

कार्यालय प्रमुख अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग,

जल भवन बाणगंगा भोपाल

क्रमांक 13300 / प्र.अ./विधि- /लो.स्वा.यां.वि./2023 भोपाल, दिनांक 27/9/2023

प्रति,

1. मुख्य अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग
भोपाल/वि./यां. भोपाल/इंदौर/जबलपुर/ग्वालियर
2. समस्त अधीक्षण यंत्री,
लोक स्वास्थ्य यांत्रिकी
मंडल.....
3. समस्त कार्यपालन यंत्री,
लोक स्वास्थ्य यांत्रिकी
खंड.....

विषय:- दैनिक वेतनभोगी कर्मचारियों द्वारा स्थायी वर्गीकरण आदेश के आधार पर अथवा बिना स्थायी वर्गीकरण आदेश के समानता के आधार पर वेतन एरियर राशि की मांग संबंधी न्यायालयीन प्रकरणों में, माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा लिमिटेशन एक्ट के संदर्भ में पारित निर्णयों को आवश्यक रूप से प्रस्तुत कराये जाने बावत्।

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उपरोक्त विषयान्तर्गत इस कार्यालय के समक्ष दैनिक वेतनभोगी स्थायी वर्गीकृत एवं बिना स्थायी वर्गीकरण वाले कर्मचारियों द्वारा दायर किये गये, ऐसे प्रकरण सामने आये हैं जिनमें एक निर्धारित अवधि से वेतन अंतर राशि चाही गई है।

इन प्रकरणों में प्रभावी प्रतिरक्षण हेतु माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा पारित ऐसे न्याय दृष्टांतों को माननीय उच्च न्यायालय के समक्ष प्रस्तुत कराया जाना आवश्यक है, जिनमें एरियर राशि की पात्रता के बारे में यह अभिनिर्धारित किया गया है कि वादी कर्मचारी को माननीय न्यायालय के समक्ष प्रकरण दायर करने की दिनांक से अधिकतम तीन वर्ष पूर्व तक की ही एरियर राशि की पात्रता आती है।

कृपया नोट करें कि ये निर्णय बिना स्थायी वर्गीकरण आदेश वाले प्रकरणों में तथा स्थायी वर्गीकरण वाले ऐसे प्रकरणों में जिनमें निर्धारित अवधि की एरियर राशि प्राप्त कर लेने के उपरांत भी कर्मचारी द्वारा और अधिक अवधि की एरियर राशि की मांग की गई है, दोनों ही प्रकृति के प्रकरणों में प्रस्तुत किये जाने आवश्यक है।

न्याय दृष्टांतों का विवरण निम्नानुसार है:-

1. माननीय उच्चतम न्यायालय का प्रकरण क्रमांक एम आर गुप्ता बनाम भारत संघ [1996 AIR 669] [1995 SCC(5)628]
2. माननीय उच्चतम न्यायालय द्वारा सिविल अपील क्रमांक 5151-5152 /2008 "भारत संघ एवं अन्य बनाम तरसेम सिंह" में पारित निर्णय दिनांक 13 अगस्त 2008
3. माननीय उच्चतम न्यायालय द्वारा सिविल अपील क्रमांक 4349 /2023 " धरम पाल सिंह बनाम उत्तर प्रदेश राज्य एवं अन्य" में पारित निर्णय दिनांक 11 जुलाई 2023
4. माननीय उच्च न्यायालय जबलपुर द्वारा रिट पिटीशन क्रमांक 8014/2022 (सुरेश कुमार तिवारी बनाम म.प्र.शासन एवं अन्य) में पारित आदेश निर्णय दिनांक 11.04.2022
- 5 माननीय उच्च न्यायालय जबलपुर द्वारा रिट पिटीशन क्रमांक 13892/2022 (हृदयराम यादव बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 24.06.2022
6. माननीय उच्च न्यायालय जबलपुर द्वारा रिट पिटीशन क्रमांक 4802/2023 (श्री निवास मिश्रा बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 01.03.2023

इन सभी निर्णयों की प्रतियां संलग्न करते हुये आपको निर्देशित किया जाता है कि आप पत्र के साथ संलग्न निर्णय सार एवं निर्णयों को याचिकाओं के जवाबदावा तैयार करते समय शासकीय अधिवक्ताओं के संज्ञान में आवश्यक रूप से लायें तथा इन्हें जवाबदावे के साथ प्रस्तुत करें।

कृपया उपरोक्तानुसार कार्यवाही सुनिश्चित कर इस कार्यालय को भी अवगत कराना सुनिश्चित करें।

