

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 136 of 2014****Order reserved on 20.04.2017****Order delivered on 04.05.2017**

1. Chhattisgarh State Power Holding Company Limited, Daganiya, Through its Managing Director, Raipur (Chhattisgarh).
2. Chhattisgarh State Power Distributing Company Limited, Through its Managing Director, Raipur (Chhattisgarh).

---Petitioners**Versus**

1. Johri Lal Sharma S/o. Shri Jagarnath Sharma, Office Attendant Grade –II, Office of Superintendent Engineer (RECE), Resident of House No. 11/361-363, Halwai Line, Raipur (Chhattisgarh).
2. State Industrial Court of Chhattisgarh, Mahanadi Khand, D.K.S. Bhavan, Raipur (Chhattisgarh).
3. Labour Court, Raipur, Anand Nagar, Raipur (Chhattisgarh).

---Respondents

For petitioners : Mr. N. K. Vyas, Advocate.

For respondent No.1 : Shri Johri Lal Sharma is present in person

For respondent No.2 : None present.

Hon'ble Shri Justice Sanjay K. Agrawal**Order [C.A.V.]**

1. The Chhattisgarh State Power Holding Company Limited calls in question legality, validity and correctness of the order passed by the Industrial Court, by which that Court reversed the order of the

Labour Court and thereby granted the benefit of pay fixation to respondent No.1 w.e.f. 15.02.1965.

2. The essential facts necessary to judge the correctness of plea raised at the Bar are as under:-

2.1 Respondent No.1 filed an application on 26.04.1996, just before 4 days before his retirement contending that, other promoted UDC namely Sirazuddin Quraishi and D.P. Soni were appointed on 15.02.1965 and their pay has been fixed at Rs. 120/- whereas, he has been promoted as UDC in the year 1964 as such his pay should have been fixed at Rs. 120/- in place of Rs. 115/- w.e.f. 15.02.1969. The department has not taken any decision therefore his pay be fixed at Rs. 115/- w.e.f. 15.02.1965 and thereafter revised pay in subsequent revisions of pay be revised and he be paid the arrears.

2.2 The petitioner filed written statement contending that the application filed by respondent No.1 is barred by limitation. Section 62 of the MPRI Act, provides limitations of filing the application within 1 year from the cause of action has been arisen. The application has been filed after lapse of 31 years as such, it is barred by limitation. It is further pleaded that Shri Soni and Sirazuddin were appointed on the post of LDC much before respondent

No.1 and respondent No.1 was fixed to Rs. 115/- after giving benefit of fundamental Rule 22(d). Similarly, when Shri Soni and Shri Quraishi were extended benefits of Rule 22(d), their pay comes to Rs. 120/- per month. The application has been filed after 31 years, in the meantime pay fixation has been done on 01.04.1989, 1974, 1979, 1984 therefore he is estopped from raising such dispute. Pay fixation has been done rightly. It is further averred that the representation of respondent No.1 was dismissed on 07.01.1983 and thereafter he filed present application just before 4 days of his retirement. The application is barred by limitation on merits also and since pay fixation has been done correctly the application filed by respondent No.1 is liable to be rejected.

- 2.3 The Labour Court vide order dated 18.02.2013 rejected the application on the count that, the application is barred by limitation as he has filed the application on 26.04.1996. The learned Labour Court has also recorded the finding that, Johrilal Sharma was appointed on 11.12.1961 whereas, Sirazuddin Quraishi was appointed on 31.12.1960 and Shri D. P. Soni was appointed on 07.01.1961, like in the promotion order, Shri Sirazuddin Quraishi and D. P. Soni have been promoted as they are seniors as such, their pay will be higher than that of

respondent No.1, which is natural consequence.

2.4 Respondent No.1 preferred an appeal before the Industrial Court which was allowed by the said Court reversing the order of the Labour Court on the question of limitation and merit as well and thereby granted the application preferred by respondent No.1.

3. Feeling aggrieved against the order of the Industrial Court, the petitioners herein have filed this writ petition under Article 226/227 of the Constitution of India.

4. Shri N. K. Vyas, learned counsel appearing for the petitioners, would submit that the learned Industrial Court should have not reversed the findings recorded by the Labour Court and respondent No.1 has not submitted any document to demonstrate that, he was appointed prior to Shri Sirazuddin Quraishi and Shri D.P. Soni. The Industrial Court should have seen that the burden lies on the employee / respondent No.1 to establish his case which he failed to discharge. Challenge to grant pay fixation which was done in the year 1965 and in the year 1996, is against the law laid down by the Supreme Court in the matter of **Rajaram Maize Product v. Industrial Court of M. P.**¹ in which the Supreme Court has considered the limitation under the MPIR Act and has held that, maximum limitation is up to two years. Therefore, the impugned order deserves to be set-aside.

