

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

Review Petition No.-

/2024

The State of M.P. & Ors.

...Petitioner

Vs.

Ganga Prasad Dubey & Ors.

...Respondents

Chronological list of date and events

Date	Events
11/4/2022	Hon'ble High Court of MP at Jabalpur passed the order dated 11/4/2022 in WP No.8014/2022 Suresh Tiwari & ors Vs State of MP & ors stating that "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.
02/9/2022	Respondents filled WP 20176/2022 for seeking a direction to the Petitioners to grant regular pay scale to the Respondents of the post held by them or at least pay the minimum of the pay scale of the post held by Respondents from the date of their permanent classification i.e. from 03/01/1998.
27/09/2022	The Writ Petition was disposed of by an order dated 27/09/2022 and the Respondents were directed to submit a fresh representation to the Petitioner No 4 and the Petitioner No 4 was directed to decide the representation in the light of order passed in the case of

	Ram naresh Rawat (supra), within 4 months. it was further directed that in case the Respondents were found entitled for the benefit claimed by them, the benefit may be extended to them.
04/10/2022	The Respondents filed a representation before Petitioner No 4 on 04/10/2022.
30/12/2022	Petitioner No 4 rejected the representation vide order dated 30/12/2022.
14/03/2023	Respondents filed WP 6277/2023 for quashing the order issued by Executive Engineer P.H.E. Division Sidhi dated 30/12/2022 by which the benefit of minimum of the pay scale of the post held from the date of the permanent classification was denied to them and for direction to the Petitioners to give the benefits

	emerging from their permanent classification order dated 03/01/1998.
11/01/2024	Hon'ble High Court pleased to pass the order dated 11/01/2024 in WP No. 6277/2023 by which the petition is allowed and petitioners are directed to give arrear from the date of order i. e. 03/01/1998.
	Therefore, filed this Petition

Place Jabalpur
Date: 10.01.2024

Humble Petitioner
State of M.P.

Through OIC

Executive Engineer, PHE,
Mech. Division, Bhopal

Through Counsel

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

Review Petition No.-

/2024

The State of M.P. & Ors.

...Petitioner

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...Respondents

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Place: Jabalpur

Date:

Humble Petitioner

State of M.P.

Through OIC

Executive Engineer, PHE,

Mech. Divn. Bhopal

Through Council

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

Review Petition No.-

/2024

1. THE STATE OF MADHYA
PRADESH THROUGH THE
PRINCIPLE SECRETARY,
PUBLIC HEALTH
ENGINEERING
DEPARTMENT, VALLABH
BHAVAN, BHOPAL (MADHYA
PRADESH)
2. THE ENGINEER IN CHIEF ,
PUBLIC HEALTH
ENGINEERING
DEPARTMENT, JAL
BHAWAN, VAN GANGA ,
BHOPAL (MADHYA
PRADESH)
3. CHIEF ENGINEER, PUBLIC
HEALTH ENGINEERING
DEPARTMENT, ZONE
JABALPUR, DISTRICT
JABALPUR (MADHYA
PRADESH)
4. EXECUTIVE ENGINEER,
PUBLIC HEALTH
ENGINEERING
DEPARTMENT, SIDHI
DIVISION, DISTRICT SIDHI
(MADHYA PRADESH)

.....Petitioners

Vs.

1. GANGA PRASAD DUBEY
S/O SHRI SUMESHWAR
PRASAD DWIVEDI, AGED

ABOUT 61 YEARS,
OCCUPATION: ASSISTANT
PUMP OPERATOR IN THE
OFFICE OF THE ASSISTANT
ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT
CHURHAT SUBDIVISION
CHURHAT DISTRICT SIDHI
(MADHYA PRADESH)

2. GANPATI PRASAD PATEL
S/O SHRI BRIJWASI PRASAD
PATEL, AGED ABOUT 60
YEARS, OCCUPATION: PUMP
OPERATOR IN THE OFFICE
OF THE ASSISTANT
ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT
CHURHAT SUB DIVISION
CHURHAT DISTRICT SIDHI
(MADHYA PRADESH)

3. TEJBHAN PATEL S/O SHRI
YAGYASHARAN PATEL,
AGED ABOUT 59 YEARS,
OCCUPATION: ASSISTANT
PUMP OPERATOR IN THE
OFFICE OF THE ASSISTANT
ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT
CHURHAT SUB DIVISION

CHURHAT DISTRICT SIDHI
(MADHYA PRADESH)

4. UGRASEN VERMA S/O
SHRI RAM GOPAL VERMA,
AGED ABOUT 60 YEARS,
OCCUPATION: PUMP
OPERATOR IN THE OFFICE
OF ASSISTANT ENGINEER
PUBLIC HEALTH
ENGINEERING DEPARTMENT
CHURHAT SUB DIVISION
CHURHAT DISTRICT SIDHI
(MADHYA PRADESH)

.....Respondents

Review Petition for reviewing the order dated 11/01/2024
passed in W.P.No.6277/2023 by Hon'ble Single Bench of
this Hon'ble Court comprising of Hon'ble Justice Shri
Vivek Agrawal Ji

MAY IT PLEASE THIS HON'BLE COURT,

Most humbly and respectfully petitioner submits this petition as under: -

1. That, initially, the Respondents have filed a writ petition before this Hon'ble Court seeking relief as under:

(I) That, a writ order or direction in the nature of certiorari thereby quashing the order dated 30/12/2022 (Annexure P/5), issued by Respondent No. 4.

(II) That, a writ order or direction in the nature of mandamus thereby directing the respondents to grant the status of regular employee to the petitioners and grant them the regular pay scale of the post along with all admissible allowances w.e.f. 03/01/1998 and all other consequential benefits of regular employee.

Or alternatively

Direct the Respondents to pay minimum of the pay scales along with allowances in different pay scales without increments w.e.f. 03/01/1998 and pay the arrears with interest at the rate of 24% per annum.

(III) That, any other appropriate writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case including the cost of litigation.

2. That the respondents are Daily wage employees. They were classified permanent on the post of Assistant Pump Operator and Pump Operator by the order dated 03/01/1998 issued by the Executive Engineer P.H.E. Department Sidhi.

That after 24 years of their permanent classification, first time in the year 2022, the respondents filed a Writ Petition No 20176/2022 before this Hon. Court on 02/09/2022 for seeking a direction to the Petitioners to grant regular pay scale to the Respondents of the post held by them or at least pay the minimum of the pay scale of the post held by Respondents from the date of their permanent classification

i.e. from 03/01/1998. Copy of the details of WP No 20176/2022 annexed as **Annexure P-1.**

The writ Petition was disposed of by an order dated 27/09/2022 and the Respondents were directed to submit a fresh representation to the Petitioner No 4 and the Petitioner No 4 was directed to decide the representation in the light of order passed in the case of Ram naresh Rawat (supra), within 4 months. it was further directed that in case the Respondents were found entitled for the benefit claimed by them, the benefit may be extended to them.

The Respondents thereafter filed a representation before Petitioner No 4 on 04/10/2022 and Petitioner No 4 rejected the representation vide order dated 30/12/2022.

4. That, the aforesaid writ petition was filed by the respondents for quashing the order issued by Executive Engineer P.H.E. Division Sidhi dated 30/12/2022 by which the benefit of minimum of the pay scale of the post held from the date of the permanent classification was denied

to them and for direction to the Petitioners to give the benefits emerging from their permanent classification order dated 03/01/1998.