कृपया ध्यान रखें कि न्यायालयीन प्रकरणों के प्रतिरक्षण में उदासीनता या लापरवाही हेतु संबंधितों के विरुद्ध अनुशासनात्मक कार्यवाही प्रस्तावित की जावेगी।

संलग्न :- उपरोक्तानुसार निर्णय सार एवं छः निर्णय


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प्रमुख अभियंता

निर्णय सार

दैनिक वेतनभोगी कर्मचारियों द्वारा स्थायी वर्गीकरण आदेश के आधार पर अथवा बिना स्थायी वर्गीकरण के समानता के आधार पर वेतन एरियर राशि की मांग संबंधी न्यायालयीन प्रकरणों में, माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा लिमिटेशन एक्ट के संदर्भ में पारित निर्णयों का सार

माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा विभिन्न न्यायालयीन निर्णयों के माध्यम से वेतन एरियर राशि की राशि हेतु माननीय न्यायालय के समक्ष प्रकरण दायर करने एवं एरियर राशि की पात्रता के संबंध यह अभिनिर्धारित किया गया है:-

- (i) त्रुटिपूर्ण वेतन प्राप्त होने वाले मामलों में "Cause of action" यानि "विवाद का कारण" सिर्फ एक बार उस समय पैदा नहीं होता जबकि जिस समय कोई लाभ दिया जाना था, नहीं दिया गया अथवा सरकार द्वारा कर्मचारी के दावे को खारिज कर दिया गया हो। बल्कि यह निरंतर रूप से हर माह भुगतान होने वाले वेतन के साथ उत्पन्न होते रहता है क्योंकि उसे जो वेतन मिल रहा है वह नियमों के अनुरूप नहीं है। जब तक कर्मचारी सेवा में है तब तक हर माह उसे मिलने वाले वेतन के साथ ही एकताजा "Cause of action" उत्पन्न होता है, इसलिये गलत वेतन को सुधारने के मामलों में लिमिटेशन एक्ट के प्रावधानों को लागू करने के लिये, निर्धारित अवधि की गणना करते समय सेवारत रहते हुये कोई समय-सीमा निर्धारित नहीं की जा सकती। अतः सेवारत रहते हुए किसी भी समय माननीय न्यायालय के समक्ष त्रुटिपूर्ण वेतन को सुधारने हेतु वाद दायर किया जा सकता है। इसी प्रकार त्रुटिपूर्ण पेंशन के मामलों में भी सेवानिवृत्ती के उपरांत उसे सुधारने के मामले में माननीय न्यायालय के समक्ष वाद दायर करने हेतु कोई समय सीमा निर्धारित नहीं की जा सकती है।
- (ii) यदि आवेदक का दावा मेरिट के आधार पर सही पाया जाता है तो उसे भविष्य में नियमों के हिसाब से वेतन का भुगतान किया जाना चाहिये तथा इस मामले में पूर्व के समय के वेतन एरियर के भुगतान के मामले में लिमिटेशन का प्रश्न उत्पन्न होगा। दूसरे शब्दों में आवेदक का दावा यदि कोई है जो त्रुटिपूर्ण वेतन प्राप्ति के कारण वेतन एरियर की प्राप्ति से संबंधित है, जिसकी गणना वेतन अंतर की राशि के आधार पर की जाती है तो वह लिमिटेशन एक्ट में दी गई समय-सीमा के अंतर्गत आयेगा और वह एक्ट में प्रावधानित अवधि से अधिक अवधि की एरियर राशि का पात्र नहीं होगा। लिमिटेशन एक्ट 1963 में इस हेतु एरियर राशि की पात्रता अवधि मान न्यायालय के समक्ष प्रकरण दायर करने से अधिकतम तीन वर्ष पूर्व तक की निर्धारित की गयी है।

इस संबंध में निम्न न्याय दृष्टांत प्रमुख है:-

(अ) माननीय उच्चतम न्यायालय द्वारा "एम.आर. गुप्ता बनाम भारत संघ एवं अन्य" में पारित निर्णय दिनांक 21 अगस्त 1995 [1996 AIR 669, 1995 SSC (5) 628]

It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified.

