

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.24470 of 2005

ORDER:

This writ petition is filed for a mandamus, declaring that the petitioner's appointment Order No.212/A3/KU/2002, dated 12th April, 2002 issued by the 2nd respondent, as illegal and arbitrary in so far as it denies the pay scale of Rs.1745-3420 with effect from 23rd March, 1994.

Heard both the learned counsel and perused the record.

Questioning the scale of pay given to him, the petitioner filed the present writ petition.

The petitioner was initially appointed as NMR on daily wage basis @Rs.16/- per day to work in PBX, vide orders dated 18.01.1989, for a period of 6 months. Thereafter, his services were extended from time to time. Post of Telephone Operator fell vacant in the event of resignation of Mr.Shivaji and according to roster, the said post was to be filled with SC (woman). In the month of August, 1991 the petitioner was awarded consolidated pay of Rs.740/-, vide orders dated 08.08.1991, initially for a period of three months and the same was extended from time to time. Subsequently, the petitioner was awarded the scale of pay of Rs.1375-2375, vide orders dated 23.03.1994, imposing some conditions. One of such conditions is that the petitioner shall have no right to claim for placing him on probation from the date of giving the regular scale. Having agreed for the terms and conditions, he continued to work till 2005, and in the year 2005 the petitioner filed the present writ petition.

The contention of the petitioner is that though his services have been regularized as PBX Operator with effect from 23.03.1994, vide

proceedings of the University and his scale of pay is determined as Rs.1375-2375, he was entitled to higher pay scale, which is applicable to a telephone operator. Subsequently, in the year 2002, the University in its proceedings Nos.212/A3/KU/2002, dated 12.04.2002 have regularized the services of the petitioner in the scale of pay of Rs.1375-2375 with effect from the date of his joining, i.e., from 24.03.1994 and in the scale of pay of Rs.1475-2670 from 01.12.1994 without any monetary benefits. The prayer of the petitioner is that he ought to have given the scale of pay at Rs.1475-2670 right from 24.03.1994 since he has been discharging the duties as telephone operator.

It is admitted fact that right from 1994, when he was given scale of pay, the petitioner has been discharging the duties accepting the scale of pay for more than 10 years and only in 2005 he questions the grant of scale of pay at Rs.1375-2375 to him from 23.03.1994 instead 1475-2670. The University in its proceedings date 12.04.2002 granted pay scale to the petitioner at Rs.1475-2670 with effect from 01.12.1994, but without any monetary benefits. If the petitioner had grievance with regard to improper fixation of pay and giving him lower pay scale though he is entitled to higher scale, he ought to have made a representation to the authorities, but having accepted the same for more than 10 years, he cannot be heard saying that he is entitled to higher scale of pay than the scale of pay granted to him in the year 1994. It is not as though the writ petitioner was accepting the terms and conditions of the employment as they were offered, but the records speaks otherwise to the fact of filing number of writ petitions and writ appeals by the writ petitioner ventilating his grievance right from 2003. Therefore, the delay on the part of the

writ petitioner in approaching the court is not justified and on the ground of laches the writ petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. However, the learned counsel for the petitioner represents that at least the service of the petitioner may be regularized from the date when he was discharging his duties, for the purpose of service conditions. In this regard, the petitioner is at liberty to make a representation to the respondents and on filing such representation, the authorities concerned may consider and dispose of the same, on merits, in accordance with law. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 21.09.2017
Dsr



M.S.K.JAI SWAL, J