

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO.22776 of 2015

Date of Decision:21.10.2015

Kaur Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:Hon'ble Mr.Justice Rajiv Narain Raina

Present: Mr.Sudhir Kumar, Advocate for the petitioner

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Rajiv Narain Raina, J. (Oral)

1. This petition has been filed claiming financial benefits by setting aside three adverse orders passed against the petitioner i.e the impugned order dated on 20th May, 1981 stopping two annual increments with cumulative effect and the impugned orders dated 13th August, 1984 and 13th March, 1989 withholding two and one annual increments with temporary effect, respectively. The petitioner who has retired from service as a Conductor in the year 2007 carries grouse against these orders and complains that recoveries have been made from his salary in an illegal manner, without considering the legal position in this regard. He places reliance on a decision of this Court rendered in CWP No.2964 of 2010 (Raghbir Singh vs. State of Punjab and others) decided on 22nd February, 2010 where this Court directed refund of an amount of Rs.16133/- recovered from Raghbir Singh on account of over-payment of leave salary.

The learned Single Judge applied the then prevailing law in the Full Bench

judgment in **Budh Ram and others vs. State of Haryana and others**, 2009 (2) ILR (Punjab & Haryana) 445: 2009(4) RSJ 110.

2. The present is not a case of over-payment or a mistake of fact and law committed by the State Government leading to loss of pay and allowances. The present is a case where the prayers are for setting aside the aforesaid three impugned orders passed over 16 to 33 years ago, one of which is a major penalty and consequently to grant the monetary benefits flowing there from with cascading effect until re-fixation of pay and pensionary benefits. The legal position has somewhat changed after the judgment rendered by the Full Bench in *Budh Ram, supra*. Some years after the progenitor judgment of the Full Bench was delivered, the Supreme Court has recently in **State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others**, (2015) 1 SCC 347 have clarified and refined the law holding that though similarly situated persons should be treated alike, but there are exceptions to this rule. The Supreme Court carved those out as follows:-

“11.....The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents can be summed up as under:

(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 K.C. Sharma & Ors.(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.”

3. In the present case, there are no similarly situated persons to measure unequal treatment as no precedent has been cited where the State Government has granted monetary benefits to those conductors who faced adverse disciplinary orders withholding annual increments with cumulative effect or on temporary basis and that too relief granted in the face of enormous with delay and laches in approaching the administrator

in the first instance and then court. It is well established that even void orders imposing penalties and punishments on delinquent employees for misconduct cannot be ignored as inoperative, void or voidable. Suitable challenge has to be brought in a court of law within the period prescribed in the residuary Art. 113 in the Schedule to the Limitation Act, 1963, which is three years from the date the cause of action accrues. Right to sue extinguishes thereafter, the Supreme Court explaining in these terms "The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means". For this proposition of law on the subject reference be had to Supreme Court in **State of Punjab v. Gurdev Singh**, AIR 1991 SC 2219: 1991 SCR (3) 663. The case arose out of a suit against a dismissal order but the principles will apply to jurisdiction provided by Article 226 of the Constitution of India. Two Division Benches of this Court taking a contrary view were overruled i.e.: [**State of Punjab v. Ajit Singh**, (1988) 1 SLR 96 and **State of Punjab v. Ram Singh**, (1986) 3 SLR 379 (1986) 3 SLR 379]. The Supreme Court quoted from **Smith v. East. Elloe Rural District Council**, [1956] AC 736 at 769, the words of Lord Radcliffe observing:

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

4. The Court in *Gurdev Singh* held: "If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It

need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court”

5. Assuming that the petitioner had brought a civil suit was with prayers as made in this petition in 2015, by person who retired in 2007, claiming a declaration that three orders passed till 1989 deserve to be declared illegal, then, without doubt the suit would be barred and where the suit is barred, the writ court has been guided not to interfere as it will always be prudent not to interfere. This principle has been explained by the Supreme Court in a Corum of five Hon. Justices in **State of Madhya Pradesh vs. Bhailal Bhai & Ors**, AIR 1964 S.C. 1006 wherein it is observed:-

“It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought 134--159 S.C. 18 may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. But where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.”

6. In the present case, the impugned orders have been passed in the years 1981, 1984 and 1989. This petition has been filed in 2015 which is almost after 26 years of the passing of adverse orders. This petition suffers from enormous delay in approaching court and laches in sleeping over rights in *personam*. Hence, the petition merits outright rejection. Neither

would a writ of certiorari nor mandamus issue to the State in a stale claim.

The petition does not pass muster and tests in entertaining writs.

7. For the reasons recorded above, this petition is accordingly dismissed.

(RAJIV NARAIN RAINA)

JUDGE

21.10.2015

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