(ब) माननीय उच्चतम न्यायालय द्वारा सिविल अपील क्रमांक 5151-5152 /2008 "भारत संघ एवं अन्य बनाम तरसेम सिंह" में पारित निर्णय दिनांक 13 अगस्त 2008 में निम्नानुसार अभिनिर्धारित किया गया है:-

Eff- To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(स) माननीय उच्चतम न्यायालय द्वारा सिविल अपील क्रमांक 4349 /2023 "धरम पाल सिंह बनाम उत्तर प्रदेश राज्य एव अन्य" में पारित निर्णय दिनांक 11 जुलाई 2023 में भी देय एररियर राशि को निम्नानुसार मान उच्च न्यायालय के समक्ष रिट पिटीशन दायर करने के दिनांक से 03 वर्ष पूर्व तक ही अभिनिर्धारित किया गया है:-

The writ petition in this regard was filed by him on 20th September, 2019. Learned counsel for the appellant has relied on the decision of Union of India & Ors. Vs. Tarsem Singh [(2008) 8 SCC 648] to contend that the cause of action

for claiming pension is recurrent in nature and he ought not to have been non suited on the ground of delay alone.

In such circumstances, we set aside the impugned order and direct that the appellant may be given enhanced pension, if he is so entitled to, by giving him the benefit of his last increment before his superannuation but the enhanced amount shall be disbursed to him from the year 1st July, 2016.

(द) माननीय उच्च न्यायालय जबलपुर द्वारा रिट पिटीशन क्रमांक 8014/2022 (सुरेश कुमार तिवारी एवं अन्य बनाम म. प्र शासन एवं अन्य) में पारित निर्णय दिनांक 11 अप्रैल 2022 में लिमिटेशन एक्ट 1963 के अनुसार एरियर राशि की पात्रता अवधि निम्नानुसार माननीय न्यायालय के समक्ष प्रकरण दायर करने के दिनांक से 03 वर्ष पूर्व तक की अभिनिर्धारित की गई है:-

The law laid down by the Supreme Court in the case of M.R. Gupta Versus Union of India and Others (1995) 5 SCC 628 provides that the law of limitation will be applicable and the petitioners will not be entitled to claim arrears of salary for which the cause of action arises on every 1st day of the month when their salary becomes due for a period exceeding three years prior to the date of filing of the writ petition

According to this writ petition can be disposed of modifying the order dated 10-11-2020 passed by the Gwalior Bench of the High Court of Madhya Pradesh in Writ Petition No. 16421/2020 (Rakesh Kumar Shrivastava & Others versus State of Madhya Pradesh & Others) to the extent that in case the petitioner's classification is intact then they will be entitled to the minimum of pay scale admissible to the post on which they are working in the light of the law laid down by the Supreme Court in the case of Ram Naresh Rawat versus Ashwini Ray 2017 (volume 3) SCC 436 but their arrears will be restricted for a period of three years prior to the date of filing of the present writ petition i.e. three years prior to 1.4.2022 in the light of the law laid down by the Supreme Court in the case of M.R. Gupta Versus Union and Others (supra).

In above terms, this writ petition is disposed of.

(इ) रिट पिटीशन क्रमांक 13892/2022 (हृदय राम यादव एवं अन्य बनाम म. प्र शासन एवं अन्य) में पारित निर्णय दिनांक 24 जून 2022 में लिमिटेशन एक्ट 1963 के अनुसार एरियर राशि की पात्रता अवधि

माननीय न्यायालय के समक्ष प्रकरण दायर करने के दिनांक से 03 वर्ष पूर्व तक की अभिनिर्धारित की गई है ।

(फ) रिट पिटीशन क्रमांक 4802/2023 (श्रीनिवास मिश्रा बनाम म. प्र शासन एवं अन्य) में पारित निर्णय दिनांक 01 मार्च 2023 में लिमिटेशन एक्ट, 1963 के अनुसार एरियर राशि की पात्रता अवधि निम्नानुसार माननीय न्यायालय के समक्ष प्रकरण दायर करने के दिनांक से 03 वर्ष पूर्व तक की अभिनिर्धारित की गई है:-

It is made clear that if respondents authorities found paid for permanent classification, then to pay him wages in accordance with the law laid down by Supreme Court in Ram Naresh Rawat (supra). However, it is made clear that arrears will be restricted to a period of three years and notional fixation will be made as revised from time to time.

This Court has not expressed any opinion on the merits of the case. I

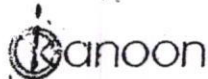
In above terms, this petition is disposed of.

