

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

**CWP No. 22190 of 2017
DECIDED ON: SEPTEMBER 27, 2017**

TARLOK CHAND & ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vikas Chatrath, 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 pension and pensionary benefits by taking into account their service rendered in the Department of Education, Punjab in terms of Rules governing their conditions of service as well as law laid down in Smt. Shant Kaur vs. Punjab State & others, 1992 (1) RSJ 579, CWP No. 6980 of 2009, Partap Singh vs. State of Haryana & others, decided on October 23, 2009, Rameshwar Dass Singla vs. State of Punjab & others, 2015 (2) SCT 95, CWPNo. 2582 of 2004, Baldev Singh Dhaliwal vs. Union of India, Narinder Kaur vs. Central Administrative Tribunal, decided on

December 14, 2015, State of Punjab and others vs. Dev Dutt Kaushal and others, AIR 1996 SC 85, Chander Sain vs. State of Punjab and others, 2006 (6) SLR 624 and Harnandan Singh Vs. State of Punjab, 2007 (1) SCT 514 and instructions issued by the Ministry of Personnel, Government of India on February 07, 1986 (Annexure P-1) and January 07, 2002 (Annexure P-2) alongwith all consequential benefits and interest 18% per annum.

2. At the very outset of arguments, the question arose that the petitioners are retirees and the grouse with regard to grant of benefit of revised pay and pension benefits etc. as well as its arrears by taking into account their past service rendered in the Department of Education, Punjab, has been ventilated for the first time through the instant petition in the month of September 2017. As such, apparently, there is a delay and laches on the part of petitioner No.1-Tarlok Chand, who stood retired on April 30, 2010 in approaching the Court but there is no delay and laches on the part of petitioner No.2-Saroj Saini. Learned counsel for the petitioners further 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 the afore-said contention, 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.

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 are seeking the grant of benefit of revised pay and pension by taking into account their past service rendered by them in the Department of Education, Punjab. 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 June 09, 2017 (Annexure P-3) upon the respondents but neither any reply nor any action has been taken by the authorities concerned so far. Moreover, petitioners also feel satisfied in case a direction is issued to respondent No.2 to consider and decide

the legal notice (Annexure P-3) 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 June 09, 2017 (Annexure P-3) and to 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 petitioners. 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 petitioners still feel aggrieved of the order passed by the authorities concerned, they shall be at liberty to approach this Court.

8. However, it is made clear that the claim of petitioner No.1 is restricted to a period of 38 months prior to the date of filing of instant petition, as there is a delay of more than 6 years in approaching this Court and in case of petitioner No.2 there is no delay.

SEPTEMBER 27, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*