

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

**CWP No. 18717 of 2017
DECIDED ON: AUGUST 23, 2017**

GURBACHAN SINGH & OTHERS

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harnek Singh, Advocate
 for the petitioners.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioners have sought the issuance of writ in the nature of mandamus directing the respondents to revise the pay scales of the petitioners w.e.f. 01.01.2016 in view of judgment passed by a Division Bench of this Court in the case of A.P. Sharma and the arrear be paid to the petitioners with 12% interest from the due date. .

2. At the very outset of arguments, the question arose that the petitioners stood retired on January 01, 2006 on attaining the age of superannuation and the grouse with regard to the revision of the pay scales of the petitioners w.e.f. 01.01.2006 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

their retirement. As such apparently, there is a delay and laches on the part of petitioner in approaching the Court. However, learned counsel for the petitioners 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 contention, learned counsel for the petitioners 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 **Umed Singh (Ex.Naik) v. Union of India and others; 2014 (2) RSJ 658;** the Hon'ble Apex Court has held as under;

“24...However, since a person has approached after delay, the claim of arrears would be restricted to a period of three years prior to initiation of lis, as any claim for money could be lodged only within three years from the date right to recovery arises in terms of Article 137 of the Limitation Act, 1963. Therefore, we find that the claim of disability pension cannot be declined for the reason that it was not raised within three years of discharge from the Army, but the payment of arrears would be restricted to a period of three years before the limitation of lis.”

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 affects 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, petitioners have sought the relief for grant of revised pay scale w.e.f. 01.01.2006. 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, petitioners have served a legal notice dated May 11, 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, petitioners also feel satisfied in case a direction is issued to respondent No.2 to decide the legal notice dated May 11, 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 petitioners in their legal notice dated May 11, 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 petitioners are entitled to the relief(s) claimed by them, 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 petitioners still feel aggrieved of the order passed by the authorities concerned, they 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*