5. That, the aforesaid writ petition was came on hearing for admission purpose on 11/01/2024 and the counsel for respondents stated before this Hon'ble court that since respondents are permanently classified employees, they are entitled to benefit of minimum pay scales as have been revised from time to time in the light of the law laid down by Hon'ble Supreme Court in the case of **Ram Naresh Rawat Vs Ashwini Ray and Others, (2017) 3 SCC 436.**

This Court by order dated 11/01/2024 disposed of the petition with a direction to the petitioners to extend to the respondents the benefit of minimum wages of the post against which they were classified as permanent from the date of their classification as have been revised from time to time within a period of ninety days from the date of receipt of certified copy of the order. Copy of the order dated 11/01/2024 passed in WP No 6277/2023 annexed as **Annexure P-2.**

6. That, the humble petitioners are totally convinced and ready to obey the part of the decision dated 11/01/2024, as far as it concerns with the status and benefit entitlement of respondents but only differ with the duration of arrears to be paid to the respondents. Because of this reason prayer is made for modification of this order, in this petition.

7. That, it is pertinent to mention here that Hon'ble High Court of MP at Jabalpur passed the order dated 11/4/2022 in WP No. 8014/2022 Suresh Tiwari & ors Vs State of MP & ors stating that:-

“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

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 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)."

A copy of order dated 11/4/2022 in WP No.8014/2022 Suresh Tiwari & ors Vs State of MP & ors is being annexed herewith and marked as **ANNEXURE P/3.**

8. That, It is further submitted that WP No.13892/2022 Hirdaram Yadav, WP No.4802/2023 Srinivas Mishra versus State of MP, WP No.17459/2023 and Chandra Shekhar Chorey Versus State of MP,

this Hon'ble Court also deal with the similar point and restricted the arrears for a period of three years prior to the date of filing of the first writ petition.

9. That, the law recognizes a **'continuing' cause of action**" which may give rise to a **"recurring' cause of action"** as in the case of salary or pension. Hon. Supreme Court in **M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628** has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee's claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. A copy of order passed by Apex Court in **M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628** is being annexed herewith and marked as **ANNEXURE P/4**.

10. That, it is important to mention here that issue of respondent is related to the correction of wrong salary or re-fixation of pay. For such cases the time limit prescribed in **Limitation Act 1963** is 03 years from the date of arise of cause of action. In this case the permanent classification order dated 03/01/1998 was issued by the Executive Engineer P.H.E. Department Sidhi in the year 1998 and since then the cause of action was aroused but the respondents approached this court in the year 2022 (after 24 years of arise of cause of action) only.

11. That the Hon. Supreme Court relying upon the aforesaid ratio, in the case of **Union of India and Others v. Tarsem Singh (2008) 8 SCC 648**, while referring to the decision in **Shiv Dass v. Union of India and Others (2007) 9 SCC 274**, quoted the following passages from the latter decision:

10. 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.”

And after giving the principles relating to **recurring/successive wrongs**, finally held that:-

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.**

A copy of order passed by Apex Court in **Union of India and Others v. Tarsem Singh (2008) 8 SCC 648** is being annexed herewith and marked as **ANNEXURE P/5**.

12. That as decided by Hon. Supreme Court in **Tarsem Singh (supra)**, the delay of 16 years in approaching the courts affected the

consequential claim for arrears and thus, the Apex Court set aside the direction to pay arrears for 16 years with interest. The Court 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". Further, the grant of interest on arrears was also denied. The aforesaid ratio in **Tarsem Singh (supra)** has been followed by the Apex Court in **State of Madhya Pradesh and Others v. Yogendra Shrivastava (2010) 12 SCC 538** and **Asger Ibrahim Amin v. Life Insurance Corporation of India (2016) 13 SCC 797**. Copies of the order passed by Apex Court in **State of Madhya Pradesh and Others v. Yogendra Shrivastava (2010) 12 SCC 538** and **Asger Ibrahim Amin v. Life Insurance Corporation of India (2016) 13 SCC 797** are being annexed herewith and marked as **ANNEXURE P/6 & ANNEXURE P/7**.

13. That, on relying upon the aforesaid ratio decided by the Hon. Supreme Court and this court the order dated 11/01/2024 passed in WP No. 6277/2023 be modified up to the extent that Respondents arrears

will be restricted for a period of three years prior to the date of filing of the first writ petition (W.P.No. 20176/2022) i.e. three years prior to 02/09/2022 .

14. That, it is pertinent to state here that due to 24 years delay caused in approaching the court, the respondents have no right to get benefits of salary arrears from the date of classification i.e. from the date 03/01/1998 to till date, as claimed by them, but only 03 years prior to filing the first Writ Petition No. 20176/2022. It is ensured that their salary will be updated notionally to the present stage as revised from time to time and they will be paid properly fixed pay-scale in future.

15. **GROUND:**

A. Because, Hon'ble Supreme Court in M.R. Gupta Versus Union of India and Others (supra), Tarsem Singh (supra), State of Madhya Pradesh and Others v. Yogendra Shrivastava (2010) 12 SCC 538 and Asger Ibrahim Amin v. Life Insurance Corporation of India (2016) 13 SCC 797 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 first writ petition.

It is further submitted that this court also in the order dated 11/4/2022 passed in WP No. 8014/2022 Suresh Tiwari & ors Vs State of MP & ors, in the order dated 24/6/2022 passed in WP No.13892/2022 Hirdaram Yadav & ors versus State of MP & ors, in the order dated 01/3/2023 passed in WP No.4802/2023 Srinivas Mishra versus State of MP& ors,, in the order dated 24/7/2023 passed in WP No.17459/2023 Chandra Shekhar Chorey Versus State of MP& ors, also dealt with the similar point and restricted the arrears for a period of three years prior to the date of filing of the first writ petition.

B. Because, respondents have caused extreme delay (24 years) in approaching to the court, therefore they have no right to get benefit as claimed by them and the ratio decided by Hon. Supreme court and this High Court may be followed in present case.

C. Because, the order dated 11/01/2024 in WP No.6277/2023 be modified up to the extent that Respondents arrears will be restricted for a period of three years prior to the date of filing of the first writ petition (W. P. No. 20176/2022) i.e. three years prior to 02/09/2022 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) & Tarsem Singh_(supra).

D. Because, respondents filed first writ petition in the year 2022 to take advantage of order dated 03/01/1998 and such writ petition have been filed after enormous and elongated delay of 24 years, respondents have to bear the loss of arrear and respondents may be eligible to get benefit from three years prior to the date of filling the first writ petition on the basis of above mentioned orders passed by this Hon'ble Court,

E. That, other grounds shall be urged at the time of hearing.

PRAYER

16. In view of the aforesaid facts and circumstances it is humbly prayed that this Hon'ble Court may kindly be pleased to allow this review petition and be further pleased to review the order dated

11/01/2024 passed by this Hon'ble Court in W.P. No. 6277/2023, up to the extent that Respondents arrears will be restricted for a period of three years prior to the date of filing of the first writ petition(W.P. No. 20176/2022) i.e. three years prior to 02/09/2022, while their salary will be updated to present stage on notional basis as revised from time to time and they will be paid corrected salary in future, 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) & Tarsem Singh (supra)**, in the interest of justice.

Place: Jabalpur
Date:

Humble Petitioner
State of M.P.
Through OIC
Executive Engineer,
PHE, Mechanical Division
Bhopal
Through Counsel

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

Review Petition No.-

/2024

The State of M.P. & Ors.