- (iii) इसके अतिरिक्त माननीय न्यायालय को यह भी बताया जाना आवश्यक है कि पूर्व में त्रुटिपूर्ण रूप से समान प्रकृति के कुछ दैनिक वेतन भोगी कर्मचारियों को स्थायी वर्गीकरण के दिनांक से वर्तमान समय तक की वेतन अंतर की एरियर राशि स्वीकृत की गई है। इस आधार पर इन कर्मचारियों को समान रूप से एरियर राशि प्राप्त करने की पात्रता नहीं है क्योंकि माननीय उच्चतम न्यायालय द्वारा निर्धारित प्रकरण "इंडियन काउंसिल ऑफ एग्रीकल्चरल रिसर्च एवं अन्य विरुद्ध टी.के.सूर्यनारायणन एवं अन्य" [(1997) एस.सी.सी. 766] में यह अभिनिर्धारित किया गया है कि यदि कुछ लोगों को त्रुटिपूर्ण लाभ दिया गया है तो वह अन्य लोगों के लिये उस लाभ को प्राप्त करने का आधार नहीं बन सकता क्योंकि संविधान के अनुच्छेद 14 के अंतर्गत दिया गया समानता के अधिकार को नकारात्मक रूप में इस्तेमाल नहीं किया जा सकता है।

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M.R. Gupta vs Union Of India & Ors on 21 August, 1995

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The Administrative Tribunals Act, 1985

S.S. Rathore vs State Of Madhya Pradesh on 6 September, 1989

Thota China Subha Rao vs Mattapalli Raju on 10 May, 1949

Cited by 135 docs - [View All]

Dr. Sobha Jasmine S vs Udhham Singh Kamal on 25 July, 2011

Shouvik Kr Parbat vs G S I on 14 September, 2017

Sunil Kumar vs Govt. Of Nctd on 9 January, 2018

Jurul Islam vs The State Of West Bengal & Ors. on 18 May, 2000

Jasmukhbhai vs President on 21 February, 2011

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Supreme Court of India

M.R. Gupta vs Union Of India & Ors on 21 August, 1995

Equivalent citations: 1996 AIR 669, 1995 SCC (5) 628

Author: J S Verma

ench: Verma, Jagdish Saran (J)

PETITIONER:

M.R. GUPTA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 21/08/1995

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

VENKATASWAMI K. (J)

CITATION:

1996 AIR 669

1995 SCC (5) 628

1995 SCALE (5) 29

CT:

ADNOTE

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GMENT VERMA. J.

re granted.

only question for decision is : Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.

appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic No. 67. Thereafter, he joined service in the railways in 1978. The appellant claimed that the fixation of his pay on his joining service in the railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1.8.1978 in accordance with Fundamental Rule 22-c. The representation of the appellant to this effect was rejected before coming into force of the Administrative Tribunals Act, 1985. The appellant then filed an application on 4.9.1989 before the Tribunal praying inter alia for rectification of his initial pay with effect from 1.8.1978 and certain consequential benefits. The application was contested by the respondents on the ground that it was time barred since the cause of action had arisen at the time of the initial fixation of his pay in 1978 or latest on rejection of his representation before coming into force of the Administrative Tribunals Act, 1985. The subsequent representations made by the appellant for proper fixation of his pay were alleged to be immaterial for purpose.

Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.8.1985 and by another letter dated 1987 that his pay had been correctly fixed so that he should have assailed that order at that time which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years from the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

After hearing both sides, we are satisfied that the Tribunal has missed the real point and overlooked the substance of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, and the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim were found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation should be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists unless the equity of redemption is extinguished. It is well settled that the right of redemption is of this kind (See Thota Chama Subba Rao and

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M.R. Gupta vs Union Of India & Ors on 21 August, 1995

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ied counsel for the respondents placed strong reliance on the decision of this Court in S.S. ore vs. State of Madhya Pradesh, [1989] Supp. 1 SCR 43. That decision has no application in the nt case. That was a case of termination of service and, therefore, a case of one time action, unlike claim for payment of correct salary according to the rules throughout the service giving rise to a cause of action each time the salary was incorrectly computed and paid. No further consideration at decision is required to indicate its inapplicability in the present case.

he aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the llant's claim have to be examined and the only point concluded by this decision is the one decided e. The question of limitation with regard to the consequential and other reliefs including the rs, if any, has to be considered and decided in accordance with law in due course by the Tribunal. matter is remitted to the Tribunal for consideration of the application and its decision afresh on is in accordance with law. No costs.

Union Of India & Anr vs Tarsem Singh on 13 August, 2008

Supreme Court of India

Union Of India & Anr vs Tarsem Singh on 13 August, 2008

Author: R.V.Raveendran

Bench: R.V. Raveendran, Lokeshwar Singh Panta

1

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5151-5152 OF 2008
(Arising out of SLP [C] Nos.3820-3821 of 2008)

Union of India & Ors.

