

CWP No.21392 of 2017

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

**CWP No.21392 of 2017
DECIDED ON: OCTOBER 04, 2017**

JAGDISH SINGH AND OTHERS

.....PETITIONER..

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. G.S. Bal, Senior Advocate with
Ms. Manjeet Kaur, Advocate,
for the petitioners.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioners have sought the issuance of a writ in the nature of mandamus directing the respondents to re-fix their pension as per circulars dated 17.08.2009, 22.02.2010 and 15.12.2011 (Annexures P-4 to P-8) in view of increase in the pay scales and grade pay in terms of judgment rendered by this Court in CWP No.2866 of 2014 captioned as Karanvir Singh & ors. vs. State of

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Punjab & ors. along number of other writ petitions and consequently grant them all consequential benefits accruing therefrom.

2. Undisputably, petitioners stood retired from service on May 31, 2007, August 31, 2000, July 31, 2006, October 31, 2000 and May 31, 2005 on attaining the age of superannuation. The grouse with regard to re-fix the pension as per circulars dated 17.08.2009, 22.02.2010 and 15.12.2011 (Annexures P-4 to P-8) has been ventilated for the first time through the instant petition in the month of September, 2017, after a period of more than six years. As such, apparently, there is a delay and laches on the part of petitioners in approaching the Court.

3. 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

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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, in view of Full Bench judgment passed by this Court in the case of *Saroj Kumari vs. State of Punjab; 1998 (3) Sct 664*.

5. Adverting to the facts of the case in hand, petitioners have sought the relief of re-fixation of their pension. Thus, the grant of benefit sought by the petitioners through the instant petition is likely to affect the other persons also. However, their 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 served a legal notice dated July 13, 2017 (P-13) to the respondents but no action has been taken by the authorities concerned so far. Moreover, petitioners also feel satisfied in case a direction is issued to the respondents to consider and decide the legal notice dated July 13, 2017 (P-13) within a stipulated period.

7. Accordingly, instant petition is disposed of with a direction to respondents to look into the grievances unfolded by the petitioners in the legal notice dated July 13, 2017 (P-13) and take a conscious decision within a period of three months from the date of receipt of a certified copy of this order in accordance with law by passing a speaking order; that too, after hearing the petitioners. In case, authority/authorities come(s) 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

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petition, in view of above-said discussion, as well as the dictum laid down in the afore-said judgments.

8. However, in case petitioners still feel aggrieved of the order passed by the authorities concerned, they shall be at liberty to approach this Court.

OCTOBER 04, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned* *Yes

Whether reportable* *Yes/No