...Petitioner

Vs.

Rajendra Prasad Namdev

...Respondents

LIST OF DOCUMENTS

S.No.	Particulars	Annex.No	Pages
1.	A copy of the details of WP No 20176/2022	P-1	
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7.	A copy of order in Asger Ibrahim Amin v. Life Insurance Corporation of India , (2016) 13 SCC 797	P-7	

Place: Jabalpur
Date:

Humble Petitioner
State of M.P.

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

Review Petition No.-

/2024

The State of M.P. & Ors.

...Petitioner

Vs.

Ganga Prasad Dubey & Ors.

...Respondents

Affidavit

I, S/o Late shri , Aged years, Occupation: Executive Engineer, PHE, Mechanical Division Bhopal do hereby solemnly affirm on oath as under: -

1. That, I am officer in charge of the case and well acquainted with the facts of this case.
2. That, my counsel has got prepared enclosed review petition under my instructions and I have gone through the same.
3. That, the contents of enclosed review petition are true to the best of my knowledge, which is based on available office record.
4. That, the documents annexed with the review petition are true copy prepared from their respective originals.

PLACE: JABALPUR
DATED:

D E P O N E N T

VERIFICATION

I, the abovenamed deponent do verify that the contents of this affidavit from para 1 to 4 are true to the best of my knowledge. No part of it has been false and nothing has been concealed therein.

PLACE: JABALPUR
DATED:

D E P O N E N T

Case No.	WRIT PETITION (WP) 20176/2022 Registered On 02-09-2022
Case Arising Detail	RP -1126-2022
Last page	153
DA Name	[WP-DA-25] [CIS User ID : 1275]
Last Listed On	27-09-2022 [HON'BLE SMT. JUSTICE NANDITA DUBEY]
Last Order	Disposed off-Ord dt:27/09/2022
Status	Disposed (Disposal Date: 27-09-2022, Month: 9, Year: 2022, JUD: 109)
Disp.Type	Disposed Off
Stage	Motion Hearing [FRESH (FOR ADMISSION) - CIVIL CASES] (64. Mention Memo/CS/RA COVID-19) [FOR ADMISSION and I.R. and IA No.14206/2022-An application for recall / modification / clarification of an order/judgment]
Statutory Info.	Single Bench
Bench	
NOT GO BEFORE (By Advocate)	
Category	SERVICE RELATING TO STATE GOVT.-17100
Act	Salary Matter-17140 Denial/Fitness in Revised/Fixation/Option in Revised Pay Scale
Petitioner(s)	1 RAMAVTAR TIWARI S/D/W/Thru:- SHRI RAMKRISHNA TIWARI TIMEKEEPER (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT SUB DIVISION CHURHAT DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH 2 ASHOK KUMAR TRIPATHI S/D/W/Thru:- SHRI TEERATH PRASAD TRIPATHI PUMP OPERATOR (AT PRESENT OFFICE CLERK) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT DISTT. SIDHI M.P. , Sidhi , MADHYA PRADESH 3 RAJKUMAR PATEL S/D/W/Thru:- SHRI NANHE PRASAD PATEL LINEMAN (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT DISTRICT SIDHI M.P. , Sidhi , MADHYA PRADESH 4 LALBAHADUR PATEL S/D/W/Thru:- SHRI RAMDULARE PATEL PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER, PHE DEPARTMENT SUB DIVISION CHURHAT DISTRICT SIDHI M.P. , Sidhi , MADHYA PRADESH 5 RAMSUMIRAN PATEL S/D/W/Thru:- SHRI AYODHYA PRASAD PATEL CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER, PHE DEPARTMENT, SUB DIVISION CHURHAT DISTRICT SIDHI M.P. SIDHI , Sidhi , MADHYA PRADESH 6 MUNI MAHESH PATEL S/D/W/Thru:- SHIR RAMDUTT PATEL PUMP OPERATOR (PERMANENT LABOUR) IN /O ASSISTANT ENGINEER, PHE DEPARTMENT, SUB DIVISION CHURHAT DISTRICT SIDHI M.P. , Sidhi , MADHYA PRADESH 7 GANGA PRASAD DWIVEDI S/D/W/Thru:- SHRI SUMESHWAR PRASAD DWIVEDI ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI

(M.P.) , Sidhi , MADHYA PRADESH

8 HIRALAL PATEL S/D/W/Thru:- SHRI SHRIMAN PATEL
LINEMAN (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

9 SMT. KUSUMWATI SINGH S/D/W/Thru:- SHRI GOMTI SINGH
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

10 UGRESEN VERMA S/D/W/Thru:- SHRI RAMGOPAL VERMA
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

11 JITENDRA SINGH S/D/W/Thru:- SHRI SAVAI LAL SINGH
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

12 MUNNA KEVAT S/D/W/Thru:- SHRI KEMLA KEVAT
LINEMEN (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

13 SHIVMANGAL YADAV S/D/W/Thru:- SHRI BALDEV YADAV
ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT
ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI
(M.P.) , Sidhi , MADHYA PRADESH

14 RAMSAJEEVAN YADAV S/D/W/Thru:- SHRI GANGA PRASAD YADAV
ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT
ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI
(M.P.) , Sidhi , MADHYA PRADESH

15 SANTOSH KUMAR MISHRA S/D/W/Thru:- SHRI TEERATH PRASAD
MISHRA
ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT
ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI
(M.P.) , Sidhi , MADHYA PRADESH

16 KAMLESH GUPTA S/D/W/Thru:- SHRI SHIVDHARI PRASAD GUPTA
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

17 AWADH LAL PATEL S/D/W/Thru:- SHRI RAMSAJEEVAN PATEL
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

18 PARMESH KUMAR VERMA S/D/W/Thru:- SHRI RAMAVTAR VERMA
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

19 AWADESH PRASAD MISHRA S/D/W/Thru:- SHRI RAMSUMIRAN MISHRA
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

20 CHABILAL PRASAD PANDEY S/D/W/Thru:- SHRI MAHAVEER PRASAD
PANDEY
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

21 TEJBHAN PATEL S/D/W/Thru:- SHRI YAGRASHARAN PATEL
ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT
ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI
(M.P.) , Sidhi , MADHYA PRADESH

22 GANPATI PRASAD PATEL S/D/W/Thru:- SHRI BRIJVASI PRASAD PATEL
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

23 SANTMUNI PATEL S/D/W/Thru:- SHRI VINDHESHRI PATEL
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

24 ASHOK KUMAR PANDEY S/D/W/Thru:- SHRI RAMSALONE PANDEY
TIMEKEEPER (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

25 ROHANI PRASAD TIWARI S/D/W/Thru:- SHRI JAMUNA PRASAD TIWARI
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

26 RAJESH SINGH S/D/W/Thru:- SHRI LAL PRAAP SINGH
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

27 GANGA PRASAD SHARMA S/D/W/Thru:- SHRI TRIVENI PRASAD DWIVEDI
ASSISTANT PUMP OPERATOR (PERMANENT LABOUR) PHE DEPARTMENT,
SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

28 VIRENDRA KUMAR DWIVEDI S/D/W/Thru:- SHRI SURYABHAN DWIVEDI
PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER
PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

29 VRINDAVAN GUPTA S/D/W/Thru:- SHRI RAM GULAM GUPTA
LINEMAN (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,
MADHYA PRADESH

