

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No.1283/2015

Date of order: 31.03.2016

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1. Harjeet Singh, Age 52 years
S/o S. Jasbir Singh
R/O Plot No. 52, Bakshi Nagar, Jammu.
 2. Romesh Chander: age: 52 years,
S/O Sh Girdhari lal Gupta
R/o 71 P, Sector 1 Extension, Trikuta Nagar, Jammu.
 3. Mohinder Paul Sood,: age: 55 years
S/O Sh Mehar Chand Sood,
R/O Sector 38A, House No. 14 C
Chandigarh.
 4. Sanjay Koul: age: 51 years
S/O Shri M.I.Kaul,
R/o 259 Palam Vihar, Sector 23
Gurgaon Haryana.

.....Petitioners

Versus

1. Union of India,
Through
Secretary to Government of India,
Ministry of Defence,
South Block New Delhi-110001.
2. Engineer-in-Chief
Army Headquarters,
Kashmir House DHQ PO
New Delhi- 110011.
3. Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.
4. Central Administrative Tribunal
Chandigarh Bench and 115 others
.

... Respondents.

Coram:
Hon’ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon’ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Petitioner(s) : Mr. Rahil Raja, Advocate.
For the Respondent(s) : Mr. Rajesh Thappa, CGSC.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar, CJ

1. This writ petition is filed by the writ petitioners challenging the order of the Administrative Tribunal dated 25.04.2014 in OA No. 924/JK/2009 whereby the Central Administrative Tribunal has dismissed the Original Application seeking directions against the respondents to re-fix the seniority of the petitioners as Surveyor Assistant Grade I, (re-designated as Jr. Engineer (QS&C) in the seniority list dated 25.10.2001 of the Surveyor Assistant Grade I and II (re-designated as Jr. Engineer QS&C) by quashing the seniority list dated 06.10.1996 and to re-fix the seniority of the petitioners strictly in accordance with their date of appointment as Surveyor Assistant Grade I against the vacancies identified for direct recruitment and for direction to respondent Nos. 1 to 3 to re-convene the review DPC and re-consider the cases of the petitioners for promotion to the post of Assistant Surveyor of works in accordance with the judgment passed by the Central Administrative Tribunal Ernakulam Bench as modified by the High Court of Kerala. The said prayer was rejected by taking note of the following facts:

- a) That the petitioners were initially appointed in MES as Surveyors in the year 1988, the recruitment of which is governed by SRO 177 dated 02.06.1983. It was a selection post which could be filled up by promotion. In the year 1956, an attempt was made to fill up the post of Surveyor

Assistant Grade I by promotion with available candidates. Despite giving promotions giving to many candidates, the vacancies remained unfilled as candidates were not available for promotion. Hence, direct recruitment was resorted to by issuing an advertisement in the year 1986 through Employment Exchange on command basis. There were five commands. In some commands, selection was initiated and completed in the year 1987 but the petitioners were appointed in the year 1988. For direct recruitment, only degree holders in Civil Engineering g were held eligible and diploma holders were not considered as the qualification prescribed was degree in Civil Engineering or its equivalent for promotion to the post of Assistant Surveyor of works re-designated as Assistant Executive Engineer.

- b) The cadre comprised of 168 posts in all out of which 50% could be filled up by direct recruitment and 50% by promotion from amongst eligible Survey Assistant Grade I. In so far as promotion to the post of Assistant Surveyor Works is concerned, Surveyor Assistant Grade I holding degree in Civil Engineering or having passed final direct examination of Institution of Surveyor India with five years regular service in the grade were eligible.
- c) The grievance of the petitioners was that despite availability of vacancies the posts were not filled up and rules came to

be amended in the year 1994 excluding the Diploma Holders for promotion and thereafter litigation arose before the Ernakulam Bench of Central Administrative Tribunal and decision was rendered on 02.12.2005 which order was modified by the Kerala High Court on 02.08.2006 pursuant to which review DPC was conducted and seniority list dated 10.10.2006 was issued pushing the petitioners down. Consequent to the said action of respondent No.2 placing the petitioners in the bottom of the seniority list, the 2nd round of litigation was raised before this Court by filing SWP No. 88/2007 which was dismissed on 04.03.2009 against which LPASW No. 59/2009 was preferred which was also dismissed on 19.05.2009.

2. The said facts were taken note of by the Central Administrative Tribunal and it was held that the litigation initiated by the petitioners has attained finality and cannot be re-opened. It was also noticed that the petitioners have preferred the writ petition challenging the action of the year 1996 and 2001 after delay of 13 years and the same cannot be entertained. It is also mentioned that even though condone delay application has been filed, the same cannot be ordered because of the fact that petitioners were parties in the case filed before the Central Administrative Tribunal, Ernakulam Bench as well as before High Court of Kerala and the said order having been implemented and

the second round of litigation initiated by the petitioners having been dismissed by the Single Judge as well as by the Division Bench of this Court.

3. We have gone through the judgments. It is well settled proposition of law that seniority once fixed cannot be questioned belatedly as it will upset and unsettle the seniority and consequential promotions. The same view is taken by Hon'ble the Supreme Court in the decision reported in **(2010) 12 SCC 747 (Shiba Shankar Mohapatra and ors v. State of Orissa and ors)**. Referring to various decisions rendered by Hon'ble the Supreme Court, it has been held in paragraph nos. 16 to 19 as under:-

"16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in R.N. Bose v. Union of India & Ors. AIR 1970 SC 470, wherein it has been observed as under:-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

18. In R.S. Makashi v. I.M. Menon & Ors. AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of Madhya Pradesh & Anr. v. Bhailal Bhaji etc. etc., AIR 1964 SC 1006, wherein it has been observed that 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 the remedy under Article 226 of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal & Ors. v. R.P. Singh & Ors. AIR 1986 SC 2086. The Court held as under:-

"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (Emphasis added)."

4. The said proposition is reiterated in the decision of Hon'ble the Supreme Court reported in **(2013) 11 SCC 451 (Rohitash Kumar v. Om Parkash Sharma and ors)**.

5. The Hon'ble Supreme Court, in the decision reported in 2010 (6) SCC 791 (S. Sumnyan and others vs. Limi Niri and others) held that if seniority fixed 10 years ago, which was acted upon by giving promotions if challenged, the same cannot be entertained on the ground of delay and laches.

6. In the light of the said decisions and having regard to the fact that the petitioner were party in the earlier proceedings and both orders having been implemented and become final, the petitioners cannot be allowed to initiate third round of litigation which was rightly dismissed by the Central Administrative Tribunal. There is no merit in the writ petition which is dismissed. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
31.03.2016
Anil Raina, Secy