

कार्यालय प्रमुख अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग,
जल भवन बाणगंगा भोपाल

क्रमांक 16123/प्र.अ./विधि-

/लो.स्वा.यां.वि./2023

भोपाल, दिनांक

29/12/2023

प्रति,

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

महत्वपूर्ण

विषय:- कार्यभारित स्थापना के सेवारत/सेवानिवृत्त कर्मचारियों द्वारा कमोन्नत/समयमान वेतनमान का लाभ प्राप्त करने हेतु दायर किये जाने न्यायालयीन प्रकरणों में विलंब तथा अवधि बीत जाने के आधार पर तथा लिमिटेशन एक्ट के तहत माननीय उच्चतम न्यायालय द्वारा पारित निर्णयों के आधार पर प्रतिरक्षण करने विषयक।

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उपरोक्त विषयान्तर्गत लेख है कि विभाग के संज्ञान में ऐसे अनेको न्यायालयीन प्रकरण आये हैं जिनमें सेवारत/सेवानिवृत्त कार्यभारित स्थापना के कर्मचारियों द्वारा म.प्र.शासन सामान्य प्रशासन विभाग (वेतन आयोग प्रकोष्ठ) मंत्रालय भोपाल के परिपत्र क्रमांक एफ 5-4/1/वेआप्र/98 भोपाल दिनांक 27 मार्च 2001/29 मार्च 2001 को आधार बनाकर कार्यभारित वाहन चालकों के समान 12 वर्ष एवं 24 वर्ष की सेवा उपरांत दो कमोन्नत वेतनमान का लाभ चाहा जाता है। इस हेतु "के.एल.असरे" एवं "तेजू लाल यादव" प्रकरणों में माननीय न्यायालयों द्वारा पारित निर्णयों का सहारा लिया जाता है।

इसके अतिरिक्त अनेकों कार्यभारित कर्मचारियों द्वारा माननीय उच्च न्यायालय के समक्ष रिट याचिका दायर कर म.प्र.शासन वित्त विभाग, मंत्रालय भोपाल द्वारा परिपत्र क्रं./एफ 11/1/2008/नियम/चार/भोपाल दिनांक 24 जनवरी 2008 के माध्यम से नियमित कर्मचारियों को दिये गये समयमान वेतनमान के समान ही 10,20 एवं 30 वर्ष की सेवा उपरांत तीन समयमान वेतनमानों की भी मांग की जाती रही है। म.प्र.शासन, वित्त विभाग, वल्लभ भवन, मंत्रालय, भोपाल के आदेश क्र. एफ 11-13/1661/2016/नियम/चार भोपाल दिनांक 21.09.2016 के माध्यम से कार्यभारित स्थापना में कर्मचारियों को उक्त लाभ दिनांक 01 जनवरी 2016 से दिये गये हैं किंतु कर्मचारी इन्हें कट ऑफ डेट के स्थान पर नियमित स्थापना हेतु जारी परिपत्र के आधार पर 10,20 या 30 वर्ष की सेवा अवधि पूर्ण होने के दिनांक से चाह रहे हैं।

अनेक न्यायालयीन प्रकरणों में न्यायालय द्वारा कर्मचारी के पक्ष में निर्णय भी पारित किये गये हैं।