... Appellants

Vs.

Tarsem Singh

... Respondent

ORDER

R.V.RAVEENDRAN, J.

Leave granted. Heard learned counsel for the parties.

2. The respondent while working in the Indian Army was invalidated out of Army service, in medical category, on 13.11.1983. He approached the High Court in 1999 seeking a direction to the appellants to pay him disability pension. A learned Single Judge by order dated 6.12.2000 allowed the writ petition and directed the appellants to grant him disability pension at the rates permissible. In so far as arrears, the relief was restricted to 38 months prior to the filing of the writ petition. The respondent was also directed to appear before the Re-survey Medical Board as and when called upon by the appellants. The appellants did not contest the said decision and granted disability pension to respondents and also released the arrears of disability pension for 38 months.

3. The respondent however was not satisfied. According to him the disability pension ought to be paid from the date it fell due on 13.11.1983. He therefore filed a Letters Patent Appeal. The said appeal was allowed by the Division Bench of the High Court by judgment dated 6.12.2006. The Division Bench held that the respondent was entitled to disability pension from the date it fell due, and it should not be restricted to a period of three years and two months prior to the filing of the writ petition. By a subsequent modification order dated 23.2.2007, the Division Bench also granted interest on the arrears at the rate of 6% per annum. The said judgment and order of the Division Bench is challenged in this appeal. The only question that therefore arises for our consideration is

whether the High Court was justified in directing payment of arrears for a period of 16 years instead of restricting it to three years.

4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan* - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In *M. R. Gupta vs. Union of India* [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred....."

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In Shiv Dass vs. Union of India - 2007 (9) SCC 274, this Court held:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored.

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Union Of India & Anr vs Tarsem Singh on 13 August, 2008

.....J [R. V. Raveendran]J [Lokeshwar Singh Panta] New Delhi;

August 13, 2008.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4349 OF 2023
(Arising out of SLP(C) No.2646/2020)

DHARAM PAL SINGH

Appellant(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

ORDER

Leave granted.

The appellant's plea in this appeal is for pension factoring within the same the annual increment he would have been entitled to. This plea has been rejected on the ground of delay. The appellant had superannuated from the post of Finance and Account Officer attached to the Office of the District Inspector of Schools on 30th June, 2004.

The writ petition in this regard was filed by him on 20th September, 2019. Learned counsel for the appellant has relied on the decision of *Union of India & Ors. Vs. Tarsem Singh* [(2008) 8 SCC 648] to contend that the cause of action for claiming pension is recurrent in nature and he ought not to have been non-suited on the ground of delay alone.

In such circumstances, we set aside the impugned order and direct that the appellant may be

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given enhanced pension, if he is so entitled to, by giving him the benefit of his last increment before his superannuation but the enhanced amount shall be disbursed to him from the year 1st July, 2016.

The present appeal stands disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

NEW DELHI;
JULY 11, 2023.

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1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 11th OF APRIL, 2022

WRIT PETITION No. 8014 of 2022

Between:-

1. SURESH KUMAR TIWARI S/O ABHAY RAJ TIWARI,
AGED ABOUT 59 YEARS, OCCUPATION: POST ASST.
GRADE 3 P.H.E. SUB DIVISION AASTA DIST.
SEHORE MP (MADHYA PRADESH)
2. MEHBOOB KHAN S/O MEHMOOD KHAN, AGED
ABOUT 59 YEARS, OCCUPATION: POST COPIEST
E.E. OFFICE E.E. OFFICE P.H.E. DIVISION (MADHYA
PRADESH)
3. KISHORE SINGH S/O MOOR SINGH, AGED ABOUT
64 YEARS, OCCUPATION: DRIVER P.H.E. SUB
DIVISION AASTA DISTRICT SEHORE MP
(MADHYA PRADESH)
4. KAMAL KISHORE S/O JAMUNA PRASAD SHARMA,
AGED ABOUT 59 YEARS, OCCUPATION: HELPER
P.H.E. SUB DIVISION AASTA DISTRICT SEHORE
MP (MADHYA PRADESH)
5. JAMUNA KHAN S/O LAXMAN KHAN, AGED ABOUT 60
YEARS, OCCUPATION: GRAUDED ABOUT
P.H.E. OFFICE SEHORE DIVISION (MADHYA
PRADESH)
6. SMT ABBA BEGAM W/O SHHEED KHAN, AGED
ABOUT 60 YEARS, OCCUPATION: COPIEST GRADE
3 P.H.E. SUB DIVISION AASTA DISTRICT SEHORE
MP (MADHYA PRADESH)
7. GHISILAL S/O BABULAL, AGED ABOUT 53 YEARS,
OCCUPATION: HELPER P.H.E. SUB DIVISION
SEHORE (MADHYA PRADESH)
8. NARAYAN BHODEKAR S/O LAXMAN BHODEKAR,
AGED ABOUT 51 YEARS, OCCUPATION: P.H.E. SUB
DIVISION P.H.E. SUB DIVISION BUDHNI, DIVISION
AND DISTRICT SEHORE (MADHYA PRADESH)
9. BHANVAR SINGH S/O CHHITAR SINGH, AGED
ABOUT 59 YEARS, PHE SUB DIVISION
NASRULLAGANJ, DIVISION AND DISTRICT
SEHORE (MADHYA PRADESH)
10. OMPRAKASH SHARMA S/O DAYASHANKAR
SHARMA AGED ABOUT 60 YEARS, PHE SUB
DIVISION AASTA DISTRICT SEHORE
(MADHYA PRADESH)