30 MITHAI LAL PATEL S/D/W/Thru:- SHRI RAMSIYA PATEL
CHOWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE
DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi ,

MADHYA PRADESH

31 HARIHAR PRASAD PATEL S/D/W/Thru:- SHRI RADHE PRASAD PATEL COWKIDAR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

32 TEJBHAN SINGH PATEL S/D/W/Thru:- SHRI JAIVANDAN SINGH PATEL PUMP OPERATOR (PERMANENT LABOUR) IN O/O ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

33 CHOTELAL GUPTA S/D/W/Thru:- SHRI MURLIDHAR GUPTA RETIRED ASSISTANT PUMP OPERATOR R/O VILLAGE VADOKHAR, TEHSIL CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

34 ASHOK KUMAR DWIVEDI S/D/W/Thru:- SHRI GANGA PRASAD DWIVEDI RETIRED ASSISTANT PUMP OPERATOR, ASSISTANT ENGINEER PHE DEPARTMENT, SUB DIVISION CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

35 UMASHANKAR MISHRA S/D/W/Thru:- SHRI KAMLA PRASAD MISHRA RETIRED HELPER R/O VILLAGE SHIRAJPUR, TEHSIL RAMPUR NAIKIN, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

36 NAND KUMAR GUPTA S/D/W/Thru:- SHRI RAMGOPAL GUPTA RETIRED PUMP OPERATOR R/O VILLAGE VADOKHAR, TEHSIL CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

37 MARKANDAY PRASAD SHUKLA S/D/W/Thru:- SHRI AWADHSHARAN SHUKLA RETIRED PUMP OPERATOR R/O WARD NO. 22 KORHA SIDHI, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

38 RAMAGOVIND PANDEY S/D/W/Thru:- SHRI JAGANNATH PRASAD PANDEY RETIRED PUMP OPERATOR R/O VILLAGE BARSETA, PSOT BARSETA, DISTRICT REWA (M.P.) , Rewa , MADHYA PRADESH

39 CHHOTI PATEL S/D/W/Thru:- LATE SHRI GANESH PRASAD PATEL HOUSEWIFE R/O VILLAGE HARDIHA (KOTHAR), PO HURHAT, TEHSIL CHURHAT, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

40 PADAMDHAR MISHRA S/D/W/Thru:- SHRI RAMKRIPAL MISHRA RETIRED PUMP OPERATOR R/O VILLAGE AND POST MAURA, TEHSIL RAMPUR NAIKIN, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

41 SHANKAR DAYAL PANDEY S/D/W/Thru:- SHRI AMBIKA PRASAD PANDEY RETIRED PUMP OPERATOR R/O VILLAGE AMARPUR, POST BADKHEDA, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH

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

2 ENGINEER IN CHIEF PUBLIC HEALTH ENGINEERING DEPARTMENT, JAL
BHAVAN

Respondent(s)

Petitioner Advocate(s)	BAN GANGA, DISTRICT BHOPAL (M.P.) , Bhopal , MADHYA PRADESH		
	3 CHIEF ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT JABALPUR ZONE, JABALPUR (M.P.) , Jabalpur , MADHYA PRADESH		
	4 EXECUTIVE ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT SIDHI DIVISION, DISTRICT SIDHI (M.P.) , Sidhi , MADHYA PRADESH		
	ASHOK KUMAR GUPTA-119/1998		
	NEELIMA GUPTA-1269/2002		
Respondent. Advocate(s)	ADVOCATE GENERAL[R-1]-7777/2014		
	ADVOCATE GENERAL[R-2]-7777/2014		
	ADVOCATE GENERAL[R-3]-7777/2014		
	ADVOCATE GENERAL[R-4]-7777/2014		
Caveat No.			
District	SIDHI		
U/Section	II		

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 11th OF JANUARY, 2024

WRIT PETITION No. 6277 of 2023

BETWEEN:-

1. GANGA PRASAD DUBEY S/O SHRI SUMESHWAR PRASAD DWIVEDI, AGED ABOUT 61 YEARS, OCCUPATION: ASSISTANT PUMP OPERATOR IN THE OFFICE OF ASSISTANT ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT CHURHAT SUBDIVISION CHURHAT DISTRICT SIDHI (MADHYA PRADESH)
2. GANPATI PRASAD PATEL S/O SHRI BRIJWASI PRASAD PATEL, AGED ABOUT 60 YEARS, OCCUPATION: PUMP OPERATOR IN THE OFFICE OF ASSISTANT ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT CHURHAT SUB DIVISION CHURHAT DISTRICT SIDHI (MADHYA PRADESH)
3. TEJBHAN PATEL S/O SHRI YAGYASHARAN PATEL, AGED ABOUT 59 YEARS, OCCUPATION: ASSISTANT PUMP OPERATOR IN THE OFFICE OF ASSISTANT ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT CHURHAT SUB DIVISION CHURHAT DISTRICT SIDHI (MADHYA PRADESH)
4. UGRASEN VERMA S/O SHRI RAM GOPAL VERMA, AGED ABOUT 60 YEARS, OCCUPATION: PUMP OPERATOR IN THE OFFICE OF ASSISTANT ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT CHURHAT SUB DIVISION CHURHAT DISTRICT SIDHI (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY SHRI ADITYA VEER SINGH - ADVOCATE FOR THE PETITIONERS)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY PUBLIC HEALTH



ENGINEERING DEPARTMENT VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)

2. THE ENGINEER IN CHIEF PUBLIC HEALTH
ENGINEERING DEPARTMENT MADHYA PRADESH
JAL BHAWAN VAN GANGA BHOPAL (MADHYA
PRADESH)
3. THE CHIEF ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT JABALPUR ZONE
JABALPUR DISTRICT JABALPUR (MADHYA
PRADESH)
4. THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DEPARTMENT SIDHI DIVISION
SIDHI DISTRICT SIDHI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARNAV TIWARI - PANEL LAWYER FOR THE STATE)

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

ORDER

Petitioners only prayer is that since they were given benefit of permanent classification vide order dated 03.01.1998, thereafter present set of petitioners were not given benefit of minimum of the regular pay scale from the date of the award/order.

It is submitted that since petitioners are permanently classified employees, they are entitled to benefit of minimum pay scales as have been revised from time to time in the light of the law laid down by Hon'ble Supreme Court in the case of **Ram Naresh Rawat Vs Ashwini Ray and Others, (2017) 3 SCC 436.**

Accordingly, this petition can be disposed of with a direction to the respondents to extend them the benefit of minimum wages of the post against which they were classified as permanent from the date of their classification as have been revised from time to time within a period of ninety days from the date

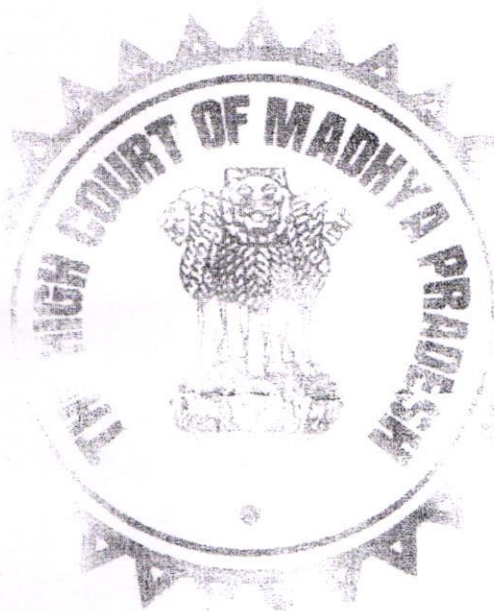
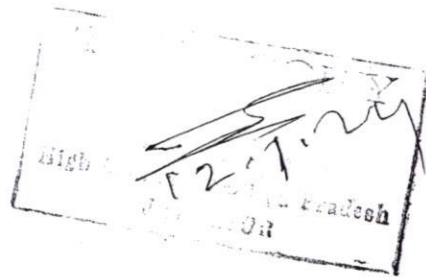
of receipt of certified copy of the order being passed today.