इस कार्यालय द्वारा इस प्रकृति के प्रकरणों का परीक्षण किया गया है तथा यह पाया गया है कि कार्यभारित कर्मचारियों को कमोन्नति और समयमान वेतनमान का लाभ प्रदान करने संबंधी प्रकरण, म.प्र.शासन सामान्य प्रशासन विभाग (वेतन आयोग प्रकोष्ठ) मंत्रालय भोपाल के परिपत्र क्रमांक एफ 5-4/1/वेआप्र/98 भोपाल दिनांक 27 मार्च 2001/29 मार्च 2001 पर आधारित है, जिनमें कार्यभारित स्थापना के अन्य पदों पर कार्यरत कर्मचारियों द्वारा कार्यभारित वाहन चालकों के समान 12 वर्ष एवं 24 वर्ष के उपरांत उक्त परिपत्र के माध्यम से उन्हें दिये गये दो कमोन्नत वेतनमान का लाभ चाहा गया है। यदि उक्त परिपत्र के जारी होने के दिनांक को देखा जावे तो इन प्रकरणों में **Cause Of Action** वर्ष 2001 में ही उत्पन्न हो गया था। कार्यभारित वाहन चालकों के समान लाभ प्राप्त करने के लिये कर्मचारियों द्वारा "के.एल.असरे" (निर्णय वर्ष-2005) एवं तेजूलाल यादव (निर्णय वर्ष-2009) प्रकरण का सहारा लिया गया है। यदि इन प्रकरणों का न्यायालयीन दृष्टांतों एवं परिपत्र दिनांक 27 मार्च 2001/29 मार्च 2001 के आधार पर विश्लेषण किया जावे तो यह पाया जाता है कि :- (i) यदि परिपत्र को आधार बनाया जाये तो करीब 20 वर्षों के उपरांत एवं यदि (ii) न्यायालयीन दृष्टांतों को आधार बनाया जावे तो करीब 12-13 वर्षों के उपरांत रिट याचिकायें दायर की गई हैं, जो कि पूरी तरह से अत्यधिक विलंब से दायर प्रकरणों की श्रेणी में आती हैं।

इसके अतिरिक्त कार्यभारित कर्मचारियों द्वारा नियमित कर्मचारियों के लिये वर्ष 2008 में लागू की गई समयमान योजना (वित्त विभाग का परिपत्र क्रमांक एफ11/1/2008/नियम/चार/भोपाल दिनांक 24 जनवरी 2008) का लाभ भी अपनी रिट याचिकाओं के माध्यम से चाहा गया है। यदि परिपत्र के जारी होने के दिनांक को देखा जाये तो इस तरह के लाभों हेतु भी 12-13 वर्षों के पश्चात रिट याचिकायें दायर की गयी हैं।

इन सभी प्रकरणों का एक महत्वपूर्ण पहलू यह भी है कि वित्त विभाग म.प्र.शासन द्वारा आदेश क्रमांक एफ 11-13/1661/2016/नियम/चार भोपाल दिनांक 21.09.2016 के माध्यम से, वर्ष 2008 में नियमित कर्मचारियों को दिये गये समयमान वेतनमान के लाभ को कार्यभारित कर्मचारियों हेतु लागू कर दिया था। सभी वादी कर्मचारियों को जो दिनांक 01.01.2016 की स्थिति में सेवारत थे, उक्त लाभ दिये जा चुके हैं। कर्मचारियों ने उनके लिये वर्ष 2016 में लागू की गई पॉलिसी का लाभ लेते समय अथवा पॉलिसी लागू करने के दिनांक से, वर्तमान रिट याचिकायें दायर करने के पूर्व तक, उक्त पॉलिसी के विरोध में कोई बात नहीं कही है तथा उक्त पॉलिसी को पूर्णतः स्वीकार किया है। पॉलिसी को स्वीकार करने एवं उसका लाभ लेने के 5-6 वर्षों पश्चात इस तरह के लाभ पूर्व के दिनाकों से प्राप्त करने हेतु रिट याचिकायें दायर करना किसी भी दृष्टि से न्यायसंगत नहीं है।

उपरोक्तानुसार सभी दायर प्रकरण उल्लेखित अत्याधिक विलंब से संबंध रखते हैं, तथा इसी आधार पर खारिज किये जाने योग्य हैं।

यदि इन प्रकरणों को माननीय उच्चतम न्यायालय द्वारा निर्णित "एम.आर.गुप्ता बनाम भारत संघ के अन्य में पारित निर्णय दिनांक 21 अगस्त 1995 [1996 AIR 669]" एवं सिविल अपील क्रमांक 5151-5152 /2008 "भारत संघ एवं अन्य बनाम तरसेम सिंह" में पारित निर्णय

दिनांक 13 अगस्त 2008 (दोनों निर्णयों की छायाप्रतियाँ संलग्न) में उल्लेखित "Continuons Cause of action" के दृष्टिकोण से भी देखा जाये, तो सेवानिवृत्त कर्मचारियों के मामले "Cause of action" के अभाव में खारिज किये जाने योग्य हैं, तथा सेवारत कर्मचारियों को रिट याचिका दायर करने के दिनांक से मात्र 03 वर्ष पूर्ण तक की ही एरियर राशि की पात्रता आती है।

