

CWP No. 18804 of 2017
DECIDED ON: AUGUST 23, 2017

....PETITIONERS

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

.....RESPONDENTS

Present: Mr. Pawan Kumar Goklaney, 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 re-fix their pension as per Government circular dated August 17, 2009 (P-1), February 22, 2010 (P-2) and August 17, 2009 (P-3) on account of increase in pay scales/grade pay and revised pensionary benefits notionally especially in view of the judgment passed by this Court in CWP No. 273 of 2014 titled as ***Jagdish Singh & others vs. State of Punjab and others***, decided on February 16, 2017.

2. At the very outset of arguments, the question arose that the petitioners stood retired on attaining the age of superannuation before cut off

date i.e. November, 30, 2011 and the grouse with regard to the re-fixation of their pension on account of increase in pay scales/grade pay as well revise pensionary benefits notionally 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 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 **Union of India vs. Tarsem Singh, (2008) 8 SCC 648;** the Hon'ble Apex Court has held as under;

“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 other 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 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. 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.”

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, petitioners have sought the relief of refixation of their pension. 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 April 17, 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 April 17, 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 April 17, 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 feels 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*