

**107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 17609 of 2017
DECIDED ON: AUGUST 23, 2017**

SEWA SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vikas Chatrath, Advocate
for the petitioner.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought the issuance of writ in the nature of mandamus directing the respondents to hold and count the service rendered by him in the Government School of State of Arunachal Pradesh from August 27, 1978 to August 15, 1983 on regular sanctioned post for the purposes of qualifying service towards the pensionary benefits under the instructions and Punjab Civil Services Rules, Vol-II (for short 'Rules') as adopted by State of Haryana alongwith all consequential benefits.

2. At the very outset of arguments, the question arose that the petitioner stood retired on November 30, 2006 on attaining the age of superannuation and

the grouse with regard to the non-counting of service earlier rendered by him in the Department of Education, Arunachal Pradesh for the period referred to above has been ventilated for the first time through the instant petition in the month of August 2017 i.e. after more than a decade of his retirement and after about 2 ½ decades from the date of his joining the service in the State of Haryana. As such apparently, there is a delay and laches on the part of petitioner in approaching the Court. However, learned counsel for the petitioner submits that there is no limitation for filing a writ petition provided under Law. However, the delay in approaching this Court would not affect the consequential claim for arrears, which can be ordered to be limited to 38 months prior to the filing of writ petition, under the settled proposition of law. To buttress this contentions, learned counsel for the petitioner has relied upon a Full Bench judgment passed by this Court in the case of **Saroj Kumari vs. State of Punjab; 1998 (3) SCT 664**. Learned counsel for the petitioner also relies upon the judgments of Hon'ble Apex Court rendered in the cases of **M.R. Gupta vs. Union of India and others; 1996 (1) SCT 8**; **Union of India vs. Keshar Singh; 2007 (2) SCT 754**, **Asger Ibrahim Amin vs. Life Insurance Corporation of India; 2015 (4) SCT 695** and **Union of India & others vs. Manpal; 2015 (4) SCT 63**.

3. Beside the afore-said judgments, in the case of **Shiv Dass vs. Union of India; 2007 (2) SCT 72**; the Hon'ble Apex Court has held as under;

“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.”

4. Thus, in the light of afore-said observation, it can be said that normally a belated service related claim will be rejected on the ground of delay and laches or limitation. 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 relates 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. Thus, in case of 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 thereof, consequential relief in respect of arrears can be restricted to a period of 38 months prior to the date of filing of the writ petition.

5. Adverting to the facts of the case in hand, petitioner has sought the relief of counting his service rendered by him in the Government School of State of Arunachal Pradesh for the period referred to above on regular sanctioned post for the purposes of qualifying service towards the pensionary benefit under the instructions and the Rules as adopted by State of Haryana alongwith all consequential benefits. Thus, the grant of benefit sought by the petitioner through the instant petition is likely to affect the other persons also. However, his claim for the consequential relief in respect of arrears can be restricted to 38 months, in view of dictum laid down in the afore-said judgments.

6. Undisputably, petitioner has served a legal notice dated June 09, 2017 (Annexure P-5) upon the respondents but despite that fact a period of more than two months have expired, no action has been taken by the authorities concerned. Moreover, petitioner also feels satisfied in case a direction is issued to respondent No.2 to decide the legal notice dated June 09, 2017 (Annexure P-5) within a stipulated period.

7. Accordingly, instant petition is disposed of with a direction to respondent No.2 to look into the grievances unfolded by the petitioner in his

legal notice dated June 09, 2017 (Annexure P-5) and take a conscious decision within a period of four months from the date of receipt of certified copy of this order in accordance with law by passing a speaking order; that too after hearing the petitioner. In case the authority comes to the conclusion that petitioner is entitled to the relief(s) claimed by him, the arrears thereof, shall stand restricted to a period of 38 months prior to the date of filing of instant writ petition, in view of above-said discussion, as well as the dictum laid down in the afore-said judgments. However, in case the petitioner still feels aggrieved of the order passed by the authorities concerned, he shall be at liberty to approach this Court.

AUGUST 23, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*