

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

%` *Date of decision: July 10, 2013*

+ **WP(C)4330/2013**

SMT.LEELA SHARMA Petitioner
Represented by: Mr.Padma Kumar, Advocate

versus

UNION OF INDIA & ORS. Respondents
Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. The Tribunal has held against the petitioner on merits as well as on the bar of limitation.
2. Since we agree with the Tribunal that the claim was barred by limitation, we need not trouble ourselves with the opinion of the Tribunal concerning the merits of the claim.
3. On the subject of limitation it be noted that the claim of the petitioner made before the Tribunal in the year 2012 was that second benefit under the Assured Career Progression Scheme ought to be granted to the petitioner in the year 2004. The basis for the claim was that ad-hoc service rendered by the petitioner since August 29, 1980 had to be counted in computing 24 years service rendered. As per the petitioner the department was clearly wrong in reckoning petitioner's service with effect from January 25, 1986. Neither party was at variance that prior to January 25, 1986 service rendered by the petitioner was ad-hoc and that it

was only on January 25, 1986 that she was regularly appointed to the post whereon she was appointed on ad-hoc basis in the year 1980, being the post of Assistant Librarian.

4. To overcome stagnation an Assured Career Progression Scheme was introduced by the Government of India in the year 1998 which was adopted by statutory bodies established by the Government of India as also autonomous bodies under the administrative control of the Government of India as also various statutory bodies established or constituted under different acts of Parliament. The scheme envisaged that if within 12 years of appointment a person does not earn any promotion he would be entitled to a first financial upgradation in the next above pay scale upon rendering 12 years service and if no promotion is earned after rendering 24 years service the employee would be placed in the next above pay scale.

5. In other words the ACP scheme envisaged two in situ promotions.

6. With respect to the claim made by the petitioner, on the subject of limitation, the view taken by the Tribunal is that as claimed by the petitioner, right to receive second financial upgradation accrued to her in the year 2004 for the reason petitioner had joined service on ad-hoc basis as an Assistant Librarian on August 29, 1980. She ought to have predicated a claim when representations made by her were turned down. Thus, the Original Application filed by the respondent in the year 2012 was opined to be barred by limitation.

7. It is not a case where the petitioner was unaware of an entitlement to stake a claim. She did so evidenced by the fact that she made a representation on August 26, 2004 praying that second financial

upgradation under the ACP scheme should be granted to her. The request was not acceded to. She continued to make representations.

8. Learned counsel for the petitioner would urge that right to receive correct wages is a continuous cause of action.

9. The principle *de die in diem* which gives birth to the concept of a continuing wrong and hence a recurring cause of action has to be applied with care and caution. Where a person does not assert a right, being ignorant of his right, and asserts the same belatedly and if the right relates to receive a monthly recurring payment the claim cannot be held to be barred by limitation because the claim would be founded on a continuing cause of action. But, while quantifying the claim if the substance thereof is accepted, monitory relief would be restricted to three years preceding when the claim was instituted because a suit to recover money has to be filed within three years from when the right to sue accrues. In other words the cause of action which subsists may result in a final relief being restricted with reference to the right to sue. It is in this light of the legal principle that we have to consider a claim made and either rejected expressly or not responded to i.e. rejected impliedly. This claim pertaining to a right to receive monthly wages would give birth to an immediate cause of action as also a right to sue and it would not be permissible to apply the legal principle hereinbefore referred to by us.

10. Thus, the facts of each case require to be considered microscopically.

11. One has to be careful in dealing with monitory claims concerning the Government or institutes established by the Government which are funded through the consolidated fund of India. These bodies manage their expenditure within the budgetary grants sanctioned and thus if stale claims are allowed the fiscal discipline of such organizations is

prejudiced. It has to be kept in mind that based on known expenditure in the future, a budget is sanctioned for such organizations and the annual expenditure has to be met from out of the said budget sanction.

12. We dismiss the writ petition in limine but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 10, 2013
mamta