Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT APPEAL NO. 170 OF 2013

(Against order dated 4/2/2013 passed by the Learned Single Judge in Writ Petition (S) No.5703 of 2008

APPELLANT/ PETITIONER IN WRIT PETITION

Alok Sharma, S/o S.N. Sharma, aged about 48 years, Occupation Service, Presently posted and working as Assistant Professor (SIEMAT – State Institute of Educational Management and Training), State Council for Education, Research and Training, Shankar Nagar, Raipur, R/o Qr.No.309A, Samata Colony, Opp.Water Tank, Raipur (CG).

W.P.(S) No. WA 170/13
Presented by Shri J. Kathore
dated 2.03.13

Versus

RESPONDENTS/ RESPONDENTS IN WRIT PETITION

1. State of Chhattisgarh, through the Secretary, Department of School Education, Mantralaya, DKS Bhawan, Raipur (CG).

   (New : Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (CG)).

2. Chhattisgarh State Public Service Commission, through its Secretary, Shahid Bhagat Singh Chowk, Shankar Nagar, Raipur (CG).

3. Prabodh Kumar Adhikari, S/o Shri Satish Chandra Adhikari, aged about 51 years, Presently working as Principal (DIET), District Institute of Education and Training, Kawardha, Tansil Kawardha, District Kabirdham (CG).

Memo of Appeal under Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act 2006.

Arising out of WP (C) No.5703 of 2008, which has been entertained by the Learned Single Judge and the order passed on dated 4/2/2013 **ANNEXURE – A/1**. The appellant, above named, most humbly and respectfully beg to submits as under: -

HIGH COURT OF CHHATTISGARH, BILASPUR

DB: HON'BLE SHRI JUSTICE NAVIN SINHA &
HON'BLE SHRI JUSTICE INDER SINGH UBOWEJA

Writ Appeal No. 170/2013

APPELLANT Alok Sharma

Versus

RESPONDENTS State of Chhattisgarh and others

And

Writ Appeal No. 321/2013

APPELLANT Smt. Kamayani Kashyap

Versus

RESPONDENTS State of Chhattisgarh and others

(WRIT APPEALS UNDER SECTION 2(1) OF THE CHHATTISGARH HIGH COURT (APPEAL TO DIVISION BENCH) ACT, 2006)

Appearance:

Shir Rajiv Shrivastava, Advocate for the appellant in W.A. No.170/2013.
Shri K.R.Nair, Shri Sudeep Verma and Ms. Veena Nair, Advocates for the appellant in W.A. No.321/2013.
Shri B.Gop Kumar, Dy. Advocate General for the State.
Shri B.D. Guru, Advocate for Chhattisgarh State Public Service Commission.
Shri R.K. Kesharwani, Advocate for respondent 3.

ORDER
(11th September, 2014)

JUSTICE NAVIN SINHA

1. The present appeals arise from a common order dated 4.2.2013 dismissing Writ Petition (S) No. 2762/2005 and W.P.(S) No.5703/2008. The learned Single Judge declined to interfere with the revised select list published by the Chhattisgarh State Public Service Commission

(hereinafter referred to as the 'Commission') for the post of Principal (DIET) declining to go into the question with regard to the method and allotment of marks. Additionally, it was held that both the Writ Petitions were barred by gross delay.

2. Learned counsel for the Appellant in W.A.No.170/2013 submitted that according to the information obtained by him under the Right to Information Act, 2005 (for short the RTI Act), he was entitled to 5 points for possessing teaching experience in B.Ed. College. Respondent No.3 possessed qualification of Lecturer at the Higher Secondary Level and had the experience of an In-charge Principal only. The appellant has been given 1 mark for his qualification and respondent No.3 has been give 5 marks when he was entitled to two marks only. It was submitted that without interfering with any other criteria for marks awarded under the experience column, if the petitioner is given 5 marks and respondent No.3 is held entitled to 2 marks and the merit position with regard to the experience column for a total of 80 marks is proportionately changed, the appellant will automatically go over respondent No.3.

3. Seeking to explain the delay, it was submitted that when the appellant received notice in W.P(S) No 2752/2008, from which, W.A. No.321/2013 arises, he sought information under the RTI Act in 2008 and preferred the Writ Petition with promptitude in 2008 itself. The delay thus stands sufficiently explained.

4. Learned counsel for the appellant in W.A.No.321/2013 submitted that respondent 4 has no experience in elementary education. With regard to delay in the writ petition, no explanation was furnished urging

that there was in fact no delay.

5. The Commission published an advertisement on 4.7.2003 inviting applications *inter alia* for the post of Principal (DIET). The appellants and respondent no. 3 were applicants amongst others. In the final select list, respondent No.3 was placed at Sr. No.2, the appellant in W.A.No.321/2013 was at Sr. No.14 and the appellant in W.A.No.170/2013 was at Sr. No.20. W.P.No.598/2005 was filed challenging the select list. A Bench of this Court, disposing the matter on 16.11.2005 with regard to respondent No.4, directed scrutiny of their forms by the Commission to find out whether they possessed the basic statutory qualifications and experience as per Schedule III of the Madhya Pradesh School Education District Institute of Education and Training (Gazetted) Service Recruitment Rules, 1991 or not. If he fulfilled the statutory qualifications and experience, his selection would be valid otherwise he would be treated as not selected. The revised select list was published in which, respondent No.4 has been given 29.82 marks, the appellant in W.A.No.170/2013 has been given 29.14 marks and the appellant in W.A.No.321/2013 has been given 24.7 marks.

6. Learned counsel for the Commission submitted that the writ petitions were barred by gross delay. He submitted that under the selection process, 80 marks were to be provided for possessing the essential qualification according to Schedule III, Rule 8, experiance in column 6, Schedule III and desirable qualifications, 19 marks were to be awarded for interview and 1 mark for the Green Card. There are no allegations of any malafides in the selection process and there is not pleading regarding ineligibility of the selected candidate. The allotment

of marks for possessing different qualifications though cumulative was provided under different heads and has been assessed and considered by experienced persons. The Court may not interfere with the same for fresh assessment of the comparative marks as that would amount to revisiting the entire selection process.

7. Learned counsel for respondent No.4 submitted that there was no allegation that he did not possess the essential eligibility criteria or the necessary experience. He had been appointed as far back as on 28.2.2006 and has been working continuously since then. The Writ petitions were barred by gross delay as held by the Learned Single Judge.

8. In W.P No. 598/2005, preferred by the appellant in W.A.No.170/2013, this Court on 16.11.2005 only ordered scrutiny of respondent No.4 to the limited extent if he possessed the essential qualification along with experience as required under the Rules. Subject to fulfillment of the same, it was ordered that it would be final and the selection would require no interference. Apparently the writ Court rightly declined to go into the comparative assessment of the candidates, but gave directions of an extremely limited nature. The order attained finality and was not questioned in any superior Court by the appellant in W.A.No.170/2013 or any other.

9. We have considered the respective submissions. No information has been placed before us if the appellant in W.A.No.321/2013 before filing the Writ Petition in 2008 had filed any earlier Writ Petition in 2005.

10. There is no challenge that respondent No.4 does not possess the essential conditions of eligibility along with the required experience.

There are no allegations with regard to any malafides in the selection process.

11. The jurisdiction of the Court in exercise of the power of judicial review is limited to examining statutory violations, malafides and illegality in the decision making process. If the selection has been done by experts then unless there are grave and exceptional reasons to interfere, the writ Court shall be loath to interfere with the same. The Court in the garb of judicial review cannot assume to itself the powers of the selecting body and substitute its own views for the manner in which the selections ought to have been done.

12. The possessing of teaching experience in B.Ed. or the qualification of Lecturer and Principal were one of the several criteria apart from various other criteria for award of cumulative 80 marks from that provided in the Rules and the marks were to be awarded under each head to the maximum extent permissible. It does not mean that merely because a person possessed the qualification, he automatically became entitled to the maximum marks prescribed under that head. The word used in the selection process for award of cumulative 80 marks is is 'Gunanukram'. According to the Bhargav's Dictionary, Hindi to English Edition, it means 'Order of merit'. For the Court to enter this arena and re-assess what marks should have been given to a candidate under which head of experience and desirable qualifications would be substituting the views of the Court for that of the selecting body which is impermissible.

13. Both the appellants also find place in the select list. In 1992 Supp (2) SCC 481 (National Institute of Mental Health and Neuro

Sciences v. K. Kalyana Raman (Dr) it was observed as follows :-

> "7.....In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative....."
>
> 8.....But the fact remains that the case of Dr Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did 'not act fairly towards Dr Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion."

14. The revised select list was published in the year 2005 itself. The writ petitions from which the present appeals arise were filed in 2008. While in the latter no explanation has been given for the delay, in the former it has been submitted that when appellant Smt. Kamayani Kashyap filed her Writ Petition in 2008 and notice was served as party respondent on appellant Shri Alok Kuamr Sharma he obtained information under The Right to Information Act, 2005 (hereinafter referred to as the RTI Act) and then filed the Writ Petition.

15. Even if, the explanation on behalf of appellant Shri Alok Kumar Sharma is considered, it is still leaves unexplained the period from 2005 till 2008 why he did not pursue matters after publication of the revised select list. On the previous he had been diligent and had come to the Court immediately in 2005 itself after publication of the original

select list.

16. The RTI Act was visualized as necessary for a vibrant democratic structure and transparency of information. In our opinion, it does not provide a *de novo* cause of action, but may only provide further information on a pre existing cause of action. The cause of action accrued to the appellant in 2005 itself on publication of the revised select list. Obtaining of information under the RTI, Act may have supplemented that cause of action only. The obtaining of information under the RTI, Act, does not give a cause of action. The cause of action arose in 2005 itself.

17. Delay has always been considered vital in exercise of discretionary writ jurisdiction. The discretion to be exercised for condoning delay has to be judicious and cautious so as not to restore a cause of action which may be dead or may have became stale or where third party rights may have accrued and fructified. While no rigid definition or standard yardstick is possible to hold what will amount to delay and what shall not amount to delay it shall have to be considered in relation to the facts and circumstances of each case.

18. In (1969) 1 SCC 185 (Durga Prashad v. Controller of Imports and Exports) it was observed as follows :-

> 3. It is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation.
> 4. Gajendragadkar, C.J., speaking for the Constitution Bench, in *Smt Narayani Devi Khaitan* v. *State of Bihar* observed:
> 'It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can

be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

19. In (1995) 4 SCC 683 (State of Maharashtra v. Digambar) holding that delay bars relief under Article 226 it was observed :-

"14....Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable

even if the relief was granted in respect of alleged deprivation of his legal right by the State.

23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

20. The principles concerning delay to bar relief under Article 226 in view of past precedents was culled as follows in (2011) 5 SCC 607 (Shankara Coop. Housing Society Ltd. v. M. Prabhakar) holding :-

'54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to

believe in regard to the remedy.
(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.
(5) That representations would not be adequate explanation to take care of the delay."

21. Delay has always been considered vital in service matters. If a period of six months delay was considered sufficient to deny relief in a promotion matter, three years delay in matters relating to appointment would undoubtedly be sufficient to deny relief especially when third party rights have accrued in favour of respondent no.4 by appointment on 28.2.2006 from the revised select list. The observations in (1975) 1 SCC 152 (P.S. Sadasivaswamy v. State of T.N.) were prophetic given the present nature of cases.

"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. 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."

22. A rank illegal selection of an ineligible would be an entirely different matter from a claim of being better suited. IN the former delay may be irrelevant while in the latter it will be crucial.

23. In conclusion, whether it be the merits of the matter or the question of delay, we do not find any reason to interfere with the order under appeals on both counts.

24. The Appeals are dismissed.

Sd/-
Navin Sinha
Judge

Sd/-
I.S. Uboweja
Judge

1 set Copy

Ord. No. 42016/14

12/9/14	(1) Application received on
16/9/14	(2) Applicant told to appear on
16/10/14	(3) Applicant appeared on
12/9/14	(4) Application (With or without further or correct particulars) sent to record-room
13/10/14	(5) Application received from record-room with record or without record for further or correct [illegible]
—	(6) [illegible] given [illegible] further or [illegible] on
—	(7) [illegible] given notice [illegible] on
—	[illegible] (6) or (7) complied with on
13/10/14	(9) Copy ready on
16/10/14	(10) Copy delivered or sent on
13.20	(11) Court-fee realised

Copyist 13/10/14

Comparer 13/10/14

Head Copyist 16/10/14