In above terms, this petition is disposed of.

Certified copy as per rules.

(VIVEK AGARWAL)
JUDGE

MTK



Application received on	Applicant told to appear on	Applicant appeared on	Application (with or without further correct particulars) sent to Record Keeper / Dealing Assistant on	Application (with record or without record, and for further or correct particulars, if any required) received from the Record Keeper / Dealing Assistant on	Applicant given notice for further or correct particulars on	Applicant given notice for further funds on	Notice in Sr.No. (6) or (7) complied with on	Copy ready on	Copy delivered on	Court- fee realized
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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 PRASAD S/O LAXMAN KHAN, AGED ABOUT 60
YEARS, OCCUPATION: GRAUDED ABOUT
P.H.E. OFFICE SEHORE DIVISION (MADHYA
PRADESH)
6. SMT. BHAGYAM DEVI 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 CHHTAR SINGH AGED
ABOUT 59 YEARS, PHE SUB DIVISION
NASRULLAGANJ, DIVISION AND DISTRICT
SEHORE (MADHYA PRADESH)
10. OMPRAKASH SHARMA S/O DAYASHANKAR
SHARMA AGED ABOUT 49 YEARS, PHE SUB
DIVISION AASTA DISTRICT SEHORE
(MADHYA PRADESH)

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

SHRI TENDRA SHRI AVA, PANEL FOR STATE
This petition is filed for hearing 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

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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 exceeding three years prior to the date of filing of the writ petition.

Accordingly, the 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

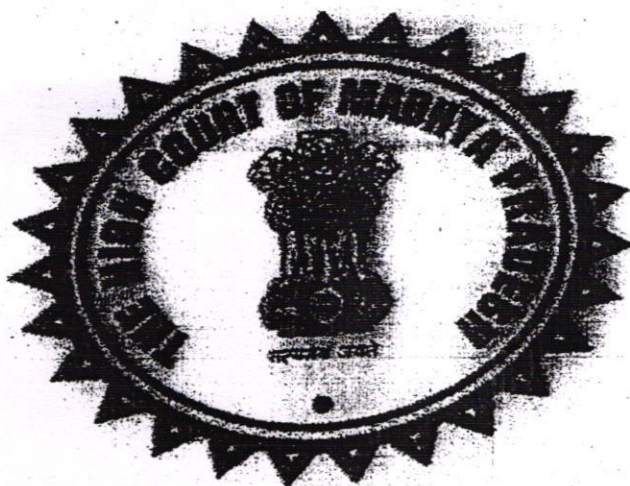
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writ petition i.e. three years ⁴ prior to 1.4.2022 in the light of the law laid down by the Supreme Court in the case of **M.R. Gupta Versus Union of India and Others (supra)**.

In above terms, this writ petition is disposed of.

(VIVEK AGARWAL)
JUDGE

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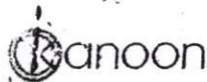
Annex P/4



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

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Cites 3 docs

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

Iasmukhbhai 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

ATTORNEY

ADROITE

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

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MENT 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.

The appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. 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 No. 2018 (N.R.S.N. 6447) equivalent to 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 reconsideration 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 the purpose.

The 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 having heard 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 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 his 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 would 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 whole 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 permanent 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 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. vs. State of Madhya Pradesh, [1989] Supp. 1 SCR 43. That decision has no application in the present 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 appellant's claim have to be examined and the only point concluded by this decision is the one decided here. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on the merits 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 Dhyaneswar 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....."

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.



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

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

August 13, 2008.

State Of M.P. & Ors vs Yogendra Shrivastava on 7 October, 2009

Supreme Court of India

State Of M.P. & Ors vs Yogendra Shrivastava on 7 October, 2009

Author: R.V.Raveendran

Bench: R.V. Raveendran, B. Sudershan Reddy

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3156 OF 2007

State of Madhya Pradesh & Ors.

Appellants

Vs.

Yogendra Shrivastava
Respondent

WITH

Civil Appeal Nos.3157, 3158, 3159, 3160, 3161, 3162,
3163, 3164, 3165, 3166, 3167 of 2007

AND

Civil Appeal Nos.6043, 6044, 6045, 6046, 6047, 6076 of
2007

Civil Appeal Nos. 6895, 6896 and 6897 of 2009 (arising
from SLP(C) Nos.12549 of 2004), SLP(C) No.2039 of 2005
and SLP(C) No.2040 of 2005).

O R D E R

R.V.RAVEENDRAN, J.

Delay condoned and leave granted in the SLPs. The question involved in these appeals filed by the State of Madhya Pradesh, relates to the quantum of Non- Practicing Allowance ('NPA' for short) payable to certain categories of Medical Officers belonging to the State Insurance service.

2. The Madhya Pradesh Employees State Insurance Service (Gazetted) Recruitment Rules, 1981 (in short 'the Rules') framed by the State Government came into force in the year 1982. Rule (5) of the Rules provides that classification of the service, the scales of pay attached thereto and the number of posts included in the service shall be in accordance with the provisions contained in Schedule I thereto. The scales of pay and NPA payable to different categories of Medical Officers, other than the

Director of the Service, are extracted below from Schedule I to the Rules:

S l.N	Name of the Posts included in the service	Scale of pay
0.		
2.	Dy. Director	Rs.680-40-800-50-1000-
3.	Superintendent, ESI Hospital	EB-50-1150 + NPA @
4.	Specialist, ESI Hospital	25% of pay
5. Supervisory Insurance Medical Officer		
6. Insurance Medical Officer (Class I) Rs.500-30-680-40-800-		
EB-50-1150 + NPA @ 25% of pay		
7. Insurance Medical Officer/Assistant Rs.425-25-500-30-680-		
	Surgeon	EB-40-800-50-900 + Rs.100 pm as ESI Special Allowance + NPA @ 25% of pay

Non-Practising Allowance is paid to Medical Officers

when private practice by medical officers was prohibited and abolished.

3. Even though the rules specified that the aforesaid categories of Medical Officers were entitled to NPA linked to their pay (that is 25% of the basic pay), the letters of appointment issued to them specified that the NPA payable to them would be a fixed lump sum approximately equal to 25% of the initial (minimum) pay in the pay scale applicable to them, (as contrasted from a variable linked to the quantum of their pay provided under the Rules). As a result, whenever there were increases in their pay on account of annual increments, NPA was not correspondingly increased so as to maintain it at 25% of basic pay, but continued to be paid at the fixed lump sum rate. The state Government was however revising the fixed lump sum NPA, whenever there was revisions in the pay scales, by issuing executive orders. The respondents in these appeals as also several other medical officers brought this anomaly to the notice of the department and requested that the NPA should be paid to them at 25% of the pay in accordance with the rules, as was done in the case of Medical Officers working in the Public Health and Medical Education departments.

