

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.14920 of 2017

Date of decision:28.07.2017

Baldev Raj Chadha & others

....Petitioners

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Ramesh Malik, Advocate, for the petitioners.

G.S. SANDHAWALIA, J. (Oral)

The petitioners seek the relief of grant of 1st ACP scale, as per the Haryana Civil Services (Revised Pay Scales) Rules, 1998 (for short, the 'Rules') and to fix the pay of the petitioners at par with the other co-employees and to pay to the petitioners the arrears of their salaries arising from such grant of 1st higher standard scales, revised and ACP scales till March, 2001, when the petitioners were retrenched from service. The re-calculation of the terminal benefits like gratuity, retrenchment compensation and other benefits have also been prayed for along with interest.

It is not disputed that the petitioners are the erstwhile employees, except petitioners No.6 & 12, who are widows of the employees and their husband have since expired. The Haryana State Small Industries and Export Corporation Ltd. in which they were working had declared them surplus in February, 2001 and they had stood retrenched from service from the Corporation, as per communication dated 06.02.2001 (Annexure P-2). Thus, their contract of service with the Corporation came to an end, at that point of time.

The claim, now, has been preferred, for the first time, by filing the present writ petition, on the ground that they are entitled for the benefits from 01.01.1996 till 2001. At no stage prior to this, they had agitated for

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their claim. It has also been mentioned that petitioner No.1 had challenged the order of retrenchment, which was dismissed and petitioners No.1, 2 and 6 were adjusted in other departments where they had completed their service, till their superannuation.

The claim has, now, been agitated on the strength of a decision taken by the Division Bench in CWP-10717-2006 titled *Ashok Goswami Vs. Commissioner & Secretary to Government, Haryana-cum-Chairman, Haryana State Small Industries & Export Corporation Ltd. & another*, decided on 03.04.2008 (Annexure P-8), wherein directions were issued to fix the 1st and 2nd ACP, as per the Rules. A perusal of the said judgment would go on to show that the petitioners had sought quashing of the resolution dated 19.03.2007, passed by the Corporation and thus, the employees who were in service, at that point of time and had challenged the said resolution within reasonable time, were granted the benefits.

Merely because another set of employees, as such, has got some benefits would not revive the limitation in the case of the petitioners who were satisfied in their case and had never sought to agitate or claim any benefits after their retrenchment in 2001. As noticed, at least 2 of the petitioners are also widows of the employees and their husbands also had chosen not to raise any grievance during their lifetime. Merely because another set of persons in service have got certain reliefs would not entitle the petitioners to approach the Court for the said relief. Law is settled by the Apex Court that fence-sitters cannot be permitted to approach this Court on the ground that certain other persons have got the relief.

In **State of Uttar Pradesh & others Vs. Arvind Kumar**

Srivastava & others 2015 (1) SCC 347, the principle of equality was examined as to whether persons who are fence sitters and seek the similar relief on account of certain benefits having been granted to the other persons and whether they are to be given the said relief, keeping in view the right of equality enshrined in Article 14 of the Constitution of India, was examined. It was, accordingly, held that there were exceptions and persons who were guilty of delay, could not be granted the same benefits and it would be a valid ground to dismiss the petition on account of delay and laches or acquiescence. The principles laid down read as under:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) 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.

(2) 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.

(3) 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 (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). 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.”

Reliance can also be placed upon the judgment of the Apex Court in *State of Uttaranchal & another Vs. Sri Shiv Charan Singh Bhandari & others 2013 (9) SCR 609* wherein it has been held that non-challenge of ground of promotion, as such, for 6 years, would debar the employees to seek consideration afresh and thereafter, to claim seniority, having accepted the position, while placing reliance upon the judgments in *C.Jacob Vs. Director of Geology & Mining (2008) 10 SCC 115* and *Union of India Vs. M.K.Sarkar (2010) 2 SCC 59*, apart from other judgments. Relevant observations read as under:

“The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*, 2006 (2) S.C.T. 417 : (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. [In State of Orissa v. Pyarimohan Samantaray](#) (1977) 3 SCC 396, it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in [State of Orissa v. Arun Kumar Patnaik](#), (1976) 3 SCC 579.

17. [In Bharat Sanchar Nigam Limited v. Ghanshyam Dass](#) (2) and others, 2011 (2) S.C.T. 712 : (2011) 4 SCC 374, a three-Judge Bench of this Court reiterated the principle stated in [Jagdish Lal v. State of Haryana](#), 1998 (1) S.C.T. 26 : (1997) 6 SCC 538, and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. [In State of T.N. v. Seshachalam](#), 2007 (4) S.C.T. 472 : (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

“....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. [Article 14](#) of the

Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

19. There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in [Ghulam Rasool Lone v. State of Jammu and Kashmir and another](#), 2010 (1) S.C.T. 169 : (2009) 15 SCC 321.

