

(2001) 09 P&H CK 0143

High Court Of Punjab And Haryana At Chandigarh

Case No: Letter Patent Appeal No. 516 of 1993

Pardeep Sharma

APPELLANT

Vs

The Commissioner
and Secretary to
Government of
Haryana Health
Department and
Others

RESPONDENT

Date of Decision: Sept. 24, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M.M. Kumar, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Hemant Kumar, for the Appellant; Jaswant Singh, DAG, for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.

These appeals are directed against order dated 6.5.1993 by which learned Single Judge dismissed C.W.P. Nos. 12342 and 16816 of 1992 filed by the appellant.

2. The facts necessary for deciding the two appeals are that after passing degrees of M.B.B.S. (1974) and M.S. (1977), the appellant was appointed to Punjab Civil Medical Service Class-II in the year 1978. After some time, he was sent on deputation to General Hospital, Sector 16, Union Territory, Chandigarh. While working as Surgical Specialist in General Hospital, Chandigarh, he applied for recruitment to Haryana Civil Medical (Group-A) Service (for short, the Service) in pursuance of the advertisement issued by the Haryana Public Service Commission (hereinafter described as "the Commission"). On being recommended by the Commission, he was appointed to the Service vide memo No. 21/23/8I/5HB-I dated 22.11.1988 issued by the Commissioner and Secretary to Government, Haryana, Health

Department (respondent No. 1). The same was sent to him by registered post, but was returned by the concerned postal authority with the remark that the addressee was not available in the hospital from 24th to 29th November, 1988. Thereafter, it was delivered to him on 15.12.1988 through messenger. However, instead of joining duty, he submitted representation dated 16.12.1988 to respondent no. 1 for extension of time. Simultaneously, he sought clarification as to whether his past service would be counted for retirement and seniority purpose and whether his pay would be protected. His prayer was rejected by the State Government and the offer of appointment given to him was cancelled vide order dated 11.1.1989 on account of his failure to join duty within the stipulated period. A copy of that order was sent to the appellant at General Hospital, Sector 16, Chandigarh, but he feigned ignorance about the same and submitted representation dated 7.3.1990 to the Secretary to Government, Haryana, Health Department (respondent no. 3) with the request that the prayer made by him vide representation dated 16.12.1988 for extension of time may be decided at an early date. After six months, he submitted another representation dated 21.9.1990 to respondent No. 3 for restoration of his status in the cadre of Group-A doctors. He then made representation dated 26.6.1991 to the Director, Health Services, Haryana (respondent No. 2) to appoint him on Group-A post. Having failed to evoke favourable response, the appellant filed C.W.P. No. 12342 of 1992 in which he made the following substantive prayers:-

"i) By issuing a writ of Mandamus the respondents may be directed to promote the petitioner on the next available vacancy of H.C.M.S. (Group-A) which is likely to be vacated in near future or create a post for the petitioner:

ii) By issuing such writ, order or direction as may be deemed appropriate in the circumstances of this case and the respondents may be directed to protect the pay of the petitioner and his service should be counted for the purposes of retirement and pension benefit.

iii) By issuing a direction the respondents may be directed to maintain the seniority which was made at the time of selection.

iv) By issuing a writ of Prohibition the respondent may be restrained from filling the post of Group-A in H.C.M.S. which is likely to be vacated in the near future on promotion or retirement of Dr. BN Aggarwal of Haryana Cadre, during the pendency of this writ petition."

3. During the pendency of that petition, the appellant filed C.W.P. No. 16816 of 1992 with the following prayers:-

"i) a writ in the nature of Mandamus or any other suitable writ, order or direction as may be deemed appropriate in the circumstances of the case for appointing the petitioner on the post of Senior Medical Officer with all consequential benefits of service and for grant of other prayers so made out:

ii) By issuing suit writ, order of direction as may be deemed appropriate in the instant case the respondents may be directed to protect the pay of the petitioner and his service should be counted for the purposes of retirement and pension benefits.

iii) By issuing a direction the respondents may be directed to maintain the seniority which was made at the time of selection.

iv) It is further prayed that the respondents be directed to order the posting of the petitioner in H.C.M.S. 1 with effect from the date of his selection and he be also allowed to continue on deputation against the post reserved by a Division Bench comprising Hon"ble Mr. Justice M.R. Agnihotri and Hon"ble Mr. Justice S.S. Grewal in C.W.P. No. 12342 of 1992:

v) by issuing a writ in the nature of certiorari or any other appropriate writ quashing the exparte order dated 11.1.1989 (Annexure P-7) where by the candidature of the petitioner was cancelled without giving him any notice by the respondent No.1."

