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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th July, 2013*

+ **W.P.(C) 4383/2013**

SHRIPAL Petitioner
Represented by: Ms.C.M.Chopra, Sr.Advocate with
Mr.D.S.Vohra, Advocate

versus

UNION OF INDIA & ORS Respondents
Represented by: Mr.Saqib, Advocate for R-1 and R-2
Mr.Rajiv Nanda, Advocate for R-3

W.P.(C) 4384/2013

SHRIPAL Petitioner
Represented by: Ms.C.M.Chopra, Sr.Advocate with
Mr.D.S.Vohra, Advocate

versus

UNION OF INDIA & ORS Respondents
Represented by: Mr.Amrit Pal Singh, Advocate for R-
1 and R-2
Mr.Rajiv Nanda, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Petitioner Shripal is a lawyer's delight and a Judge's despair. He has kept the lawyers happy for over two decades and instant writ petition

appears to be the eighth or the ninth round of litigation.

2. He was employed in the Public Works Department of the Central Government as a skilled beldar on October 16, 1974 as a daily wager. On August 13, 1976 he was employed as a daily wager as a Graduate Supervisor. He commenced litigation somewhere in the year 1983 praying therein that notwithstanding he being employed firstly as a skilled beldar on daily wage and later on as a graduate supervisor on daily wage since he was performing duties which were to be performed as a Research Assistant/Technical Associate and then as a Senior Research Assistant, he prayed that on the principle of equal pay for equal work he should be paid salary firstly as that of a Research Assistant from October 16, 1974 and that payable to a Senior Research Assistant with effect from August 13, 1976. He also prayed for his service to be regularized.

3. W.P.(C) No.1006/1983 was dismissed on March 22, 1984 observing that the Court could not direct creation of a post. The Court noted that a post of Laboratory Assistant was offered to the petitioner which he declined to accept. Thus, it was observed that petitioner's grievance of being kept with a muster roll status was not justified i.e. it was a case of self-denial of an opportunity.

4. Deciding Civil Appeal No.10775/1984 the Supreme Court took on record statement made on behalf of CPWD that after creating a post the petitioner would be appointed as a Laboratory Assistant.

5. In the year 1987 petitioner filed OA No.1480/1987 claiming same or similar reliefs as were prayed for in CW No.1006/1983 which were declined to him when the Original Application was dismissed on March 17, 1993.

6. We are eschewing reference to other litigations because they are irrelevant for our purposes.

7. After a post of Laboratory Assistant was sanctioned the petitioner was appointed against said post on regular basis on November 01, 2000. One would have expected him to be happy with a permanent job and it appears he was, till somebody misled him in the year 2010 to make a representation firstly on January 01, 2010 which was repeated on October 31, 2010 demanding salary with increments from October 16, 1974 as payable to a Research Assistant and thereafter with effect from August 13, 1976 as payable to a Senior Research Assistant, the two dates being when the petitioner was appointed as a daily wager skilled beldar and a daily wager supervisor respectively.

8. The Department did not respond to his belated representations resulted in the petitioner filing OA No.4130/2012 which was disposed of by the Tribunal on the very first day of hearing without notice to the respondents directing that representation made by the petitioner and especially the last one made on February 13, 2012 should be disposed of expeditiously.

9. But for reasons best known to the petitioner when OA No.4130/2012 was pending in the Registry and we say so for the reason we find that said Original Application was listed before the Tribunal Bench only on January 30, 2013, he filed another Original Application which was registered as OA No.39/2013 praying similar relief which has been dismissed by the Tribunal vide order dated January 21, 2013 observing that the claim was barred by limitation.

10. We note that the Tribunal has not noted the past litigation to

which we have briefly made a reference hereinbefore.

11. Vide W.P.(C) No.4384/2013 order passed by the Tribunal on January 21, 2013 dismissing OA No.39/2013 has been challenged. Vide W.P.(C) No.4383/2013 order dated January 30, 2013 has been challenged.

12. As regards challenge to the order dated January 30, 2013, the petitioner can have no grievance because nothing adverse against him has been held. But, we need to speak about the order dated January 30, 2013.

13. We have repeatedly cautioned the Tribunal not to dispose of Original Applications without notice to the respondents and pass seemingly innocuous orders as of the kind dated January 30, 2013. The reason is, as in the instant case, stale claims are sought to be resuscitated by making belated representations and directions issued ex parte to the Department to decide such representations, upon the same being rejected, create problems of cause of action accruing. If only the Tribunal would have called for a response in OA No.4130/2012 the Department would have informed that after having filed OA No.4130/2012 in the Registry somewhere in the month of December, 2012 without getting the same listed before the Bench the petitioner had filed OA No.39/2013 in the first week of January, 2013 which Original Application was listed before the Bench and as an after notice matter was heard and decided vide order dated January 21, 2013. Thus, the Tribunal, if only it had the patience to seek a response, would have been guided to dispose of OA No.4130/2012 as infructuous.

14. As regards the order dated January 21, 2013 we agree with the view taken by the Tribunal that the claim was barred by limitation. Suffice would it be to state that the petitioner was seeking a monetary relief going back to October 16, 1974.

15. The claim was even otherwise barred by res judicata. Same claim was made twice earlier firstly under W.P.(C) No.1006/1983 which was declined secondly when OA No.1480/1987 was filed and the relief was declined.

16. Undisputedly petitioner was appointed as a daily wage skilled beldar on October 16, 1974 and his claim that he actually worked as a Research Assistant required him to apply the principle of equal pay for equal work within three years of October 16, 1974. Similar would be the position with respect to his claim pertaining to salary payable to a Senior Research Assistant with effect from August 13, 1976. It has to be kept in mind that a post of Laboratory Assistant was created for the petitioner and he was appointed on regular basis to said post on November 01, 2000. He was paid salary in the pay scale ₹3200-4900. He never raised the issue of notional appointment from a back date in the interregnum, as noted above, he fought many litigations but was unsuccessful at each stage except an assurance made in the Supreme Court that a regular post would be sanctioned to which petitioner would be appointed.

17. Contention urged by Ms.C.M.Chopra senior counsel that the principle of equal pay for equal work is applicable in the instant case overlooks that pertaining to daily rated employees such view taken by different benches by applying parity with regular appointed employees was held to be contrary to law in the decision reported as (2006) 4 SCC 1 Secretary State of Karnataka Vs. Uma Devi. Besides, any monetary claim preceding three years from the date when a claim is made in a Court or a judicial Fora has to be held as barred by limitation.

18. The second contention urged that whereas the Tribunal may be

bound by the law of limitation, exercising writ jurisdiction, this Court can cut through the technicalities of the law is rejected by us for the reason a Rule of equity cannot be applied in the teeth of a statutory law. If a claim is barred by limitation or on account of res judicata, a Writ Court cannot resurrect the claim.

19. Accordingly, we dismiss both writ petitions but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JULY 16, 2013
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