4. As their request was not acceded, the respondents approached the Madhya Pradesh Administrative Tribunal seeking a direction for payment of NPA in accordance with the Rules. They contended that whenever there was an increase in their basic pay, either on account of annual increments in the pay scale or on account of revision of pay scales, there should be corresponding automatic increase in the NPA in terms of the Rules which required payment of "NPA @ 25% of the pay". The Tribunal accepted the contention and allowed their applications and directed the appellant to calculate and pay NPA at the rate of 25% of the pay from the respective dates of their joining service. The State Government filed writ petitions challenging the orders of the Tribunal. The High Court dismissed those petitions, upholding the orders of the Tribunal. The said orders of the High Court are under challenge in these appeals by special leave.

5. It should be noted here that as there was no stay, the state government instructed the Director of Employees State Insurance Services, to give effect to the orders of the Tribunal affirmed by the High Court and pay the respondents NPA @ 25% of their salary from the respective dates of their appointment, subject to the final decision of this Court, with a condition that if the matters were decided in favour of the appellants, recovery of the excess payment would be made.

6. The appellant State also amended the Madhya Pradesh Employees State Insurance Service (Gazetted) Rules 1981 (by notification dated 20.3.2003) and substituted the words "NPA at such rate as may be fixed by state government from time to time by orders issued in this behalf" in place of the words "NPA at 25% of pay" wherever they occurred in the Rules, with retrospective effect from 14.10.1982.

7. In this background, on the contentions raised by the parties, the following three questions arise for our consideration:

(i) Whether the rates of NPA specified in the letters of appointment and the orders of the department, can prevail over the provisions relating to NPA in the Rules ?

(ii) Whether the retrospective amendment of the Rules by notification dated 20.5.2003, can deny the benefit which had accrued under the unamended Rules?

(iii) Even if the respondents are held to be entitled to higher NPA as contended by them and as found by the Tribunal and the High Court, whether the financial benefit could be extended to them beyond three years prior to filing of the original applications before the Tribunal.

Re : Question (i)

8. The appellants contend that the Rules do not contain any specific provision for payment of non-practising allowance. They point out that schedule I to the Rules merely refers to "plus NPA @ 25% of the pay" in the column relating to the pay scale, without defining the term 'pay'. It is submitted that when the term 'pay' is not defined, it can refer to the minimum or initial pay in the pay-scale, or to each stage in the pay-scale commencing from the initial pay and ending with the maximum pay in the pay-scale. It is contended that the State Government had proceeded on the basis that "25% of

the pay" referred to the '25% of initial pay' and had fixed the NPA keeping the said figure in view, by means of executive orders. It is submitted that fixing of a lump sum as NPA, approximately equal to 25% of the initial pay in the applicable pay-scale, by executive orders issued by the Government from time to time, was therefore in consonance with the Rules. Alternatively, it was contended that incidental matters relating to number of posts, pay scales and NPA referred to the Schedule to the Rules, were subject to periodical revision/changes and it was common practice to make such revisions/changes, by executive orders instead of adopting the process of amending the rules every time, and that such executive orders were binding on the employees and were never challenged.

9. The Rules made under Article 309 of the Constitution clearly provided that the concerned employees (medical officers) were entitled to NPA @ 25% of pay, in addition to the pay in the pay scale. In fact, it formed part of the pay scale. Consequently, whatever was the basic pay, 25% thereof had to be paid as NPA. Whenever the benefit of increments in the pay- scale, or revision in pay scale were extended, NPA also got correspondingly increased so that NPA always remained as one fourth of the basic pay. This is the interpretation that has been put forth by the Tribunal and upheld by the High Court and we find no reason to interfere with the same.

10. The contention that the executive orders issued from time to time or the appointment letters issued in accordance with such executive orders will prevail over the Rules cannot be accepted. When there is conflict between the Statutory Rules and executive orders, the statutory Rules will prevail (See : K. Dayananda Lal vs. State of Kerala - 1996 (9) SCC 728, T. N. Housing Board vs. N. Balasubramaniam - 2004 (6) SCC 85, State of Karnataka vs. K.G.S.D. Canteen Employees Welfare Association - 2006 (1) SCC 567 and Punjab National Bank vs. Astamija Dash - 2008 (14) SCC 370). Executive orders cannot be made or given effect in violation of what is mandated by the Rules. If appointment letters provides for payment of NPA which is not in consonance with Rules, they can be corrected or set right by Tribunals/courts.

Re : Question No.(ii)

11. The Rules were retrospectively amended on 20.5.2003 substituting the words "NPA at such rates as may be fixed by the state government from time to time by order issued in this behalf" in place of "NPA @ 25% of pay" in the Rules. It was contended that as the Rules were amended in the year 2003 with retrospective effect from 14.10.1982, it should be deemed that the NPA payable was as notified by the government from time to time and not '25% of the pay'.

12. It is no doubt true that Rules under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect. [See : N.C. Singhal vs. Director General, Armed Forces Medical Services - 1972 (4) SCC 765; K. C. Arora vs. State of Haryana - 1984 (3) SCC 281; and T.R. Kapoor vs. State of Haryana - 1986 Supp. SCC 584]. Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay, having accrued to the respondents under the unamended Rules, it follows that respondents-employees will be entitled to Non-Practising

Allowance @ 25% of their pay upto 20.5.2003. Re : Question No.(iii)

13. The Tribunal directed payment of the difference in NPA to respondents from their respective dates of appointment. The respondents were appointed from 1982 onwards. The respondents had approached the Tribunal long after their appointment, that is, in 1998 or thereafter.

14. The appellants contended that the claims were therefore barred by limitation. It was pointed out that the respondents were paid NPA at a fixed rate as stipulated in the appointment orders and NPA was increased only when it was revised by Government orders from time to time; that respondents accepted such NPA without protest; and that therefore, they cannot, after periods varying from 5 to 15 years, challenge the fixation of NPA or contend that they are entitled to NPA at a higher rate, that is 25% of their pay. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628, and Union of India vs. Tarsem Singh 2008 (8) SCC 648]
Conclusion :

15. The appeals are allowed in part as follows:

(i) We uphold the decision of the Tribunal, affirmed by the High Court that respondents are entitled to 25% of their pay, as NPA.

(ii) The respondents will be entitled to NPA @ '25% of pay' only upto 20.5.2003. Thereafter, the amended Rules will apply.

(iii) In so far as arrears, the respondents are entitled to recover the difference in NPA only in regard to the salary which accrued due during the three years prior to the date of filing of the original applications by the respondents before the Tribunal and not from the date of their appointments.

(iv) As a consequence, if the appellants, in pursuance of the orders of the Tribunal/High Court, had paid the difference in NPA, for any period beyond three years before the date of the respective original applications, they will be at liberty to recover the same from the respective respondents in 24 monthly instalments.

_____ J [R. V. Raveendran] _____ J [B. Sudershan
Reddy] New Delhi;

October 07, 2009.

Asger Ibrahim Amin vs Life Insurance Corp. Of India on 12 October, 2015

Supreme Court of India

Asger Ibrahim Amin vs Life Insurance Corp. Of India on 12 October, 2015

Bench: Vikramajit Sen, Abhay Manohar Sapre

REPORTAI

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10251 OF 2014

ASGER IBRAHIM AMIN

.. APPELLANT

VERSUS

LIFE INSURANCE CORPORATION OF INDIA

.. RESPONDENT

J U D G M E N T

VIKRAMAJIT SEN, J.

