High Court of M.P. Vs. Mahesh Prakash and others, wherein, referring to its earlier decision in M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others, , it was observed as under:

The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.

Accordingly, in view of the above, we dismiss the present appeal as the Learned Single Judge was justified in dismissing the writ petition on the ground of delay and laches.