

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 1897/2004**

% **16th April, 2015**

MANOHAR SINGH Petitioner

Through: None.

Versus

NATIONAL THERMAL POWER CORPORATION LTD. Respondent

Through: Mr. S.K. Taneja, Senior Advocate
with Mr. Rajesh Gupta, Advocate and
Ms. Divyangana Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 15.1.2015.

No one appears for the petitioner on two calls. One call was made in the pre-lunch session and another call was made post lunch. It is 2.45 P.M.

2. By this writ petition filed under Article 226 of the Constitution of India, petitioner an employee of the respondent/National Thermal Power Corporation Ltd (NTPC), seeks the relief that his pay be re-fixed at a higher level in an appropriate grade with consequential benefits from the date on

which petitioner joined the respondent in terms of the office order of the respondent dated 7.12.1981.

3. The facts of the case are that petitioner was originally appointed by the Intelligence Bureau (IB) as a Junior Intelligence Officer-I (Tech.) and the petitioner thereafter sought employment with the respondent as Supervisor Grade-II in terms of the recruitments which were made by the respondent for the said post. Petitioner was recruited by the respondent pursuant to the letter of the respondent dated 7/8.12.1981 and in which the pay scale of the petitioner was fixed at Rs.550-20-900/-. Petitioner claims that petitioner had sought protection of his lien in the post with IB at the time of being appointed with the respondent and this lien recognition was confirmed to the petitioner by the respondent in terms of the respondent's letter dated 24.2.1982. Petitioner relies upon para 2 of this letter to claim that petitioner's pay with the respondent has to be fixed in accordance with the pay of his parent department viz IB. Petitioner further pleads that terms of the appointment of the petitioner were with respect to pay scale specifically amended by the respondent vide its order dated 28/29.5.1984 thereby fixing the pay scale from Rs.550-20-900/- to Rs.550-900/- with basic pay of Rs.590/-. The effect of this order dated 28/29.5.1984, it is pleaded was to fix the pay of the petitioner as per the last pay certificate

issued by the IB. Petitioner further contends that the respondent had earlier issued its letter dated 11/12.4.1983 whereby in para 4 the respondent has specifically stated that the pay of the petitioner will be protected in case the court case filed by the petitioner against IB results in higher pay fixation by the parent organization on the case being decided in favour of the petitioner, and the respondent is so informed by the IB in this regard. Petitioner finally pleads that he was successful in the court case in terms of the judgment dated 5.11.1999 in LPA No.216/1980 whereby the petitioner was directed to be considered by the IB for promotion to the post of ACIO-II (Tech.) from 24.12.1974 and IB therefore re-fixed his pay treating the petitioner as ACIO-II (Tech.) against the earlier rank of JIO-I (Tech.). Petitioner accordingly claims that his pay which was fixed by the respondent at the time of his appointment should hence be at a higher pay scale.

4. Respondent has contested the case of the petitioner and stated that the petitioner was given appointment on specific terms as per the recruitment done. A particular pay scale was given in the appointment letter of appointment of the petitioner to the post of Supervisor Grade-II being the pay scale of Rs.550-20-900/-. Respondent has denied that there was assurance as claimed by the petitioner that he would be soon considered for appointment to the post of Supervisor Grade-I. Respondent also argues

before this Court that it was the respondent which was to decide what would be its financial commitment/pay to be paid to the petitioner and there is no law or any other service rule requirement that petitioner's pay had necessarily to be fixed by the respondent as per his last pay drawn with his earlier employer/IB. Respondent contends that pay protection of the petitioner in terms of the letter of the respondent dated 24.2.1982 was only for the period during retention of lien and such expression of words are specifically found in para 2 of this letter dated 24.2.1982 filed as Annexure P-4 to the writ petition. Respondent also argues that the petitioner is wrongly interpreting the last line of para 4 of the respondent's communication dated 11/12.4.1983 inasmuch as when re-fixing of pay of the petitioner is talked of in the last line of para 4 of the letter dated 11/12.4.1983 the same is qua the fixation only for the period of lien and not for the period thereafter when the petitioner would in fact be an employee of the respondent. Hence, the respondent pleads that it was and is entitled to fix what should be the financial commitment of the respondent to the petitioner in terms of its service rules. Respondent also argues that merely because the initial employer of the organization namely IB has given a particular higher pay scale by granting promotion to the petitioner, that cannot mean that the same is binding on the respondent because there is no law nor any service

rule of the respondent that respondent is bound to fix a particular pay scale for its employee merely because that employee was working earlier with the government. It is reiterated by the respondent that protection of pay of the petitioner and grant of any higher pay can only be during the period when the petitioner had lien with his original employer and not on his becoming a permanent employee with the respondent.