कृपया ध्यान दे कि ये सभी प्रकरण सेवाकाल के दौरान प्राप्त होने वाले त्रुटिपूर्ण वेतन से संबंध रखते हैं। माननीय उच्चतम न्यायालय द्वारा "एम.आर.गुप्ता बनाम भारत संघ के अन्य में पारित निर्णय दिनांक 21 अगस्त 1995 [1996 AIR 669]" एवं सिविल अपील क्रमांक 5151-5152 /2008 "भारत संघ एवं अन्य बनाम तरसेम सिंह" में पारित निर्णयों के माध्यम से त्रुटिपूर्ण वेतन को सुधारने एवं वेतन एरियर राशि पाने हेतु माननीय न्यायालय के समक्ष प्रकरण दायर करने की समय-सीमा एवं एरियर राशि की पात्रता अवधि के संबंध यह अभिनिर्धारित किया गया है:-

- (i) त्रुटिपूर्ण वेतन प्राप्त होने वाले मामलों में "Cause of action" यानि "विवाद का कारण" की समय-सीमा निर्धारित करते हुये कहा गया है कि सेवारत रहते हुए किसी भी समय माननीय न्यायालय के समक्ष त्रुटिपूर्ण वेतन को सुधारने हेतु वाद दायर किया जा सकता है। सेवाकाल समाप्ति उपरांत वाद दायर करने हेतु "Cause of action" उत्पन्न नहीं होता है। अतः सेवाकाल समाप्ति के उपरांत त्रुटिपूर्ण वेतन को सुधारने हेतु वाद दायर नहीं किया जा सकता है।
- (ii) यदि आवेदक का दावा मेरिट के आधार पर सही पाया जाता है तो उसे भविष्य में नियमों के हिसाब से वेतन का भुगतान किया जाना चाहिये तथा इस मामले में पूर्व के समय के वेतन एरियर के भुगतान के मामले में लिमिटेशन का प्रश्न उत्पन्न होगा। दूसरे शब्दों में आवेदक का दावा यदि कोई है जो त्रुटिपूर्ण वेतन प्राप्ति के कारण वेतन एरियर की प्राप्ति से संबंधित है, जिसकी गणना वेतन अंतर की राशि के आधार पर की जाती है तो वह लिमिटेशन एक्ट में दी गई समय-सीमा के अंतर्गत आयेगा और वह एक्ट में प्रावधानित अवधि से अधिक अवधि की एरियर राशि का पात्र नहीं होगा। न्याय दृष्टांतों एवं लिमिटेशन एक्ट 1963 में इस हेतु एरियर राशि की पात्रता अवधि माननीय उच्च न्यायालय के समक्ष प्रथमतः प्रकरण दायर करने से अधिकतम तीन वर्ष पूर्व तक की निर्धारित की गयी है।

यह पाया गया है कि विभाग की ओर से इस प्रकृति के प्रकरणों का विलंब एवं अवधि समाप्त हो जाने के आधार पर प्रतिरक्षण नहीं किये जाने के कारण माननीय न्यायालय द्वारा वर्ष 2013 एवं 2015 में सेवानिवृत्त हुये कर्मचारियों को वर्ष 2022-2023 में दायर की गई रिट याचिकाओं के आधार पर भी इस तरह के लाभ देने के आदेश दिये हैं। ऐसे में इन प्रकरणों में "एम. आर गुप्ता" प्रकरण के अनुसार वर्तमान स्थिति में वेतन पुनरीक्षण एवं तीन वर्ष पूर्व तक की एरियर राशि देना किसी भांति संभव नहीं है।

विभाग के समक्ष विलंब के आधार पर प्रतिरक्षण से संबंधित इस प्रकृति का एक मात्र प्रकरण माननीय उच्च न्यायालय जबलपुर द्वारा निर्णित रिट पिटीशन क्र. 20847/2018 (हरिलाल सेन बनाम म.प्र.शासन) एवं अन्य है जिसमें दिनांक 10.08.2021 को निर्णय (प्रतिलिपी संलग्न) पारित किया गया है।