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12. BABULAL MAHESWARI S/O AATMARAM , AGED ABOUT 65 YEARS, OCCUPATION: WATCHMAN PHE SUB DIVISION AASTA DIVISION AND DISTRICT SEHORE (MADHYA PRADESH)

.....PETITIONERS

SHRI RAMANUJ CHOUBEY, ADVOCATE FOR PETITIONERS

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY MINISTRY OF PUBLIC HEALTH ENGINEER DEPT. VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE ENGINEER IN CHIEF, P.H.E DEPARTMENT JAL BHAWAN, BANGANGA, BHOPAL (M.P.) (MADHYA PRADESH)
3. THE CHIEF ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT DISTRICT BHOPAL (M.P.) (MADHYA PRADESH)
4. THE CHIEF ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT DIVISION SEHORE (MADHYA PRADESH)

.....RESPONDENTS

THE HON'BLE JUDGE, JUDGE AVA, PANEL FOR STATE
The petition for habeas corpus and the Court has
passed the following
ORDER

Petitioners' only grievance is that they were classified as Permanent Employees vide order dated 8.4.2003 passed by the Executive Engineer, Public Health Engineering Department, Sehore Division, Sehore but despite their permanent classification, they have not been paid minimum of regular pay scale from the date of their classification.

Learned counsel for the petitioners submits that under similar facts & circumstances of the case, the Gwalior Bench of the High Court of Madhya Pradesh in Writ Petition No.16421/2020 *Shrivastava & Others versus State of*

Madhya Pradesh & Others) vide order dated 10.11.2020 directed the authorities that if the classification of the petitioners is intact then they shall be paid minimum of the pay scale admissible to the post on which they have been classified as permanent employees without any increment and if any arrears are worked out then the same shall be paid as expeditiously as possible preferably within a period of three months: The petitioners are claiming parity and are seeking similar relief.

The law laid down by the Supreme Court in the case of **M.R. Gupta Versus Union of India and Others (1995) 5 SCC 628** provides that the law of limitation will be applicable and the petitioners will not be entitled to claim arrears of salary for which the cause of action arises on every 1st day of the month when their salary becomes due for a period extending three years prior to the date of filing of the writ petition.

Accordingly, this writ petition can be disposed of modifying the order dated 10.11.2020 passed by the Gwalior Bench of the High Court of Madhya Pradesh in Writ Petition No.16421/2020 (**Rakesh Kumar Shrivastava & Others versus State of Madhya Pradesh & Others**) to the extent that in case the petitioners' classification is intact then they will be entitled to the minimum of pay scale admissible to the post on which they are working in the light of the law laid down by the Supreme Court in the case of **Ram Naresh Rawat versus Ashwini Ray 2017 (Volume 3) SCC 436** but their arrears will be restricted for a period of three years prior to the date of filing of the present

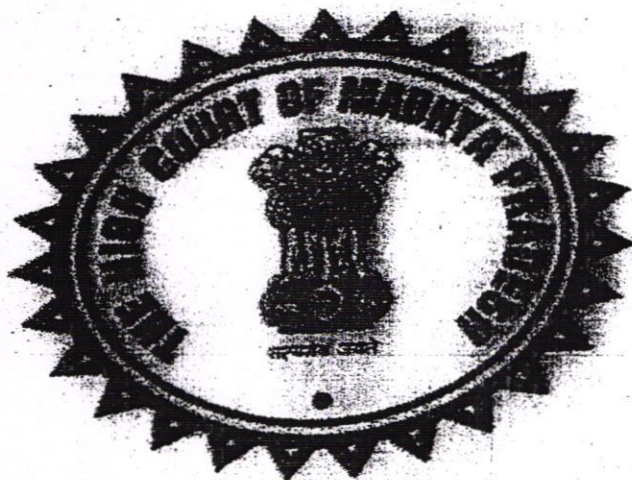
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writ petition i.e. three years prior to 1.4.2022 in the light of the law
laid down by the Supreme Court in the case of **M.R. Gupta**
Versus Union of India and Others (supra).

