

Chief Justice's Court

Case :- WRIT - A No. - 11908 of 2024

Petitioner :- Vijay Pratap Singh

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Anita Kushwaha, Sanjay Kumar Om

Counsel for Respondent :- Ravi Ranjan

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This writ petition is directed against the order dated 10.04.2024 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Misc. Delay Condonation Application No. 330/3758/2023 in Diary No. 4942 of 2023 whereby the application filed by the petitioner seeking condonation of delay has been rejected and consequently, Original Application also has been dismissed.
2. Original Application was filed by the petitioner seeking benefit of financial upgradation of IDA scale (first and second) pursuant to the promotion policy dated 18.01.2007 with effect from 01.10.2004 and 01.10.2009 respectively and seeking entire arrears of salary with interest thereon.
3. Further prayer was made to recalculate the pension and other retiral benefits admissible to the petitioner, after considering first and second financial upgradation with effect from 2004 and 2009 respectively.
4. Along with the Original Application an application seeking condonation of delay was filed.
5. Submissions were made that the petitioner was not aware about the executive promotional policy for Group-'B' level officer of BSNL as the same was not notified, he was placed under suspension with effect from 07.09.2011. Whereafter disciplinary proceedings were initiated against him which continued up to 08.08.2016, resulting in imposition of punishment, appeal was filed, which was rejected on 07.03.2018.

6. It was further submitted that during currency of the disciplinary proceeding, his wife got ill and was confined to bed for which he was required to attend her regularly and therefore, he could not approach the Tribunal in time.

7. Further indications were made that the subject matter of the petition was recurring cause of action as the same has led to month to month loss to the petitioner and therefore, the delay in filing the Original Application be condoned.

8. It was also indicated that the petitioner has obtained voluntary retirement in the year 2020.

9. A response to the application was filed contesting the same. It was submitted that the petitioner has no right to seek financial upgradation at belated stage. The reason assigned to explain the delay was not proper and sufficient, it was apparent that the petitioner was sleeping over his rights and therefore, he cannot be allowed to claim the benefit at such belated stage.

10. The Tribunal after hearing the parties, came to the conclusion that the cause of action arose in the year 2004 itself and the petition has been filed in the year 2013, no order as such has been challenged as the representation has not been decided by the respondent. Whereafter by referring to judgements of Hon'ble Supreme Court on the aspect of delay, and on coming to the conclusion that the relief claimed in the matter cannot be termed to be recurring as the same pertains to financial upgradation, on account of inordinate delay, the application was dismissed and consequently, Original Application was also dismissed.

11. Learned counsel for the petitioner made submissions that determination made by the Tribunal that the cause of action arose in the year 2004, is factually incorrect as the promotion policy itself came in the year 2007, though the benefit was to be made available from the year 2004.

12. Further submission has been made that the observations made that the relief claimed cannot be termed to be recurring as it relates to financial upgradation also has no substance inasmuch as the upgradation, if granted,

would affect his pension and is, therefore, definitely a recurring loss and the determination made by the Tribunal deserves to be set aside.

13. Reliance has been placed on order of this Court in **Jay Prakash v. Union of India & 2 others; Writ - A No. 7811 of 2024** decided on 01.08.2024 and **M.R. Gupta v. Union of India & others : (1995) 5 SCC 628**.

14. Counsel for the respondents supported the order impugned. Submissions have been made that the petitioner has made incorrect averments in the application seeking condonation of delay as reliance was placed on a representation said to have been made in the year 2012. However, the said representation makes a reference of his voluntary retirement in the year 2020, which necessarily means that the same was a made up document and as the petitioner has not approached the Tribunal with clean hands, he is not entitled to seek any relief from this Court.

15. Further submissions have been made that in case the petitioner is granted any relief, there may be other employees, who are similarly placed, which would lead to flood of cases and therefore, the order impugned does not call for any interference.

16. We have considered the submissions made by counsel for the parties and have perused the material available on record.

17. The petitioner in his application seeking condonation of delay, attempted to explain the delay by relying on the fact that he was facing departmental proceedings, then appeal and that his wife was not well, which led to him not filing the Original Application in time.

18. Further plea was raised regarding the cause of action being recurring as the same is affecting his month to month pension.

19. The Tribunal, as noticed hereinbefore, came to the conclusion that the cause of action arose in the year 2004 and the petition was filed in the year 2023 and that the cause of action was not recurring and consequently, dismissed the application.