उक्त प्रकरण में याचिकाकर्ता कर्मचारी द्वारा वर्ष 2013 में सेवानिवृत्ति होने के उपरांत "के.एल.असरे" प्रकरण में पारित निर्णय के आधार पर 12 वर्ष की सेवा उपरांत दो क्रमोन्नत वेतनमान का लाभ प्रदान करने हेतु निवेदन किया गया था किन्तु माननीय न्यायालय द्वारा याचिका दायर करने में किये गये विलंब को देखते हुये कर्मचारी को उक्त लाभ उसके द्वारा प्रथम रिट याचिका दायर करने के दिनांक 25.01.2016 से प्रदान किये गये है। यदि माननीय उच्चतम न्यायालय के न्याय दृष्टांतों के आधार पर प्रकरण का प्रतिरक्षण किया जाता तो प्रकरण में रिट याचिका खारिज होने की संभावना भी उत्पन्न हो सकती थी।

माननीय उच्चतम न्यायालय द्वारा विलंब एवं अवधि समाप्त हो जाने के संबंध में पारित कुछ निर्णयों का उल्लेख निम्नानुसार है :-

(i) The Apex Court in Northern Indian Glass Industries vs. Jaswant Singh & others 2002 Supp(3) SCR 534, wherein the Court cautioned that the High Court cannot ignore the delay and laches in approaching the writ court and there must be satisfactory explanation by the petitioner as how he could not come to the court well in time.

A similar view was reiterated by the Apex Court in Printers (Mysore) Ltd. Vs. M.A. Rasheed & another (2004) 4 SCC 460, wherein it held that the High Court should have dismissed the writ petition on the ground of delay and laches.

(ii) The Apex Court in S.S. Balu vs. State of Kerala (2009) 2 SCC 479 in the following terms:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents.

It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

(iii) The Apex Court in *Karnataka Power Corporation Ltd. vs. K. Thangappan* (2006) 4 SCC 322 held that series of representation cannot extend the period of limitation to condone the laches on the part of the petitioner. The Apex Court, at Paragraph 6, held as follows:

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

(iv) In *G. C. Gupta vs. N.K. Pandey* (1988) 1 SCC 316, the Apex Court held that inordinate delay is not merely a factor for the court to refuse appropriate relief but also a relevant consideration for not unsettling settled things.

(v) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraph 21, held as follows:

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

(vi) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Apex Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(vii) In *Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman*, reported in (2003) 12 SCC 408, the Apex Court has observed as follows:

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone.

(viii) In *Virender Chaudhary v. Bharat Petroleum Corporation* reported in 2009 (1) SCC 297, the Apex Court held that the court exercises its jurisdiction only upon satisfying itself

that it would be equitable to do so and also observed that Delay/ Laches, indisputably, are the relevant factors. The Court held thus:

15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches.

(viii) In Lipton India Ltd. v. Union of India [(1994) 6 SCC 524] and M.R.Gupta v. Union of India [(1995) 5 SCC 628]) the Apex Court held that Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time and in case of entitlement of arrear amount, it will be limited to the period of three years prior to the date of filing of writ petition.

(ix) In Chennai Metropolitan Water Supply & Sewerage Board v. T. T. Murali Babu 2014 (4) SCC 108, the Apex Court held as follows:

Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix.

Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated

approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice.

On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons who compete with Kumbhakarna or for that matter Rip Van Winkle. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

(x) In *Brijesh Kumar v. State of Haryana* 2014 (11) SCC 351, the Apex Court held that it is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

(xi) In *Prabhakar v. Joint Director, Sericulture Department* reported in 2015 (3) SCC 1, the Apex Court held as follows:

37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity delay defeats equities.

(xii) In *State of Jammu and Kashmir v. R.K. Zalpuri* reported in 2015 (15) SCC 602, the Apex Court, at paragraph 27, held as follows:

27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone

even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim Deo gratias.

