

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.19901 of 2015

Date of decision: 18.9.2015

Gurdial Singh and others

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sunny Singla, Advocate,
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioners are mostly retired persons. Two of them are still in service. The dates of retirement of the others range from the year 1991 to 2009. They claim difference of arrears of salary for discharging duties and responsibilities of the higher post on which they were given the current duty charge. These claims are for various periods ranging as far back as from 1991 till about November, 2009 in respect of 7 of the retirees. The particulars of the petitioners and the periods spent on duty performed of the post carrying higher responsibility have been placed at Annexure P-1. Though principles of *quantum meruit* would broadly apply in view of **Smt. P.Grover v. State of Haryana**; 1983 (4) SCC 291 to draw higher pay for discharging work of the higher post even when current duty charge is given in the own pay scale and the difference of salary would become a right to property, but the arrears to be claimed or payable on account of the difference of salary of the lower and the higher post is not an accrued and

vested right as it is based on the principle of *quantum meruit* and rights in personam and when the petitioners have no right to the arrears then the higher pay scale would not percolate down to the last pay certificate by a Court intervention to impact the consequential reformation of pension and pensionary benefits. This extra money will not impact pension since the claim is transitory in nature and therefore it cannot be countenanced that it is a continuing obligation of the State Government and a recurring cause of action which can be encashed at any time. The right claimed in this petition is a right to recover money for which the Limitation Act, 1963 prescribes a period of 3 years for bringing suits. Merely because the benefits have been to similarly situated persons will not entitle the petitioners to similar relief whether claimed after a long lapse of time in view of the authoritative pronouncement of the Supreme Court in **State of Uttar Pradesh & others v. Arvind Kumar Srivastava & others** (2015) 1 SCC 347 in which the following principles have been laid down : -

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason

that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

Principle 2 in the judgment applies to this case since the petitioners have approached the High Court for the first time through this writ petition in 2015 while the tail end of the petitioners retired on 30th October, 2012 while the rest retired on 30th November, 1999, 31st May, 2007, 31st May, 2009 and 30th November, 2011 respectively. Though Gurmail Singh retired on 30th October, 2012 and may be within limitation for filing a suit to claim money since he retired on 30th October, 2012 and 3 years has not yet run out but his claim based on officiating on higher post is

for the period from 8th August, 2008 to 23rd February, 2009 from where he asserts cause of action and right to sue. Therefore, merely because he retired on 30th October, 2012 within three years of the filing of the writ petition will not revive the stale cause of action accruing on 23rd February, 2009 when the Government did not accede to his claim or pay him the difference of pay of the two posts for work done. In this manner, even Gurmail Singh has no case before this Court in this petition being hit by delay and laches.

It has been pointed out by the learned counsel for the petitioners that petitioners No.5 and 6 Lakha Singh and Balwinder Singh are still in service while the others have retired. Their right, if any, also stands extinguished since their claim for work performed on the higher post is from 20th November, 2003 to 15th April, 2012 and 28th December, 2001 to 25th April, 2012 which also makes their claim also stale and time barred when counted from 15th April, 2012 and 25th April, 2012 respectively. The action qua them is also barred by limitation prescribed for filing a suit. It has been settled by the Constitution Bench of the Supreme Court in **State of Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006 that where the limitation for filing a suit have run out, then ordinarily the writ Court would refuse to entertain a writ petition. It must be remembered that the relief granted under Article 226 of the Constitution of India is discretionary and an order will not be made only because it is lawful to do so, and for these reasons, no interference is warranted in the matter which is stale and afflicted by delay and laches. Consequently the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 18, 2015