4. The respondents controverted the appellant's claim and prayed for dismissal of the writ petitions on the ground of delay and also on the ground that the post offered to him had already been filled by appointing the next candidate from the waiting list. They also averred that none of the representations submitted by the appellant except the one dated 16.12,1988 had been received by the concerned authorities.

5. After hearing learned counsel for the parties, the learned Single Judge dismissed the writ petition on the ground of delay by making the following observations:-

"The petitioner was selected for a higher post than the one on which he was working on deputation with Union Territory, Chandigarh. It cannot be imagined that he would be content by just writing a letter that his joining time be extended and thereafter would sleep over the matter for more than there years. It further cannot be imagined that he would not know that the post already stood filled in by the next candidate in the waiting list. It cannot be said in this case that somebody else was interested to get the post and, therefore, no appointment letter was issued to the petitioner within time. As observed above, a registered letter was sought to be served on the petitioner which was issued on 22nd November, 1988. From the pleadings of the petitioner it looks that he was and is interested to stay in Chandigarh. The petitioner is supposed to know that the post for which selection was made in the year 1957, would have been filled up within a reasonable time and it could not be imagined by him that the post would be lying vacant for a period of four years. The respondents have denied receipt of any representation of the petitioner after 16th December, 1988. The petitioner has no legal right at this stage to be appointed to the post for which he was selected more than five years back. The post already stands filled up."

6. Shri Hemant Kumar laid emphasis on the fact that the appellant had been constantly representing to the respondents for extension of time specified in memo dated 27.11.1988, but his request was not attended to by the concerned authorities and argued that he cannot be penalised for the lapse committed by the authorities concerned in deciding his representations. He submitted that the appellant had a legitimate expectation of his request being granted and, therefore, he had waited for the decision of his representation and sought the Court's intervention only when he felt that his grievance will not be remedied by the administrative authorities.

7. In our opinion, there is no substance in the arguments of the learned counsel and we do not find any valid reason to disagree with the learned Single Judge that the writ petitions were highly belated. The appellant's assertion that he had made repeated representations to different authorities of the department cannot be relied upon for overlooking delay of more than 3 years in filing of the writ petitions. In the written statements filed on behalf of respondent Nos. 1 & 2 and 3 & 4, it was categorically averred that none of his representations except the one dated 16.12.1988 had been received. The appellant did file replications to the two written statements, but did not produce any evidence to prove that representations dated 7.3.1990, 21.9.1990 and 24.6.1991 had, in fact, been delivered to the concerned authorities. Therefore, there is no escape from the conclusion that after making representation dated 16.12.1988, he did not take any step for remedy of his grievance in the matter of extension of time specified in memo dated 27.11.1988 and sought intervention of the Court after almost 3 years and 8 months of the cancellation of offer of appointment and in our opinion, this delay was rightly treated by the learned Single Judge as fatal to the claim of the petitioner (appellant herein). In [State of Madhya Pradesh Vs. Bhailal Bhai and Others](#), a Constitution Bench of the Supreme Court dealt with the issue of delay in filing of the writ petition and observed as under:-

"At the same time the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.

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It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

The provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

8. In the matter relating to promotion, a delay of more than one year has been treated as fatal to the maintainability of the writ petition. - P.S. Sadasivaswamy Versus Slate of Tamil Nadu, 1976(1) S.L.R. 53. In that case, the Supreme Court observed as under:-

"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."

9. If that be the position in matters relating to promotion, it would be reasonable to take the view that a person seeking Court's intervention in the matter of direct recruitment must approach the Court within a period of less than one year and the Court would decline to entertain the petition on the ground of delay unless there is a cogent explanation for not filing the petition earlier.

10. The issue deserves to be considered from another angle. The validity period of the select list prepared by the Commission is six months or maximum one year. Therefore, a person feeling aggrieved by the action of the state in the matter of appointment by direct recruitment must seek intervention of the Court before the expiry of the validity period prescribed for operating the select list/waiting list and if he fails to do so, the Court would be fully justified in declining relief on the ground of laches.

11. The facts of this case show that the appellant was offered appointment vide memo dated 27.1.1988, but instead of joining duty, he first sought extension of time and then kept silence for more than three years. During this period, the government cancelled the offer and appointed a candidate from the waiting list. In view of these facts, the learned Single Judge rightly declined relief to him and we do not find any

justification to interfere with the impugned order.

For the reasons mentioned above, the appeals are dismissed.