20. Determination made by the Tribunal regarding the cause of action being not recurring on account of the upgradation, does not appear to be correct inasmuch as if the petitioner was to be accorded financial upgradation with effect from 2004 and 2009 in terms of the policy of 2007, the same would definitely affect his salary and emoluments and as a consequence, the same would also affect his pension and therefore, the indication made in this regard cannot be countenanced.

21. This Court in the case of **Jay Prakash (Supra)**, which pertained to wrong fixation of pay scale, after referring to the judgement of **M.R. Gupta (Supra)**, **Union of India v. Tarsem Singh : (2008) 8 SCC 648** and **Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation : JT 2022 (5) SC 470**, came to the following conclusion :

"14. Evidently, the quantum of pension is always dependent upon the last paid drawn. In case, the benefits of 6th pay commission are extended to the original applicant then his pay scale shall stand enhanced on his date of his superannuation making the original applicant entitled to higher pension.

15. In **M.R. Gupta (supra)**, the Hon'ble Apex Court while interpreting Fundamental Rules 22(c) had the occasion to consider the issue relatable to wrong fixation of the pay-scale and it was observed as under:

"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, 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 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 extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subha Rao and Others v. Mattapalli Raju and Others, AIR 1950 Federal Court 1)."

16. In **Tarsem Singh (supra)**, the question of belated service related claim came for consideration wherein it was observed that in the case of the claim based upon continuing wrong which does not affect the settled rights of the third parties, it would not be appropriate to deny the said benefits. It was held as under:

"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 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. 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."

17. The aforesaid principles of law came to be reiterated in the case of **Rushibhai Jagdishbhai Pathak (supra)**.

18. Applying the principles or law as culled out in the above noted decisions in the present facts of the case an irresistible conclusions stands

drawn that wrong fixation of pay scale is a continuous wrong which accrues on month to month basis when the same is related to payment of pension, which obviously makes a marked difference as the pension is obviously paid on the last paid drawn.

19. There is no quarrel to the proposition of law laid down in the judgement relied upon the Tribunal in the case of **Chennai Metro Politan Water Supply & Swerage Board and Ors. v. T.T. Murali Babu**, reported in (2014) 4 SCC 108 and **Pathapati Subba Reddy (Died) By L.Rs. and Others v. Special Deputy Collector (LA)**, reported in 2024 SCC Online SC 513 that **a litigant whose sleeps over his rights cannot claim equity**, however, there is a slight distinction that in the present case, no third party settled rights are being affected as it is not the case of seniority or promotion. Insofar as the judgement in the case of **S.S. Rathore (supra)** is concerned, the same in the present facts of the case would not apply as the present case falls within the category of continuous wrong.

20. Bearing in mind, the nature of the claim set up by the original applicant before the Tribunal as well as the judicial pronouncement referred to above, we are of the firm opinion that the claim of the applicant is required to be decided on merits and not to be negated on the grant of delay and laches.

21. Accordingly, the writ petition is being decided in the following manner:

(a). The order dated 22.04.2024 passed in Misc. Application No. 4200 of 2023 (Delay Condonation Application) in O.A. No. 557 of 2023 (Jay Prakash v. Union of India) are set aside.

(b). Delay in filing the original application is condoned.

(c). The original application stands restored to its original number and the case is remitted back to the Tribunal to decide the matter afresh strictly in accordance with law. "

22. The present case apparently is squarely covered by the determination made by this Court in the case of **Jay Prakash (Supra)** and therefore, the same deserves to be decided in terms of the said judgement.

23. So far as the plea raised pertaining to the petitioner approaching the Tribunal with unclean hands is concerned, though it is true that the contents of the document claimed to have been filed in the year 2012 does not tally with the factual situation, filing and/or non filing of the said representation being inconsequential, the petition cannot be dismissed on the said count.

24. Further plea raised that in case the petitioner is granted any relief, other employees, who were similarly placed, would also approach the respondent and would lead to flood of cases, cannot be a reason enough to deny relief to the petitioner in case he is otherwise entitled to the same.

25. Accordingly, the writ petition is allowed. The order dated 10.04.2024 passed in Misc. Delay Condonation Application No. 330/3758/2023 in Diary No. 4942 of 2023 (Vijay Pratap Singh v. Union of India & others) is set aside, delay in filing the Original Application is condoned.

26. The matter is remanded back to the Tribunal, wherein the Original Application would be registered and the same would be decided strictly in accordance with law.

27. Passing of the above order would not be construed to be an expression, pertaining to the merits of the claim made by the petitioner.

Order Date :- 3.9.2024
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(Vikas Budhwar, J) (Arun Bhansali, CJ)