5. I agree with the arguments and contentions urged by the learned senior counsel for the respondent inasmuch as a deputationist organization has a right to fix the pay of an employee once the period of deputation comes to an end and the employee is absorbed as the employee of the respondent. In this case, it is rightly argued by the counsel for the respondent that there was no period of deputation and petitioner was given a specific direct appointment in terms of the offer letter of the respondent dated 7/8.12.1981 which specified the pay scale of the petitioner. The pay scale originally fixed would stand revised in terms of the letter of the respondent dated 28/29.5.1984 as Rs.550-900/- with basic pay of Rs.590/-. It is argued that merely because the original employer of the petitioner has treated the petitioner on foreign service with the respondent, cannot mean that petitioner would be on deputation with the respondent because at no point of time respondent ever treated the petitioner as being on deputation

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with the respondent and no communication has been issued by the respondent to the petitioner wherein it is stated that petitioner is taken on deputation from IB to the respondent.

6. That the stand of the respondent urged before this Court is correct becomes clear from the letter of the respondent dated 11/12.4.1983 addressed to the petitioner wherein in para 1 respondent has categorically stated that retention of lien of the petitioner with the previous employer is for the interest of the petitioner and the same does not extend any liability upon the NTPC/respondent and that therefore the question of mentioning of the lien terms and conditions in the appointment letter to the petitioner does not arise.

7. In the opinion of this Court in one way this writ petition can also be said to be barred on the principle of limitation and the doctrine of delay and *laches* inasmuch as once the request of the petitioner was specifically rejected by the respondent vide its letter dated 11/12.4.1983, the petitioner thereafter cannot approach this Court much later in the year 2004 inasmuch as though strictly the Limitation Act, 1963 does not apply to writ petitions but the principle of limitation will definitely apply and this is so held by the Supreme Court in the case of *State of Orissa and Anr. Vs.*

Mamata Mohanty (2011) 3 SCC 436. Paras 52 to 54 of this judgment are

relevant and the same read as under:-

“52. In the very first appeal, the respondent filed Writ Petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See *Lachhmi Sewak Sahu v. Ram Rup Sahu: AIR 1994 PC 24* and *Kamlesh Babu v. Lajpat Rai Sharma: (2008) 12 SCC 577.*)

53. Needless to say that Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See *Rup Diamonds v. Union of India: (1989) 2*

SCC 356, State of Karnataka v. S.M. Kotrayya: (1996) 6 SCC 267
and Jagdish Lal v. State of Haryana: (1997) 6 SCC 538.)”
(underlining added)

8. In view of the above, merely because petitioner got a higher pay scale in his original employer on account of his being granted promotion pursuant to his being successful in a court case against his original employer cannot mean that respondent is in any manner legally bound by the pay scale which is fixed of the petitioner in the original employer/organization/IB. The respondent is rightly entitled to contend that the relationship of the petitioner with the respondent has to be governed directly and only within the scope of the letter of the appointment dated 7/8.12.1981 and as amended partially in terms of the office order of the respondent dated 28/29.5.1984 fixing pay scale of Rs.550-900/- with basic pay of Rs.590/-.

9. Petitioner has not been able to establish to the satisfaction of this Court that the petitioner can be said to have been on deputation for a period of two years with the respondent as is claimed by the petitioner from the original date of appointment with the petitioner inasmuch as appointment of the petitioner with the respondent is not shown to be on deputation by filing any letter of the respondent to this effect. Also, the petitioner's request having been rejected by the respondent of being granted a higher pay

scale in the year 1983 itself, the writ petition filed in the year 2004 is also barred by the doctrine of delay and *laches* as stated above.

10. In view of the above, there is no merit in the petition, and the same is therefore dismissed. No costs.

APRIL 16, 2015
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VALMIKI J. MEHTA, J