20. [In New Delhi Municipal Council v. Pan Singh and others](#), 2007 (2) S.C.T. 601 : (2007) 9 SCC 278, the Court has opined that though there is no period of limitation provided for filing a writ petition under [Article 226](#) of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

21. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in [P.S. Sadasivasway v. State of Tamil Nadu](#), (1975) 1 SCC 152, wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

22. We are absolutely conscious that in the case at hand the

seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

In Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu 2014 (4) SCC 108, the order of dismissal challenged successfully before the High Court, was set aside on

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the ground of delay and laches, by holding that it does not foster the cause of justice, but brings injustice as it is likely to effect others precious ripened rights.

On 13.07.2017, the following order was passed:

“Counsel prays for time to assist the Court as to how the claim is maintainable, in view of the fact that the petitioners were retrenched wayback in the year 2001. Counsel shall also apprise the Court on the issue as to whether the petitioners would be entitled to raise the issue of revised pay scale, only on account of the fact that the employees who were in service had agitated for their rights wayback in the year 2007 and any subsequent adjudication can give a fresh cause of action on the same to the petitioners.

List on 28.07.2017.”

Counsel for the petitioner, accordingly, relied upon the judgment of the Apex Court in **M.R.Gupta Vs. Union of India & others 1995 (5) SCC 628**, to submit that the right for fixation of the pay and payment, was a recurring cause of action and therefore, there was a right of Government servant to be paid the correct amount.

A perusal of the said judgment would go on to show that the Tribunal had dismissed the application for fixation of pay and the matter had been raised after a lapse of 8 years since the initial pay-fixation. It was, in such circumstances, the Apex Court had held that the right of the Government servant to be paid the correct salary throughout his tenure according to the computations made in accordance with the rules were a subsisting cause of action. It was not a case where services had already been dispensed with more than 15 years back and the relationship of employer-employee had got snapped and thus, the said judgment would not

be applicable to the facts and circumstances of the present case.

Similarly, reliance upon *Union of India & others Vs. Tarsem Singh 2008 (8) SCC 648*, would be of no help of the petitioner, which followed the earlier view referred above, where disability pension had been restricted to 38 months prior to the filing of the writ petition by the Single Judge. The Division Bench had granted the benefit from the date the same fell due and also interest on the arrears @ 6% per annum. The Apex Court rather held that the relief should have been restricted to 3 years prior to the date of filing of the writ petition and the delay of 16 years would affect the consequential claim of the arrears and that too with interest and allowed the appeal. It rather noticed that limitation was to be kept in mind and a belated service claim was liable to be rejected on the ground of delay and laches and the only exception to the said rule was in case relating to a continuing wrong.

As noticed above, counsel has not been able to point out as to what was the continuing wrong, as such, in the case of the petitioners, as neither any submission has been made that the petitioners are in receipt of any pension which is to be refixed from the erstwhile Corporation, which stands wound up.

Similarly, the judgment passed in *Rattan Singh Vs. State of Haryana 1995 (1) PLR 274*, was a case in principal relating to the fixation of the pay-scales of the teachers in which there was repeated litigation till the Apex Court and fixing of the pay on a higher scale from the date the requisite qualifications were acquired, was the subject matter. The matter had gone to the Apex Court on various occasions and law had been settled

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and in such circumstances, it was held that once in principal, identically situated persons had been given the benefit, similarly situated persons who approached the Court, could not be treated differently. It was further held that limitation was a self-imposed rule and the Court will have to scrutinize the relevant facts whether it was proper exercise of jurisdiction, in a given case or restrict the same in others.

Thus, the view has already been elaborated later by the Apex Court in **Arvind Kumar Srivastava's** case (supra), to the same extent and keeping in view the reasons mentioned above, merely because some set of persons in service had approached this Court and were successful in seeking the relief, the petitioners who were retrenched long ago and had never agitated for their grievance at any given point of time, cannot, now, approach this Court after a period of more than 15 years from the date of their retrenchment.

The judgments relied upon by counsel for the petitioners would, thus, be not of much consequence, in view of the latest law laid down by the Apex Court, as discussed above and the fact that in the present case, the relationship of employer and employee got snapped in the year 2001.

Accordingly, the present writ petition, being bereft of any merit, the same is, hereby, dismissed, in limine.

28.07.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes