Vijay Kumar Kaul & Ors vs U.O.I. & Ors on 25 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2274, 2012 (7) SCC 610, 2012 AIR SCW 3277, 2012 LAB. I. C. 2702, 2012 (4) AIR JHAR R 228, (2012) 116 ALLINDCAS 243 (SC), 2012 (134) FACLR 8, (2013) 1 SERVLR 485, 2012 (3) SERVLJ 242 SC, 2012 (5) SCALE 665, (2012) 3 SERVLJ 242, (2012) 3 JCR 230 (SC), (2012) 7 ADJ 8 (SC), 2012 (116) ALLINDCAS 243, 2012 (7) ADJ 8 NOC, 2012 (94) ALL LR 43 SOC, (2012) 2 LAB LN 607, (2012) 4 SCT 423, (2012) 3 ESC 412, (2012) 3 ESC 316, (2012) 5 SCALE 665, 2012 (4) KCCR SN 270 (SC)

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Bench: B.S. Chauhan, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4986-4989 OF 2007

Vijay Kumar Kaul and others ….. Appellants

Versus

Union of India and others … Respondents

J U D G M E N T

Dipak Misra, J.

The appellants, four in number, participated in a selection process conducted by the Second Field Ordnance Depot (2 FOD) in the year 1984 for the post of Lower Division Clerks (LDCs). Despite their selection for the post in question they were not issued appointment letters on the pretext that there was a ban on appointments. In December 1993, pursuant to the order passed in OA No. 29/jk/92 dated 24.8.1993 by the Chandigarh Bench of the Central Administrative tribunal (for short 'the Tribunal'), respondent No. 4 was issued an appointment letter. The appellant Nos. 1 to 3 were given appointment in May, 1996 on the basis of the directions issued on 24.7.1995 by the High Court of Jammu and Kashmir in SWP No. 1052 of 1991.

2. It is worth noting that Parveen Singh and others, whose names, had figured in the select list, being aggrieved due to non appointment, had preferred OA No. 539-HP of 1986 before the

Chandigarh Bench of the tribunal which allowed the OA vide order dated 25.8.1987 directing the respondent herein to issue appointment letters to them. The respondents instead of appointing the said Parveen Singh and others against the vacancies in 9 FOD, where there were ten vacancies of LDCs, appointed them against the vacancies falling in 2 FOD where there were 27 vacancies for LDCs with effect from 1.1.1990.

3. As set forth, said Parveen Singh and others filed second OA No. 1476- pb-1991 before the Chandigarh Bench of the tribunal with a prayer to issue a direction to the respondents to appoint them as LDCs with effect from 1.5.1985 with all consequential benefits including seniority, pay and allowances, etc. on the foundation that similarly situated persons who were selected along with them had been appointed with effect from 1985. The tribunal allowed the application vide order dated 13.10.2000 directing that their appointment shall be treated with effect from 1.5.1985 and they shall be extended the benefit of fifty per cent of back wages and other consequential reliefs.

4. The aforesaid order was called in question by the respondents before the High Court of Punjab and Haryana in CWP No. 1158 of 2001 and a Division Bench of the High Court, as per order dated 12.7.2001, set aside the order of the tribunal to the extent of grant of back wages but did not interfere with the direction ante-dating their date of appointment and other consequential reliefs granted by the tribunal.

5. As has been stated earlier that the appellants had approached the tribunal and were appointed on two different dates sometime in December, 1993 and May, 1996. After the High Court of Punjab and Haryana passed the order, the respondents conferred the benefit on said Parveen Singh and others. Thereafter, the present appellants submitted a series of representations to extend to them the similar benefits on the foundation of parity. The said prayer was negatived by the respondents by order dated 21.7.2004.

6. Being dissatisfied with the said action of the respondents the appellants knocked at the doors of the Principal Bench of the tribunal in OA No. 2082 of 2004. It was contended before the tribunal that grave injustice had been done to them by the respondents inasmuch as they were not given the equal treatment that was given to similarly placed employees; and that their seniority position and prospects for promotion had been immensely affected. The stance and stand put forth by the appellants was resisted by the respondents contending, inter alia, that as the appellants were not parties to the application before the Chandigarh tribunal and were not covered by the judgment of Punjab and Haryana High Court, they were not extended the benefit; that only those general category candidates who were placed higher in merit list were appointed prior to them excepting one Kalu Ram who belonged to the Scheduled Caste category; that the appellants could not have been appointed as there was a ban and thereafter they were appointed as per the direction of the High Court of Jammu and Kashmir; and that the tribunal in OA No. 29/jk/92 preferred on the question of appointment of the appellant No. 4 had clearly stated that the appointment shall have prospective effect and he would not be entitled to any back wages or seniority and the said order has gone unassailed; and hence, the claim put forth in the petition did not merit consideration.

7. The tribunal adverted to various orders passed by the tribunal at various junctures and the orders passed by the Punjab and Haryana High Court and came to hold that as far as the appellant No. 4 is concerned his case had attained finality; that the decision rendered in the case of Parveen Singh and others could not be treated as judgment in rem but a judgment in personam; and that the appellants had been given appointment as per their placement in the merit list regard being had to availability of vacancies and hence, it could not relate to an earlier date, especially when they failed to show that any person junior to them had been given appointment from a retrospective date or extended benefit. Being of this view the tribunal dismissed the Original Application.

8. Aggrieved by the aforesaid order the appellants invoked the jurisdiction of the High Court of Delhi under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari for quashment of the order dated 10.3.2005 passed by the tribunal and also for quashing of the orders by which their representations had been rejected and further pressed for issue of a writ of mandamus commanding the respondents to extend the similar benefits as had been extended to Parveen Singh and others in view of the judgment rendered by Punjab and Haryana High Court.

9. The High Court, upon perusal of the order passed by the tribunal, the decision rendered by the Punjab and Haryana High Court, and on considering the factum of the delay and laches on the part of the appellants, and that they had not been superseded as the select list was prepared in order of merit, and appreciating the fact that the appointments had been made strictly in accordance with the merit declined to interfere with the order.

10. We have heard Mr. Ashok Bhan, learned senior counsel for the appellants and Mr. R.P. Bhatt, learned senior counsel for the respondents.

11. It is submitted by the learned senior counsel for the appellants that the tribunal as well as the High Court have fallen into serious error by expressing the view that the appointments were based on the merit list and, therefore, there was no supersession of the appellants. It is urged by him that neither the original application nor the writ petition could have been dismissed on the ground of delay and laches, in view of the fact that the appellants immediately approached the tribunal after the High Court rendered its judgment on 12.7.2001. It is his further submission that a serious anomalous situation has cropped up inasmuch as the candidates whose names featured in one select list have been appointed at various times, as a consequence of which their pay-scale, seniority and prospects for promotion, have been put to jeopardy. The last limb of submission of the learned senior counsel for the appellants is that both the forums have failed to appreciate that injustice meted out to the appellants deserved to be remedied applying the doctrine since the doctrine of parity and the orders are vulnerable and deserved to be axed and appropriate direction are to be issued considering similar benefits. The learned senior counsel to bolster his submission has placed reliance on the decisions in K.C. Sharma and others v. Union of India and others[1], Collector of Central Excise, Calcutta v. M/s. Alnoori Tobacco Products and anr.[2], State of Karnataka and others v. C. Lalitha[3] and Maharaj Krishan Bhatt and another v. State of Jammu and Kashmir and others[4].

12. Mr. Bhatt, learned senior counsel for the respondents supported the order passed by the tribunal as well as by the High Court on the ground that the decisions which have been rendered by the tribunal and the High Court are absolutely impregnable since the appellants had never approached the tribunal at the earliest and only put forth their claims after success of Parveen Singh and others. It is propounded by him that the appellants while filing the various original applications seeking appointment had never claimed the relief of appointment with retrospective effect and, in fact, in the case of the appellant No. 4 the tribunal has categorically stated that his appointment could have prospective effect which has gone unassailed and, therefore, relying on the decision of Parveen Singh and others is of no assistance to the appellants.

13. To appreciate the rival submissions raised at the Bar it is appropriate to refer to the various orders passed at various times. Parveen Singh and others approached the tribunal of Chandigarh at Chandigarh Bench in the year 1986. The tribunal, by order dated 25.8.1987, directed to issue appointment letters to the applicants against the vacancies which had not been filled up, regard being had to the merit position in the examination. Thereafter, the said Parveen Singh and others were intimated vide letter dated 15.1.1991 to report at the office for collection of their appointment letters on character verification and eventually they got appointments. Later on Parveen Singh and others had approached the tribunal to extend the monetary benefits from the date of their appointment. The tribunal had directed to extend 50% of the actual monetary benefits from the date of appointment along with other consequential benefits. The Union of India and its authorities preferred writ petition before the High Court of Punjab and Haryana, which passed the following order: -

> "For the reasons recorded above, the writ petition is partly allowed and the order of the tribunal is quashed to the extent it grants 50% back wages. However, we do not find any infirmity in keeping intact the other reliefs granted by the tribunal, namely, ante-dating of appointment of respondent Nos. 1 to 7 and fixation of their pay with all consequential benefits of increments etc. with effect from the date, all other candidates placed on the panel of selected candidates were appointed. No order as to costs."

14. While Parveen Singh and others were proceeding in this manner, appellant No. 4, Ujwal Kachroo, approached the tribunal at Jammu. The tribunal allowed OA and directed to issue appointment letter to the applicant for the post for which he was duly selected in 1984 within a period of six weeks. It proceeded to clarify that the appointment shall have prospective effect and he would not be entitled to any back wages or seniority for the simple reason that it was neither his case nor anything had been brought on record to show that any person junior to him in the panel had already been appointed. At this juncture, three of the appellants approached the High Court of Jammu and Kashmir and the learned single Judge of the High Court of Jammu and Kashmir, by order dated 24.7.1995, had passed the following order: -

> "I have heard learned counsel for the parties. The respondents have no objection in appointing the petitioners as and when the posts of LDCs become available and also subject to their merit positions in the select list. Since the respondents have not

objected in making appointments of the petitioner, I allow this writ petition and direct the respondents that the petitioners shall be appointed as LDCs as and when the posts become available, on their own turn, as per their merit position in the select list." On the basis of the aforesaid order, the said appellants were given appointment.

15. After the decision of the Punjab and Haryana High Court was delivered the present appellants approached the Principal Bench of the tribunal and the tribunal did not accept the prayer which has been given the stamp of approval by the High Court.

16. In the course of hearing, learned senior counsel for the parties fairly stated that the decision rendered by the High Court of Punjab and Haryana has not been challenged before this Court and, therefore, we refrain from commenting about the legal defensibility of the said decision.

However, it is clear as noon day that the appellants, neither in their initial rounds before the tribunal nor before the High Court, ever claimed any appointment with retrospective effect. In fact, the direction of the in respect of appellant No. 4 in the OA preferred by the appellant No. 4 was absolutely crystal clear that it would be prospective. The said order was accepted by the said appellant. However, as is manifest, after the decision was rendered by the Punjab and Haryana High Court wisdom dawned or at least they perceived so, and approached the Principal Bench for grant of similar reliefs. In the petition before the tribunal, they had stated in their factual portion which are to the following effect: -

"(n) That since at the time of filing writ by applicant/petitioner Nos. 1,2 and 3 and an O.A. by applicant/petitioner No. 4, the issue of entitlement to anti- dating appointment and back wages was under adjudication before the Hon'ble High Court of Punjab and Haryana in the case of Parveen Singh & Ors., the applicants/petitioners in the present O.A. did not seek such relief in their respective writ and O.A.

(o) That when the High Court upheld the orders of the tribunal in case of Parveen Singh & Ors., that they are entitled to the benefit of anti-dating appointment and the consequential benefits, the applicants/petitioners made individual representations to the respondents seeking the benefit of High Court's judgment dated 12.7.2001 delivered in C.W.P. No. 1156 of 2001. A true photocopy of this judgment is already available as Annexure A-5 at page 22-32 of the O.A."

17. Thus, it is demonstrable that they did not approach the legal forum but awaited for the verdict of the Punjab and Haryana High Court. As far as appellant No. 4 is concerned, we really see no justifiable reason on his part to join the other appellants when he had acceded to the first judgment passed in his favour to a limited extent by the tribunal. This was an ambitious effort but it is to be borne in mind that all ambitions are neither praiseworthy nor have the sanction of law. Be that as it may, they approached the tribunal some time only in 2004. The only justification given for the delay was that they had been making representations and when the said benefit was declined by communication dated 31.7.2004, they moved the tribunal. The learned senior counsel for the

appellants fairly stated that as the doctrine of parity gets attracted, they may only be conferred the benefit of seniority so that their promotions are not affected.

18. It is necessary to keep in mind that claim for the seniority is to be put forth within a reasonable period of time. In this context, we may refer to the decision of this Court in P.S. Sadasivaswamy v. State of Tamil Nadu[5], wherein a two-Judge Bench has held thus: -

> "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 courts to put forward stale claims and try to unsettle matters."

19. In Karnataka Power Corporation Ltd. & Anr. v. K. Thangappan & Anr.[6] this Court had held thus that delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

20. In City Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala & Ors.[7] this Court has opined that one of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

21. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

22. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

23. In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Singh and others before the tribunal and the directions given by the tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.

24. Presently we shall refer to the authorities commended by the learned senior counsel for the appellants. In K.C. Sharma (supra) the factual scenario was absolutely different and thus, distinguishable. In C. Lalitha (supra) it has been held that justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates. In our considered opinion, the said decision does not buttress the case of the appellants.

25. In Maharaj Krishan Bhat (supra), the appellants had made a representation on 8.1.1987. A similar representation was sent by one Abdul Rashid on that date to the Hon'ble Chief Minister of State of Jammu and Kashmir with a request to consider the case for appointment to the post of PSI by granting necessary relaxation in rules against 50% direct recruitment quota. The Director General of Police vide his letter dated 23.1.1987 recommended the name of Hamidullah Dar, one of the applicants, for appointment and he was appointed as PSI vide order dated 1.4.1987. The other appellants were not extended the benefit of appointment. Under those circumstances the High Court of Jammu and Kashmir in SWP No. 351 of 1987 directed the Director General of Police to consider the case of the appellants. Thereafter Abdul Rashid filed a similar petition which was admitted. Pursuant to the direction of the High Court the Director General of Police considered the applications of Mohd. Abbas and Mohd. Amim but rejected the prayer on 13.12.1991. When the matter of Abdul Rashid, the appellant, came up the learned single Judge allowed the writ petition relying on the earlier judgment. The Government of Jammu and Kashmir filed Letters Patent Appeal which was dismissed. In the context, this Court opined that the Division Bench should not have refused to follow the judgment by another Division Bench. Attention was raised that initial violation was committed by the State Government and which was violative of Articles of 14 and 16 of the Constitution and the said mistake could not be perpetuated. In that context it was held as follows: -

> "21. It was no doubt contended by the learned counsel for the respondent State that Article 14 or 16 of the Constitution cannot be invoked and pressed into service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute." Thereafter the Bench proceeded to state as follows: -
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> "23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered

view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored."

26. We respectfully concur with the said observations but we cannot be oblivious of the fact that the fact situation in that case was totally different. Hence, the said decision is not applicable to the case at hand.

27. In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Punjab and Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the tribunal after quite a span of time. In the meantime, the beneficiaries of Punjab and Haryana High Court, as we have been apprised, have been promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the tribunal and the High Court have correctly declined to exercise their jurisdiction.

28. Another aspect needs to be highlighted. Neither before the tribunal nor before the High Court, Parveen Singh and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant. In this context we may refer with profit to the decision in Indu Shekhar Singh & Ors. v. State of U.P. & Ors.[8] wherein it has been held thus: -

"There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

29. In Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.[9] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: -

"7. ..... In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr., AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are

applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat; AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors., AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88).

8. In Prabodh Verma & Ors. v. State of U.P. & Ors. AIR 1985 SC 167; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

30. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.

31. Analysed on the aforesaid premised reasons, we do not see any merit in these appeals and, accordingly, they are dismissed with no order as to costs.

.....J. [Dr. B. S. Chauhan] .....J. [Dipak Misra] New Delhi;

May 25, 2012

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[1] (1997) 6 SCC 721
[2] 2004 (6) SCALE 232
[3] (2006) 2 SCC 747
[4] (2008) 9 SCC 24
[5] AIR 1974 SC 2271
[6] AIR 2006 SC 1581
[7] AIR 2009 SC 571
[8] AIR 2006 SC 2432
[9] AIR 2010 SC 2613