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

+ **W.P.(C) 8931/2014 & CM APPL. Nos.20438-20439/2014**

ARJUN LAL MAKHIJA Petitioner
Through **Ms. Vibha Narang & Ms. Neelam**
Murpana, Advocates
versus

GOVERNMENT OF N.C.T. OF DELHI & ORS..... Respondents
Through **Ms. Purnima Maheshwari,**
Advocate for R-1
Mr. Sushil Kumar Tripathi, Proxy
Counsel for Ms. Anita Pandey,
Advocate for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **07.04.2015**

KAILASH GAMBHIR, J. (ORAL)

By this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner questions the tenability of the impugned order dated 24.03.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Original Application (*in short 'OA'*) No.3744/2012 dismissing the OA preferred by the petitioner on the ground of limitation.

We have heard the learned counsel for the parties.

The petitioner preferred an OA No. 3744/2012 before the learned Tribunal seeking direction to the respondents to re-fix/ revise his pay scale and also to re-designate him on the post of Meter Reader and place him in the scale of Rs.1329- 2040 w.e.f. 01.01.1986 and further place him in higher scale on his promotional post of Meter Inspector (Bulk). The petitioner also sought direction to the respondents to grant him all benefits, which were being enjoyed by his junior employees on the same post.

The genesis of the case of the petitioner as set up by him before the learned Tribunal is that he joined Delhi Jal Board on 11.12.1980 and was promoted to the post of Meter Inspector (Bulk) on regular basis on 08.06.2007 but despite his promotion, he was drawing a salary lower than three Meter Reader-cum-Mechanics w.e.f. 01.01.1986.

The main cause of grievance of this petitioner was that some of the similarly situated persons had approached the Labour Court and the Labour Court had given a decision in their favour in I.D. No.32/1993 to place them in the pay scale of Rs. 1320-2040/- w.e.f. 01.01.1986 but the petitioner was denied the same benefits.

The OA preferred by the petitioner was contested by the respondents primarily on the ground of delay. The learned Tribunal has

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dismissed the OA preferred by the petitioner on the ground of delay after placing reliance on the decision of the Supreme Court in the case of ***State of Orissa & Anr. v. Mamata Mohanty, (2011) 3 SCC 436***. The learned Tribunal in the impugned order observed that there has been considerable delay on the part of the petitioner in filing the OA and he has also not given sufficient reasons to extend the period of limitation.

While addressing arguments in support of his case, the petitioner placed reliance on the decision of the Apex Court in the case of ***State of U.P. & Ors. v. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347*** and in the case of ***Union of India & Ors. v. Tarsem Singh, (2008) 8 SCC 648***.

In ***State of U.P. & Ors. (supra)***, the Apex Court took a view that it is a normal rule that when a particular set of employees is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. While laying down this principle, the Court further observed that this normal rule is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence which would be a valid ground to dismiss their claim but such an exception could not be applied to those

cases where the judgment pronounced by the Court was judgment in rem with intention to bestow benefit on all similarly situated persons irrespective of the fact whether such persons had approached the Court or not. Relevant paras of the said judgment wherein these legal principles have been culled out are reproduced as under:-

“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.

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.

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. 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.”

We may also usefully refer to some of the relevant paras of the judgment of **Tarsem Singh (supra)**, wherein the Apex Court took a view that an exception can be made in the case of continuing wrong as the same gives rise to continuing cause of action, subject to the qualification that third party rights will not be affected. The issue of fixation of pay has been held to be a continuous cause of action to a claimant and in the case of any delay and laches on the part of the applicant, at best, a relief can be confined to a period of three years from the date of such claimant approaching the Court.

“The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A ‘continuing wrong’ refers to a single wrongful act which causes a continuing injury. ‘Recurring/successive wrongs’ are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare v. Shree Dhyaneshwar Maharaj Sansthan AIR1959SC798 , explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) : It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders

the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. In M.R. Gupta v. Union of India AIR1996SC669 , the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held : The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred.... In Shiv Dass v. Union of India (2007) IILLJ212SC , this Court held: The High Court does not ordinarily permit a belated resort to the extraordinary

remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. 5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

The learned Tribunal in the impugned order has not dealt with the main claim of the petitioner on its merit and dismissed his O.A on the ground of limitation.

Considering the fact that the reasoning given by the learned Tribunal doesn't find favour with us and therefore while setting aside the said reasoning, we remand the matter back to the learned Tribunal for deciding the claim of the petitioner on its merits after giving due opportunity to the parties hereto.

Accordingly, list this matter before the learned Tribunal on 22.04.2015. Both the parties are directed to appear before the learned Tribunal on the said date.

With the above direction, the present Writ Petition and all the pending applications are disposed of.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

APRIL 07, 2015

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