1 The question which falls for consideration is whether the Appellant is entitled to claim pension even though he resigned from service of his own volition and, if so, whether his claim on this count had become barred by limitation or laches.

2 The Appellant joined the services of the Respondent Corporation on 30.6.1967 on the post of Assistant Administrative Officer (Chartered Accountant) at the age of twenty seven. He worked for 23 years and 7 months in the Corporation before tendering his resignation on 28.1.1991, owing to "family circumstances and indifferent health", presumably having crossed fifty years in age. The request of the Appellant for waiver of the stipulated three months notice was favourably considered by the Corporation vide letter dated 28.2.1991, and the Appellant was allowed to resign from the post of Deputy General Manager (Accounts), which he was holding at that time. We shall again presume that the reasons that he had ascribed for his retirement, viz. family problems and failing health, were found to be legitimate by the Respondent, otherwise the waiver ought not to have been given. Thereafter, the Central Government in exercise of power conferred under Section 48 of the Life Insurance Corporation Act, 1956 had notified the LIC of India (Staff) Regulations, 1960 and thereafter the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (hereinafter referred to as "Pension Rules") which, though notified on 28.6.1995, were given retrospective effect from 1.11.1993. The Pension Rules provide, inter alia, that resignation from service would lead to forfeiture of the benefits of the entire service including eligibility for pension. 3 On 8.8.1995, that is post the promulgation by the Respondent of the Pension Rules, the Appellant enquired from the Respondent whether he was entitled to pension under the Pension Rules, which has been understood by the Respondent as a representation for pension; the Respondent replied that the request of the Appellant cannot be acceded to. The Appellant took the matter no further but has averred that in 2000, prompted by news in a Daily and Judgments of a High Court and a Tribunal, he requested the Respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the Respondent, in response to which the Respondent reiterated its stand that the Appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the Appellant filed a Special Civil Application on 29.3.2012 before the High Court, which was dismissed by the Single Judge vide Judgment dated 5.10.2012. The LPA of the Appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide Judgment dated 1.3.2013, against which the Appellant has approached

this Court.

4 As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in Union of India v. Tarsem Singh, (2008) 8 SCC 648 that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held:

7. 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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.

(emphasis is ours) We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.

5 The second issue which confronts us is whether the termination of service of the Appellant remains unalterably in the nature of resignation, with the consequence of disentitling him from availing of or migrating/mutating the pension scheme or whether it instead be viewed as a voluntary retirement or whether it requires to be regarded so in order to bestow this benefit on the Appellant; who had 'resigned' after reaching the age of fifty and after serving the LIC for over twenty three years. The Appellant resigned from service under Regulation 18 of LIC of India (Staff) Regulations, 1960, which along with the other provisions of relevance is reproduced for facility of reference -

SECTION 3 – TERMINATION Determination of Service:

18. (1) An employee, other than an employee on probation or an employee appointed on a temporary basis, shall not leave or discontinue his service in the Corporation without first giving notice in writing to the competent authority of his intention to leave or discontinue the service. The period of

notice required shall be-

- (a) three months in the case of an employee belonging to Class I;
- (b) one month in the case of other employees.

Provided that such notice may be waived in part or in full by the competent authority at its discretion. In case of breach by an employee of the provisions of the sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him.

Superannuation and Retirement:

19(1) xx (2) An employee belonging to Class I or Class II appointed to the service of the Corporation on or after 1st September, 1956, shall retire on completion of 60 years of age, but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 50 years of age or at any time thereafter on giving him three months' notice or salary in lieu thereof.

The following Regulations, on which learned Senior Counsel for the LIC has placed reliance, came to be introduced on 16.2.1996, that is after the Appellant had 'resigned' from service. We have called for and perused this Notification, and as we expected, these provisions apply retrospectively with effect from 1.11.1993. These Regulations ordain, inter alia, that an employee may be permitted to retire (a) on completion of the age of 55 and

(b) after completing 25 years in service. In other words, the Corporation has the power to compulsory retire an employee who has attained the age of 50 years if in its opinion such decision is in the interests of the Corporation; and the employee may seek permission to retire upon completion of 55 years of age and after rendering 25 years of service. This very position finds reiteration in Rule 31 of the Pension Rules under the epithet 'voluntary retirement', which pandect appears to have been available from the inception i.e. 1.11.1993.

(2A) (a) Notwithstanding what is stated in sub-rules (1) and (2) above, an employee may be permitted to retire at any time on completion of the age 55 after giving three months notice in writing to the appointing authority of his intention to retire.

(b) (i) Notwithstanding the provisions of Clause (a), an employee governed by the Life Insurance Corporation of India (Employees) Pension Rules 1995 may be permitted to retire at any time after he has completed twenty years of qualifying service, by giving notice of not less than ninety days in writing to the appointing authority.

Provided that this sub-clause shall not apply to an employee who is on deputation unless after having been transferred or having returned to India, he has resumed charge on the post in India and has served for a period of not less than one year.

Provided further that this sub-clause shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(ii) The notice of voluntary retirement given under sub-clause (i) of clause (b) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.” 6 As we have already recounted, the Appellant received a waiver of the requirement of giving three months prior notice of his resolve to “discontinue his service in the Corporation”, bestowing legitimacy to the reasons that compelled him to do so. It also brings to the fore that the 1960 Staff Regulations did not provide for voluntary retirement or VRS as has become commonplace today. This Court has clarified and highlighted that ‘resignation’ and ‘retirement’ have disparate connotations; that an employee can ‘resign’ at any time but, in contradistinction, can ‘retire’ only on completion of the prescribed period of qualifying service and in consonance with extant Rules and Regulations.

7 We shall now consider the Pension Rules of 1995. Rule 3 of Chapter II thereof, provides that the Rules are applicable to employees (1) who were in the service of the Corporation on or after 1.1.1986 and had retired before 1.11. 1993 i.e. the notified date, or (2) who retired after 1.11.1993; or (3) who were in the service before the notified date and continued to be in service on or after the notified date; or (4) who were in the service on or after 1.1.1986 but had retired on or after 1.11.1993 and before the notified date. What is discernible from these dates is that the Pension Rules of 1995 have included two classes of beneficiaries into one homogenous class, to wit, the employees who had retired before the notified date and those who were to retire after the notified date. In our opinion, the advantage of these beneficent Rules should be extended even to the Appellant who was similarly placed as the retirees mentioned in Rule 3 but for the fact that he had ‘resigned’ rather than retired. The two provisions caught in the crossfire are Rule 2(s), which defines “retirement” and Rule 23, which deals with the “forfeiture of service”: 2(s) “retirement” means,- (i) retirement in accordance with the provisions contained in sub-regulation (1) or sub-regulation (2) or sub-regulation (3) of regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985 made under the Act;

(ii) voluntary retirement in accordance with the provisions contained in rule 31 of these rules. (emphasis added)

23. Forfeiture of service - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

Voluntary retirement, noted in the sub-Rule (ii) of Rule 2(s), has been defined in Rule 31, and it reads as follows:

55

31. Pension on voluntary retirement - (1) At any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than ninety days, in writing, to the appointing authority, retire from service:

Provided that this sub-rule shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-rule shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

(b) on receipt of a request under clause(a), the appointing authority may, subject to the provisions of sub-rule (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee, who has elected to retire under this rule and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this rule shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of retirement.

(6) The pension of an employee retiring under this rule shall be based on the average emoluments as defined under clause(d) of rule 2 of these rules and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating

his pension.