1 2001(4) SCC 492

5. Respondent No.1 appearing in person would submit, that the Industrial Court has rightly held that the application filed by him was within the period of limitation as the cause of action was recurring cause of action and therefore no interference is warranted on the question of limitation. He would further submit, that the petitioners have illegally deprived respondent No.1 of his legitimate right which has been granted by the Industrial Court and as such the writ petition deserves to be dismissed being merit-less.

6. I have heard learned counsel for the petitioners and respondent No.1 in person and gone through the record with utmost circumspection.

7. The Labour Court rejected the application filed by respondent No.1 on the question of limitation as well as on merit. The Labour Court clearly recorded a finding that the respondent No.1 has filed this application on 26.04.1996 and claimed relief w.e.f. 15.02.1965 and as such barred by Section 62 read with Section 61(1)(A) of the Chhattisgarh Industrial Relations Act, 1961. On appeal being preferred by respondent No.1, the Industrial Court reversed the finding of limitation holding that the question of fixation of pay is a continuous wrong and it is a recurring cause of action, therefore the application filed is within the period of limitation.

8. The dispute between the parties mainly relates to fixation of pay. In the matter of **M. R. Gupta v. Union of India**² the Supreme Court

2 AIR 1996 SC 669

has held that the question of non-fixation/wrong fixation of pay being continuous wrong gives an employee a recurring/fresh cause of action and question of limitation does not arise. Relevant paragraphs of the report state as under: -

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. 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,.....

6. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli Raju*, AIR 1950 Federal Court I).”

9. The aforesaid judgment has been followed with approval by the Supreme Court in the matter of Union of India v. Tarsem Singh³ and it was held as under:-

“4. 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 Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan⁴ explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

“31. ... 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.”

7. 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

3 (2008) 8 SCC 648

4 AIR 1959 SC 798

others also, and if the reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.”

10. Thus, if the facts of the case are examined in light of the principles of law laid down in above-stated judgments, it is quite vivid that the finding recorded by the Industrial Court holding that the application filed by respondent No.1 was within the period of limitation, is a finding based on the correct appreciation of the material available on record that respondent No.1 has recurring cause of action in his favour to maintain the application before the Labour Court, and the Industrial Court is justified in holding so.

11. This determination would bring me to the next submission of the petitioners that even assuming that respondent No.1 had recurring cause of action in his favour and his application was within the period of limitation, then the Industrial Court should have restricted the consequential benefits relating to arrears etc., respondent No.1 to a period of three years from the date of filing of the application before Labour Court.

12. In the judgment of the Supreme Court noticed herein-above

Tarsem Singh (supra), Their Lordships have categorically held that in such cases relating to continuous wrong, the consequential relief relating to arrears normally should be restricted to period of three years prior to the date of filing of the suit. Similarly, the Supreme Court in the matter of **State of Madhya Pradesh and others v. Yogendra Shrivastava**⁵ held that denial of benefit of higher allowance or pay is a continuous wrong and cause of action arises every month at the time of payment of salary but arrears cannot be granted beyond three years prior to date of application.

“18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application.

19. The appeals are allowed in part as follows:

- (i) We uphold the decision of the Tribunal, affirmed by the High Court that the respondents are entitled to 25% of their pay, as NPA.
- (ii) The respondents will be entitled to NPA @ “25% of pay” only up to 20-5-2003. Thereafter, the amended Rules will apply.
- (iii) Insofar as arrears are concerned, the respondents are entitled to recover the difference in NPA only in regard to the salary which accrued due during the three years prior to the date of filing of the

5 (2010) 12 SCC 538

original applications by the respondents before the Tribunal and not from the date of their appointments.
 (iv) As a consequence, if the appellants, in pursuance of the orders of the Tribunal/High Court, had paid the difference in NPA, for any period beyond three years before the date of the respective original applications, they will be at liberty to recover the same from the respective respondents in twenty-four monthly instalments.”

13. The principle of law laid down by the Supreme Court in **Yogendra Shrivastava** (supra) squarely applies to the facts of the present case. The Industrial Court held that respondent No.1 is entitled for the consequential benefits w.e.f. 15.02.1965. The aforesaid finding/direction of the Industrial Court is contrary to law. The said finding and relief granted by the Industrial Court deserve to be modified.

14. The writ petition is allowed in part as follows:

1. The order of the Industrial Court is modified directing that respondent No.1 will be entitled to recover the difference in pay scale which accrued to him during three years prior to the date of filing of application before the Labour Court.
2. He will be entitled for re-fixation of pay/pension, but only arrears will be restricted to a period of three years prior to the filing of application before the Labour Court.

15. No order as to cost(s).

Sd/-
 (Sanjay K. Agrawal)
 Judge