

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPASW no. 78/2010
CMA no 112/2010

Date of order: 18.02.2013

Vijay Kumar Khajuria v. State of J&K and ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice.
Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing counsel:

For the Appellant(s) : Mr. Nirmal Kotwal, Advocate.
For the respondent(s) : Mr. P. R. Drora, Advocate vice
Mr. R. Koul, Advocate.

i)	Whether to be reported in Press, Journal/Media	:	Yes/No
ii/	Whether to be reported in Digest/ Journal	:	Yes/No

M. M. Kumar, CJ

1. The instant appeal under Clause 12 of the Letters Patent is directed against the judgment and order dated 15.05.2010 rendered by a learned Single Judge of this Court, dismissing the writ petition on the ground of un-explained delay and laches.

2. The prayer made in the writ petition was that the appellant-writ petitioner be given promotion with effect from the date persons junior to him like, Mohd Yaseen- respondent no.4 and Devinder Bhan-respondent no.5 were promoted on the post of Junior Assistant. The learned Single Judge found that Devinder Bhan-respondent no. 5 was promoted with effect from 28.12.1983 on the post of Junior Assistant. In order to earn

promotion, Mohd Yaseen-respondent no. 4 also filed three writ petitions claiming promotion with effect from the date Devinder Bhan-respondent no.5 was promoted as Junior Assistant. Accordingly, he was also given promotion with effect from 28.12.1983. The appellant-writ petitioner filed writ petition in the year 2002 and failed to question the promotion of Devinder Bhan-respondent no.5 within time as Junior Assistant and Senior Assistant. Likewise he also did not question promotion of Mohd Yaseen-respondent no.4 after he got his right determined by the intervention of the Court. The appellant-writ petitioner has been found to be a fence seater, waiting for the out come of the litigation and has preferred to file the writ petition in the year 2002. The learned Single Judge accordingly dismissed the writ petition by placing reliance on the judgments of Hon'ble the Supreme Court rendered in cases of Ghulam Rasool Lone v. State of J&K, 2009 AIR SCW 5260, Government of West Bengal v. Ratun K. Roy, (2004) 1 SCC 347, S. S. Balu v. State of Kerala, (2009) 2 SCC 479 and proceeded to hold that delay defeats equity and it is a relevant factor in exercise of writ jurisdiction. On the ground of delay and laches the writ petition has been dismissed.

3. We have heard the learned counsel for the parties at some length and have perused the paper book with their able assistance.

4. We are of the considered view that there is no room for interfering in the well reasoned order passed by the learned Single Judge which is supported by a catena of judgments of Hon'ble the Supreme Court. The claim of the appellant-writ petition is stale. Third party's rights might have also intervened and perfected. Such settled rights cannot be interfered with. The appeal does not merit admission and is thus liable to be dismissed.

5. For the reasons aforesaid this appeal fails and the same is dismissed.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
18.02.2013
Anil Raina, Secy.