(xiii) The Apex Court in *Rup Diamonds & Ors vs Union Of India And Ors* 1989 SCR (1) 13 has held in clear terms that Recourse to judicial proceedings should be within 'reasonable time' and the Petitioner cannot rise from slumber to seek indulgence of Court and held thus:

"Apart altogether from the merits of the grounds for rejection on which it cannot be said that the mere rejection of the Special Leave Petitions in the cases of M/s. Ripal Kumar & Co., and M/s. H. Patel & Co., could by itself, be construed as the imprimatur of this Court on the correctness of the decisions sought to be appealed

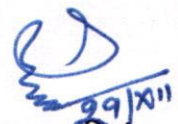
against--there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years.

Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. There case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection."

आपको निर्देशित किया जाता है कि कार्यभारित कर्मचारियों की क्रमोन्नती/समयमान वेतनमान से संबंधित न्यायालयीन निर्णयों में जवाबदावा दाखिल करने के पूर्व इन सभी तथ्यों का समग्रता से संज्ञान लें तथा इन्हें शासकीय अधिवक्ता के संज्ञान में भी लायें ताकि " Delay & Laches " के आधार पर माननीय न्यायालय द्वारा इन प्रकरणों को खारिज कराया जा सकें।

इसके अतिरिक्त इस प्रकृति के जिन प्रकरणों में माननीय न्यायालयों द्वारा कर्मचारी के पक्ष में निर्णय पारित किये जा चुके हैं उन्हें भी इन तथ्यों के आधार पर रिव्यू पिटीशन/ रिट अपील/एस.एल.पी. आदि दायर कर उन निर्णयों पर शासन हित में तत्काल कार्यवाही करने का कष्ट करें। यदि प्रकरणों में आगे चुनौती देने की स्थिति समाप्त हो चुकी हो तो कर्मचारियों को एरियर राशि की स्वीकृति जारी करते समय रिट पिटीशन दायर करने के दिनांक से अधिकतम 03 वर्ष पूर्व की राशि स्वीकृत करें तथा वेतन पुनरीक्षण आदि काल्पनिक आधार पर करें।

संलग्न:- उपरोक्तानुसार
03 निर्णय


११/११
प्रमुख अभियंता



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User Queries

pay fixation

time barred

jagdish saran

recurring cause

continuing wrong

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

Bench: 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)

VENKATASHAMI K. (J)

CITATION:

1996 AIR 669

1995 SCC (5) 628

1995 SCC (5) 29

Act

HEADNOTE

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JUDGMENT VERMA, J.

ive granted.

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

appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined service in the railways in 1978. The appellant claimed that the fixation of 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 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 proper fixation 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 its 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 1.1.1987 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 since 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.

Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, is 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. could 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 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 the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists unless the equity of redemption is lost. It is a continuing right of redemption of this kind. (See: *Thota Chama Sabha Rao and*

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

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ried counsel for the respondents placed strong reliance on the decision of this Court in S.S. Sore 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 fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

On the 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 above. 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 merits in accordance with law. No costs.

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

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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 filing of the 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.

7

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

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

August 13, 2008.

urgent

Sh. Pandeykar S.G. (Lams)

27/8/21

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

WRIT PETITION NO.	20847/2018
Parties Name	HARILAL SEN VS. STATE OF M.P. AND OTHERS
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	
Name of counsel for parties	For petitioner: Shri R. G. Rai, Advocate For Respondents : Ku. Shami, Panel Lawyer.
Law laid down	
Significant paragraph number	

(O R D E R)
10/08/2021

Petitioner has filed this writ petition making a prayer to quash order dated 27.8.2018 passed by respondent no.3 Chief Engineer, P.H.E Department, Jabalpur. Petitioner has also prayed for grant of Krammonnati from due date i.e. on completion of 12 years of service on 8.2.2000 and 24 years service i.e. on 8.2.2012.

