

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22595 of 2014

Date of Decision: 09.02.2015

Dr. Harabhajan Ram and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Inderjit Sharma, 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.

The petitioners are members of the Punjab Civil Medical Services.

They are serving as Medical Officers and are all presently posted in District Gurdaspur. They earned their Post Graduate Degrees on various dates ranging from 1997 to 2001. In terms of the then extant policy instructions contained in the letter of October 27, 1993, issued by the Secretary, Health & Family Welfare, Punjab, those Medical Officers as of whom had completed their Post Graduate Degree/Diploma while in service were entitled to the benefit of six increments, all at once, by earning higher scales for higher qualifications earned during service. They were granted these six increments w.e.f. 1.01.1996 to 23.05.2001 relative to the dates when the petitioners qualified the PG Degree/Diploma examinations. Though the increments were fixed on paper but the monetary benefits stated to be accruing failed to percolate down to them in terms of money and the arrears of those increments have not been released so far. They claim the monetary

element of these increments along with arrears thereof with interest @12% per annum. It transpires that by letter dated December 26, 2013, the arrears with respect to the PG Degree increments have been stopped w.e.f. 01.06.2012. They impugn the letter dated December 26, 2013 as illegal, null and void, arbitrary and discriminatory and one which has been issued with mala fide intention. They refer to an order dated June 23, 2000 where the State Government informed respondent No.2 that the matter regarding advance increments given to government doctors on the basis of the letter dated October 27, 1993 is under consideration before the Implementation Committee and its decision is awaited.

It is then averred that some similarly situated Medical Officers filed CWP No.6437 of 2001 and this Court quashed the order of reduction of pay and withdrawal of increments and a direction was issued to decide the matter in accordance with law after observing the principles of natural justice and after offering hearing. The recoveries were ordered to be reimbursed.

In the reply filed by the State, it is mentioned that the order would be applicable from January 01, 1996 and prior to this, the PCMS Doctors who joined on regular basis would be receiving benefits as per the earlier orders. It is mentioned that one PCMS Doctor who had earned his Post Graduation Degree in July 1999 feeling aggrieved by non-release of the six PG increments w.e.f. July 1999 approached the Civil Court which decreed the suit. The State appeal failed before the District Judge and these orders were upheld up to the Supreme Court. Then the case of another Dr. Ravinder Kumar Kohli is cited, who also obtained a similar decree from the

civil court, was appealed against by the respondent-State in Regular Second Appeal in this Court bearing No.3037 of 2004. The same was dismissed on February 27, 2006 and the plaintiff was held entitled to the benefit of annual grade increments for his Post Graduate Degree and the arrears were ordered to be paid with 12% interest. The State still feeling dissatisfied, filed an SLP in the Supreme Court which was dismissed on July 17, 2006. Ultimately, Dr. Kohli was allowed six PG increments by the Government by the letter dated November 16, 2006, which information the petitioner has received under the RTI Act. Several other writ petitions were also filed in this Court bearing numbers CWP No.13112 of 2007 and CWP No.17156 of 2008. CWP No.17156 of 2008 was decided on July 01, 2009.

The petitioners woke up for the first time to their claimed rights and served a legal notice on March 03, 2014 on the respondents claiming payment of arrears of increments w.e.f. January 01, 1996 to May 23, 2001 on the basis of the instructions dated October 27, 2013 and the order dated December 26, 2013.

It is not disputed before this Court that the right to six PG increments stands extinguished as the scheme has been withdrawn and is inoperative. The petitioners have slumbered long and were awakened for the first time in March 2014 to claim recovery of money. Several times more than three years have elapsed from the dropping of the scheme and therefore, retrospective rights might remain but the remedies stand taken away by operation of the statute of limitations, cf. Article 137 of the Limitation Act, 1963. The right to receive money resulting from the non-grant of six increments for earning higher qualifications while in service is

not a recurring right like pension is, and merely because similarly situated persons have been granted monetary benefits under the old scheme through Court orders or otherwise, did not postpone the cause of action which accrued several years before the period of three years ran out, with limitation to be reckoned backwards from either the date of the legal notice or from the date of filing of the present petition. It is settled law that where a civil suit would not lie, the writ court would ordinarily refuse to exercise its discretionary jurisdiction provided in Article 226 of the Constitution, cf. **State of MP v. Bhailal Bhai**, AIR 1964 SC 1006, the Supreme Court holding that: "It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus".

The rights of similarly situated persons in the context of court orders, delay and laches in approaching court or succumbing by acquiescence have been considered exhaustively by the Supreme Court recently in **State of Uttar Pradesh vs. Arvind Kumar Srivastava**, Civil Appeal 9849 of 2014 decided on 17th October 2014 [2014 STPL(Web) 697 SC]. The Supreme Court summed up the legal position and synthesized different strains of judicial thought on the subject, of which three principles which are summarized are appropriate to this case, wherein it was observed thus:-

["(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 persons. 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- (1976) 6 SCC 721]. 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"].

No order have been shown or relied upon from where it can be said with certitude that the directions in any of the cases relied upon to claim similar relief were in rem in order to take the present case out of the teeth of the exceptions carved out. I would read those orders and directions as eminently in personam.

For the foregoing reasons, the petition to stand dismissed as not warranting interference.

(RAJIV NARAIN RAINA)
JUDGE

09.02.2015
manju