In above terms, this writ petition is disposed of.

(VIVEK AGARWAL)
JUDGE

and



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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 24th OF JUNE, 2022

WRIT PETITION No. 13892 of 2022

Between:-

1. HARIDAYRAM YADAV S/O SHRI RAJARAM
YADAV, AGED ABOUT 56 YEARS, OCCUPATION:
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING BHOPAL (M.P.) (MADHYA
PRADESH)

MOHD. JAKARIYA SIDDIQUI S/O LATE MOHD.
YUSUF SIDDIQUI, AGED ABOUT 54 YEARS,
OCCUPATION: WORKING AS CLASSIFIED
EMPLOYEE PUBLIC HEALTH ENGINEERING
BHOPAL (MADHYA PRADESH)

HABIBUDDIN S/O LATE MOHD. JAKARIYA
SIDDIQUI, AGED ABOUT 54 YEARS, OCCUPATION:
WORKING AS CLASSIFIED EMPLOYEE PUBLIC
HEALTH ENGINEERING BHOPAL (MADHYA
PRADESH)

ABRAR AHMED S/O LATE AHMED, AGED ABOUT 56
YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING BHOPAL (MADHYA PRADESH)

SAFYAD ABRAR AHMED S/O SHAHWAZ AHMED,
AGED ABOUT 51 YEARS, OCCUPATION:
WORKING AS CLASSIFIED EMPLOYEE PUBLIC
HEALTH ENGINEERING BHOPAL (MADHYA
PRADESH)

SMT. PREMwati SHARMA W/O CHHOTELAL
SHARMA, AGED ABOUT 52 YEARS,
OCCUPATION: WORKING AS CLASSIFIED
EMPLOYEE PUBLIC HEALTH ENGINEERING
BHOPAL (MADHYA PRADESH)

ROSAMMA JOSE W/O K.J. JOSE, AGED ABOUT
60 YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING BHOPAL (MADHYA PRADESH)

GOPAL DAS S/O LATE HARIBAKSH, AGED



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Handwritten signature and notes at the bottom center, including 'AET (Law)' and 'Faint signature'.



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ABOUT 56 YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING DISTRICT RAJGARH (MADHYA
PRADESH)

9. ~~MOTILAL S/O LATE MOTILAL~~, AGED ABOUT 55
YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING DISTRICT RAJGARH (MADHYA
PRADESH)

10. ~~MOHD. ANEEL S/O MOHD. SAREEF~~, AGED
ABOUT 55 YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING DISTRICT RAJGARH (MADHYA
PRADESH)

11. ~~RASHID AHMED S/O ANIS AHAMAD~~, AGED
ABOUT 54 YEARS, OCCUPATION: WORKING AS
CLASSIFIED EMPLOYEE PUBLIC HEALTH
ENGINEERING DISTRICT RAJGARH (MADHYA
PRADESH)

(BY ~~ANUVAD SHRIVASTAVA~~, ADVOCATE)
AND

1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, MINISTRY OF
PUBLIC HEALTH ENGINEERING DEPARTMENT
VALLABH BIHAWAN BHOPAL (M.P.) (MADHYA
PRADESH)

2. ENGINEER IN CHIEF PUBLIC HEALTH
ENGINEERING DEPARTMENT JAL BIHAWAN,
BANGANGA, BHOPAL (MADHYA PRADESH)

3. THE CHIEF ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT BHOPAL
(MADHYA PRADESH)

4. THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT BHOPAL
(MADHYA PRADESH)

5. THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT RAJGARH
(MADHYA PRADESH)



____ PETITIONERS

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.....RESPONDENTS

(BY SHRI A. RAJESHWAR RAO, GOVERNMENT ADVOCATE)

This petition coming on for hearing on this day, the court passed the following:

ORDER

Petitioners have filed this writ petition under Article 226 of the Constitution of India making a prayer that petitioners be paid regular pay scale from the date of their permanent classification in the respondent department i.e. from 2013.