2. By impugned order dated 27.8.2018 case of petitioner was considered for grant of time scale of pay. Petitioner was working on post of Time-keeper and his salary was drawn from Work Charged Contingency Paid Establishment. By circular of the State Government dated 27.3.2001 Work Charge Employees were given benefit of Krammonnati Yojana. Petitioner was appointed in Public Health Engineering

Department on post of Time-keeper on 8.2.1988 and he superannuated on 30.4.2013. Krammonnati Policy was implemented by State Government on 19.4.1999 for employees who are in regular establishment. Said Scheme was not applicable for Work Charged and Contingency Paid employees. His claim was rejected by impugned order on ground that it is not in accordance with rules, therefore, benefit of Krammonnati scheme cannot be given to petitioner.

3. Learned counsel for petitioner submitted that case of petitioner is covered by judgment passed by this Court in case of **State of M.P vs. Dalluram Vishwakarma, W.A No.883/2014**. In said writ appeal it has been held by Division Bench of this Court that principles laid down by this Court in case of **State of M.P. and others vs. K. L. Asre**, SLP (Civil) CC No.8436/2014 dated 4.7.2014, **State of M.P. and others vs. Teju Lal Yadav**, SLP (Civil) CC No.14582/2010 dated 27.9.2016 and **State of M.P. vs. Gajendra Kumar Shukla**, SLP (Civil) CC No.9780/2015 dated 6.9.2015 were upheld by the Supreme Court and SLP's were dismissed. Since principles laid down by this Court that Work Charged Contingency Paid employees are also entitled to get benefit of Krammonnati Yojana, therefore, learned counsel for the petitioner prayed that petitioner may also be granted similar benefits. Learned counsel for the petitioner

submitted that similarly situated employees have been extended the said benefit but respondents are discriminating him by not granting similar benefits. Since cause of action of petitioner is recurring, therefore, only on ground of delay petition may not be rejected.

4. Learning Panel Lawyer appearing for the respondent/State opposed the relief claimed by petitioner on the ground that petitioner had not approached the Court within time for grant of time-bound promotion. Petitioner has filed W.P No.1805/2016 on 25.1.2016. Said petition was disposed off with direction to consider the case of petitioner. Thereafter case of petitioner was considered and rejected. On date of filing of petition Scheme of Krammonnati Yojana does not exist and same has been amended and replaced by time-scale of pay from 24.1.2008. The benefit of time-scale of pay was extended to Work Charged Contingency Paid Establishment employees vide order dated 21.9.2016 and was made effective from 1.1.2016. Petitioner had already been superannuated from service on 30.4.2013, therefore, he can neither be given the benefit of Krammonnati Yojana nor time-scale of pay.

5. Heard the learned counsel for parties.

6. This Court vide its order dated 3.2.2016, disposed of W.P No.1805/2016, with direction to respondents to decide

petitioner's case expeditiously in light of judgment passed by this court in the case of **K. L. Asre** (supra). Later on, a Review Petition was filed by the State Government and said Review Petition was allowed and order dated 5.4.2019 was recalled. Order dated 5.4.2019 was recalled on the ground that Govt. Advocate appearing for the respondent/State has wrongly given his consensus, though reply has been filed by State and case was being contested on merits.

7. The question which arose before this Court is whether petitioner is entitled to get the benefit of judgment passed by this Court in the case of **K. L. Asre** (supra), **Teju Lal Yadav** (supra) and **Gajendra Kumar Shukla** (supra), as petitioner has approached the Court belatedly and has filed this petition after a long period of his retirement.

8. Scheme of Krammonnati was framed and made applicable from 19.4.1999. Scheme was framed to grant benefit of two up-gradations in pay-scale if an employee is stagnated on his post and did not receive any promotion. This Court in number of cases has held that Work Charged Contingency Paid employees are also entitled to get the benefit of Krammonnati. Petitioner has superannuated from service in year 2013 and had filed this writ petition in year 2018 and there was delay on his part to approach the Court, but benefit cannot be denied due to recurring cause of

action, therefore, petitioner will only be entitled for getting benefit of Krammonnati Yojana from date of filing of first writ petition i.e. from 25.1.2016.

9. Writ Petition filed by petitioner is **partly allowed**. Respondents are directed to give benefit of Krammonnati Yojana to petitioner notionally. Arrears and actual benefits shall be granted to petitioner from the cut-off date i.e. 25.1.2016.

(VISHAL DHAGAT)

JUDGE

mms

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SIMON
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