It seems obvious to us that the Appellant's case does not fall within the postulation of Rule 23 as the last four categories or genres or types of cessation of services are in character punitive; and the first envisages those resignations where the right to pension has not been earned by that time or where it is without the permission of the Corporation. 8 The Respondent Corporation has vehemently argued that the termination of services is under Regulation 18 (supra) of the LIC (Staff) Regulations, 1960 and is not covered by the Pension Rules of 1995. Respondent Corporation has controverted the plea of the Appellant that at the relevant date and time, viz. 28.1.1991 there was no alternative for him except to tender his resignation, pointing out that he could not have sought voluntary retirement under Regulation 19(2A) of LIC of India (Staff) Regulations, 1960. If that be so, the Respondent being a model employer could and should have extended the advantage of these Regulations to the Appellant thereby safeguarding his pension entitlement. However, we find no substance in the argument of the Respondent since Regulation 19(2A) was, in fact, notified in the Gazette of India on 16.2.1996, that is after the pension scheme came into existence with effect from 1.11.1993. Otherwise there would have been no conceivable reason for the Appellant not to have taken advantage of this provision which would have protected his pensionary rights.

9 We also record that the provisions covered by the definition of "retirement", which do not entail forfeiture of service, are sub-regulation (1), sub-regulation (2), and sub-regulation (3) of Regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and Rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985. None of these provisions provides for voluntary retirement like Rule 31 of the Pension Rules nor does the definition of "retirement" make any mention of aforementioned Regulation 19(2A).

10 The facts of the case disclose that the Appellant has worked for over twenty years and had tendered his resignation in accordance with the provision of Regulation 18 of LIC of India (Staff) Regulations, 1960, which, as is apparent from its reading, does not dissimulate between the termination of service by way of resignation on the one hand and voluntary retirement on the other, or distinguish one from the other. Significantly, there was no provision for voluntary retirement at the relevant time, and it was for this reason that the Pension Rules of 1995 specifically provided for it under Rule 31. In this backdrop of facts, we need not dwell much on the issue because the case of Sheelkumar Jain v. New India Assurance Co. Ltd., (2011) 12 SCC 197 is on all fours of this case. 11 In Sheelkumar, the Appellant resigned from the services of the Respondent Company after serving for over 20 years on 16.12.1991. His resignation was offered and granted under Clause 5 of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976. Thereafter, the Central Government formulated General Insurance (Employees') Pension Scheme, 1995 with retrospective effect from 1.11.1993. Sheelkumar applied for pension under this Scheme, which was declined on the ground that resignation from service would entail forfeiture of service under Clause 22 of the General Insurance (Employees') Pension Scheme, 1995. The Appellant moved the High Court challenging the rejection of his claim. His writ petition as well as the writ appeal was dismissed by the High Court. The Appellant then moved this Court, whereby we noted that Clause 5 of the Scheme of 1976 did not mention resignation nor was the

Appellant made aware of the distinction between resignation and voluntary retirement; that this distinction was a product of the General Insurance (Employees') Pension Scheme of 1995. This Court observed:

20. Sub-para (1) of Para 5 does not state that the termination of service pursuant to the notice given by an officer or a person of the Development Staff to leave or discontinue his service amounts to "resignation" nor does it state that such termination of service of an officer or a person of the Development Staff on his serving notice in writing to leave or discontinue in service amounts to "voluntary retirement". Sub-para (1) of Para 5 does not also make a distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service has to serve a notice of three months to the appointing authority.

21. We also notice that sub-para (1) of Para 5 does not require that the appointing authority must accept the request of an officer or a person of the Development Staff to leave or discontinue his service but in the facts of the present case, the request of the appellant to relieve him from his service after three months' notice was accepted by the competent authority and such acceptance was conveyed by the letter dated 28-10-1991 of the Assistant Administrative Officer, Indore.

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23. The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General Manager of Respondent 1 Company. Hence, when the appellant served his letter dated 16-9-1991 to the General Manager of Respondent 1 Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively.

24. Both the appellant and Respondent 1 have acted in accordance with the provisions of sub-para (1) of Para 5 of the 1976 Scheme at the time of termination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the termination of service of the appellant under sub-para (1) of Para 5 of the 1976 Scheme amounts to resignation in terms of Para 22 of the 1995 Pension Scheme or amounts to voluntary retirement in terms of Para 30 of the 1995 Pension Scheme.

25. Para 22 of the 1995 Pension Scheme states that the resignation of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently he shall not qualify for pensionary benefits, but does not define the term "resignation". Under sub-para (1) of Para 30 of the 1995 Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since "voluntary retirement" unlike

"resignation" does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have "resigned" from service.

26. In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word "resign".

12 What is unmistakably evident in the case at hand is that the Appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months notice in writing, and that the said notice was accepted by the Respondent Corporation and the Appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. In Sheelkumar, this Court was alive to the factum that each case calls for scrutiny on its own merits, but that such scrutiny should not be detached from the purpose and objective of the concerned statute. It thus observed:

30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.

31. The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority.

13 The Appellant ought not to be deprived of pension benefits merely because he styled his termination of services as "resignation" or because there was no provision to retire voluntarily at that time. The commendable objective of the Pension Rule is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age, and if there are some inconsistencies between the statutory provisions and the avowed objective of the statute so as to discriminate between the beneficiaries within the class, the end of justice obligates us to palliate the differences between the two and reconcile them as far as possible. We would be failing in our duty, if we go by the letter and not by the laudatory spirit of statutory provisions and the fundamental rights guaranteed under Article 14 of the Constitution of India.

14 Reserve Bank of India v. Cecil Dennis Solomon, (2004) 9 SCC 461 relied upon by the Respondent, although distinguishable on facts, has ventured to distinguish "voluntary retirement" from "resignation" in the following terms:

10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal (1989 Supp (2) SCC 175) on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra ((1978) 2 SCC 301) it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.

(emphasis is ours) The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the Appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or enabling voluntary retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months notice period was granted by the Respondent Corporation. The State being a model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it. 15 The cases of Shyam Babu Verma v. Union of India, (1994) 2 SCC 521; State of M.P. v. Yogendra Shrivastava, (2010) 12 SCC 538; M.R. Prabhakar v. Canara Bank, (2012) 9 SCC 671; National Insurance Co. Ltd. v. Kirpal Singh, (2014) 5 SCC 189; UCO Bank v. Sanwar Mal, (2004) 4 SCC 412 relied upon by the parties are distinguishable on facts from the present case. 16 We thus hold that the termination of services of the Appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the Pension Rules of 1995. The Appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the Provident Fund along with interest accrued thereon as provided in the Pension Rules of 1995. Considering the huge delay, not explained by proper reasons, on part of the Appellant in approaching the Court, we limit the benefits of arrears of pension payable to the Appellant to three years preceding the date of the petition filed before the High Court. These arrears of pension should be paid to the Appellant in one instalment within four weeks from the date of refund of the entire amount payable by the Appellant in accordance of the Pension Rules of 1995. In the alternative, the Appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrear is more

than the amount of refund required, then the remaining amount shall be paid within two weeks from the date of such request made by the Appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted.

17 The impugned Judgments of the High Court are set aside and the Appeal stands allowed in the terms above. However, parties shall bear their respective costs.

.....J (VIKRAMAJIT SEN)J (ABHAY
MANOHAR SAPRE) New Delhi, October 12, 2015.