Counsel appearing for petitioners submitted that representation filed by petitioners is pending, therefore, respondents be directed to consider and decide their representation, in light of order passed in W.P. No.8014/2022 dated 11.04.2022 in case of *Suresh Kumar T. and others Vs. State of M.P. and others*.

Government Advocate appearing for State submitted that representation of petitioners shall be considered in accordance with law.

Considering the aforesaid facts and circumstances of the case, writ petition filed by petitioners is disposed off with direction to respondents to consider fresh representation of petitioners which will be filed by them within a period of 15 days along with certified copy of the order passed today and order passed in W.P. No.8041/2022, if same is done, then authority shall consider and decide the representation within further period of 90 days.

No opinion is expressed on the merits of the case.

With the aforesaid direction, writ petition is disposed off.

C.C. as per rules.

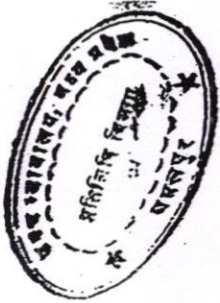
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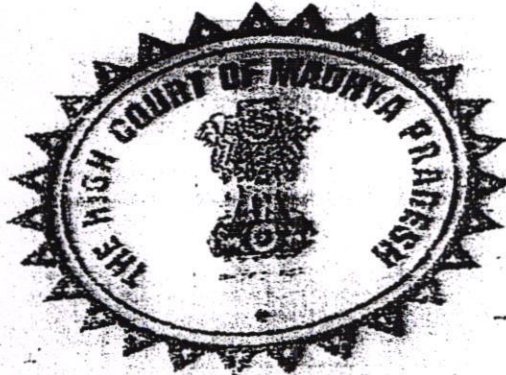
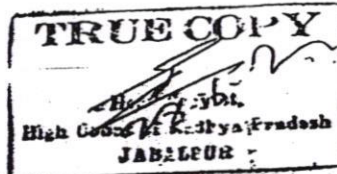
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(VISHAL DHAGAT)
JUDGE



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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 1st OF MARCH, 2023

WRIT PETITION No. 4802 of 2023

9839

BETWEEN:-

SHRINIWAS MISHRA S/O LATE RAM KUMAR MISHRA,
AGED ABOUT 54 YEARS, OCCUPATION: WORKING AS
TIMEKEEPER PUBLIC HEALTH ENGINEERING
DEPARTMENT SUB DIVISION PAWAI DIVISION PANNA
DISTRICT PANNA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SUDHANSHU KUMAR SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY, PUBLIC HEALTH
ENGINEERING DEPARTMENT, MANTRALAYA
VALABHAIWAN, BHOPAL (MADHYA PRADESH)

ENGINEER IN CHARGE PUBLIC HEALTH
ENGINEERING DEPARTMENT JALDHAWAN, BAN
GANGA, BHOPAL (MADHYA PRADESH)

CHIEF ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT GWALIOR
PARICCHETRA GWALIOR (MADHYA PRADESH)

EXECUTIVE ENGINEER, PUBLIC HEALTH
ENGINEERING DEPARTMENT DIVISION PANNA
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SHIV KUMAR SHRIVASTAVA - GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the
following:

ORDER

Petitioner's contention is that Chief Engineer, Public Health and

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Engineering Department, Gwalior Zone Gwalior, had asked the Executive Engineer, Public Health and Engineering Department, Division Parma, to grant benefit of permanent classification to the petitioner Shrinivas Mishra, w.e.f. 2003 and paying him the minimum of the regular pay scale in terms of the law laid down by the Supreme Court in *Ram Naresh Rawat Vs. Ashwini Ray and others* [(2017) 3 SCC 436].

It is submitted that Executive Engineer has yet not acted on the said orders of the Chief Engineer. Petitioner has already made a representation (Annx.P/5) which is pending before the respondents authorities.

This innocuous prayer is not opposed by Shri Shrivastava, learned Government Advocate.

Accordingly, this petition is disposed of with a direction that in case petitioner files a fresh representation raising his grievance raised herein, within 15 days along with certified copy of the order being passed today before the concerned respondents authorities, then the concerned respondents authorities shall consider and decide the same within a period of sixty days, through a speaking order under communication to the petitioner.

It is made clear that if respondents authorities found paid for permanent classification, then to pay him wages in accordance with the law laid down by Supreme Court in *Ram Naresh Rawat (Supra)*. However, it is made clear that arrears will be restricted to a period of three years and notional fixation will be made as revised from time to time.

This Court has not expressed any opinion on the merits of the case.

In above terms, this petition is disposed of.

(20)

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(VIVEK AGARWAL)
JUDGE

A.Praj.

