

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

L.P.A. No. 367 of 2015 (O&M)

Date of decision : 27.4.2015

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Gian Chand Goel and others

.....Appellants

vs.

Dakshin Haryana Bijli Vitran Nigam Ltd. others

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant  
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Sh. B.S. Mittal, Advocate  
for the appellants.

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**P.B. Bajanthri, J.**

The appellants are retired Junior Engineers-I in Dakshin Haryana Bijli Vitran Nigam Ltd. Their grievance is that in the year 1979 their junior one Sh. Ashok Kumar Dhamija was getting more pay than them. After retiring from service, they opened their eyes to know that Sh. Ashok Kumar Dhamija who is junior to them was getting higher pay scale. Consequently, through an Advocate legal notice got issued to the respondents. For non-consideration of their grievance, they then approached this Court. On 4.4.2014, this Court was pleased to dispose of their Civil Writ Petition No. 6589 of 2014.

Extract of order is reproduced herein :-

“Without commenting anything on the merit of the case and keeping in view the limited prayer of the petitioners, the present petition is disposed of with a direction to the respondents to decide the legal notice dated 15.11.2013, which is annexed as Annexure P-1 with the petition, and take necessary action in accordance with law within a period of two months from the date of receipt of certified copy of this order.”

A reading of the aforesaid order is crystal clear that this Court has not expressed anything on merit of the case. In pursuance of the order of this Court passed in Civil Writ Petition No. 6589 of 2014, the 2<sup>nd</sup> respondent rejected the claim of the appellants, while assigning the reason that the appellants had opted for a particular revision of pay scale w.e.f. 1.4.1979 in the pay scale of Rs.700-30-850/900-40-1100/50-1250 (Junior Engineer cadre). On the other hand Sh. Ashok Kumar Dhamija opted for the revised scale w.e.f. 1.9.1979 in the pay scale of AFM Rs.570-15-600-20-700/750-30-900/940-14-1020. The said option by him was after the grant of increment, thus his pay was fixed at Rs.750/-. It was also stated that in view of the aforesaid factual aspects, namely, seeking option both by the appellants and Sh. Ashok Kumar Dhamija, there is a difference of pay among the appellants and Sh. Ashok Kumar Dhamija and he was getting more pay as on 5.11.1982 i.e. the date on which he was promoted as Junior Engineer. The appellants, aggrieved by the

decision of the 2<sup>nd</sup> respondent bearing office order No. 429/SE/HR dated 17.6.2014, again preferred Civil Writ Petition before this Court, which the learned Single Judge considered and has rejected both on delay as well as merit. The appellants relied on number of decisions before the learned Single Judge both on delay as well as on the ground of merit. The same have been duly considered. In fact the learned Single Judge has extracted two decisions of the Apex Court on the question of inordinate delay and latches on the part of the appellants in approaching Court.

The appellants, aggrieved by the order of the learned Single Judge, preferred the present LPA.

We have heard the learned counsel for the appellants.

The facts relating to the appointment of the appellants and Sh. Ashok Kumar Dhamija are not disputed. The crux of the matter is revision of pay scale given effect from 1.4.1979 to all the employees of the State. At the relevant point of time, every employee had an opportunity of exercising his/her option for a particular date. In other words, an employee can have revision of pay scale before grant of an annual increment or after availing annual increment in that particular cadre depending upon certain advantages. In the present case the appellants have opted for revised pay in the pay scale of Junior Engineer i.e. Rs.700-1250 in the year 1979, whereas Sh. Ashok Kumar Dhamija, has opted for extending the revision of pay after availing increment, which was due to him. Consequently, his pay was fixed at Rs.750/- in the pay scale of AFM i.e. Rs.570-1020. When

things stood thus, Sh. Ashok Kumar Dhamija was promoted to the cadre of Junior Engineer on 5.11.1982. Consequently, his pay was higher than the appellants in the Junior Engineer-I cadre. In this background, the appellants for the first time, after their retirement, on 15.11.2013 got issued notice to the 2<sup>nd</sup> respondent and another, seeking for rectifying the pay anomaly between the appellants and Sh. Ashok Kumar Dhamija. It is to be noted that both the appellants as well as Sh. Ashok Kumar Dhamija have retired from service in the year 2003 to 2009. After a decade, the appellants have opened their eyes to rectify the fixation of revision of pay which relates back to the year 1979. Having regard to the facts of the case, learned Single Judge rightly rejected the claim of the appellants on the question of delay. The appellant's counsel vehemently contended that fixation of pay of an employee is a continuing cause of action. Consequently, the question of delay in seeking relief could not be a hurdle. It is to be noted that the learned Single Judge relied on decisions which is reported as **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu 2014 (4) SCC 108**, wherein the Apex Court considered the question of delay in approaching by the litigants. In the present case, not only delay on the part of the appellants, even the laches is to be taken into consideration, for the reasons that cause of action accrued to the appellants somewhere in the year 1979, the date on which option was given to them for the purpose of extending revision of pay or on the date of promotion of Sh. Ashok Kumar Dhamija i.e. in the year 1982.

For the first time, the appellants approached the authorities on 15.11.2013. It is to be noted that the learned Single Judge in Civil Writ Petition No. 6589 of 2014 has only directed the concerned respondents to consider the legal notice dated 15.11.2013 got issued through the counsel. That direction did not mean that delay or latches on the part of the appellants are waived off or condoned. Therefore, there is no infirmity in so far as rejection of the appellants' claim on the ground of delay is concerned.

In so far as merit of the case is concerned, question of pay anomaly among the appellants and Sh. Ashok Kumar Dhamija is not attracted or even the question of stepping up of pay also does not arise. For the reasons that Sh. Ashok Kumar Dhamija was initially appointed as LM-II on 16.3.1965 and thereafter he was promoted/appointed as LM from SA, JE and ASSA. On the contrary, the appellants joined as Junior Engineer in the month of April, 1973/July 1973 and all of them have retired during the period between 2003 to 2009. For the purpose of setting right the pay anomaly or stepping up of pay principle would be applicable if service conditions of both the persons like date of entry into service and other factors are identical and if the junior's pay is higher than the senior, in such circumstances, the pay anomaly can be rectified by stepping up the pay of a senior to that of junior. In the present case, the situation is entirely different. The appellants and Sh. Ashok Kumar Dhamija were not recruited by a common order to a particular cadre. On the other hand, when the revision of pay took place in the

year 1979 i.e. 1.4.1979, Sh. Ashok Kumar Dhamija was in the feeder cadre to the Junior Engineer in the pay scale of AFM i.e. Rs.570-1020 and he exercised to extend the 1979 revision of pay after granting annual increment. Consequently, his pay was fixed at Rs.750/- in the AFM pay scale. On the other hand, the appellants who are in the Junior Engineer pay scale, their pay was fixed at Rs.700/-. When Sh. Ashok Kumar Dhamija was promoted to the cadre of Junior Engineer. By that time his basic pay was Rs.900/-. On the other hand, the appellants' basic pay was Rs.790 or Rs.820/- . Therefore, the appellants' grievance was rightly rejected by the 2<sup>nd</sup> respondent and the learned Single Judge up held the decision of the 2<sup>nd</sup> respondent.

For the reasons aforesated, we decline to interfere with the order of the 2<sup>nd</sup> respondent dated 17.6.2014, so also order of the learned Single Judge dated 12.12.2014 passed in Civil Writ Petition No. 25512 of 2014. Thus the LPA is rejected.

No order, as to costs.

( **Surya Kant** )  
Judge

( **P.B. Bajanthri** )  
Judge

**27.4.2015.**  
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