

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

**CWP No. 4458 of 2017 (O&M)
DECIDED ON: AUGUST 02, 2017**

SURJEET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Gursharan Singh, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

CM No. 10498 of 2017

Application is allowed, as prayed for.

Representations dated June 21, 2012 and dated August 26, 2014
(Annexures P-4 and P-5) are taken on record, subject to all just exceptions. Be
tagged at appropriate place.

CWP No. 4458 of 2017

By virtue of instant petition preferred under Articles 226/227 of the
Constitution of India, petitioner has sought a writ of mandamus directing the
respondents to pay service benefits, annual increments w.e.f. July 04, 1990 to
January 03, 1998 in the grade of ₹2200-4000 as well as increase in grade after
completing 8 years of service, as Agriculture Development Officer in the scale

of ₹3000-4500/- as well as, the arrears of increments, other service benefits and increase in scale, with interest upto date with consequential relief of mandatory injunction commanding the defendants to pay scale of ₹2200-4000/- which was subsequently revised to ₹10025-15100/- along-with DA and other benefits, with further direction to decide the case of the petitioner in view of Annexures P-1 and P-2 and to decide legal notice (Annexure P-3) within a specific time.

2. A perusal of file reveals that vide order dated March 06, 2017 petitioner was directed to place on record the representation and copy of order passed by the Civil Court to show as to what controversy was involved in the said case. In pursuance to said order, petitioner has placed on record the so called representation(s) dated June 21, 2012 (P-4) as well as dated August 26, 2014 (P-5) but when learned counsel for the petitioner was asked to furnish the vernaculars of the representation(s), he feigned ignorance and submitted that no such vernacular is available with him as the same has been misplaced. Meaning thereby, no such representations were preferred to the concerned authorities and true copies have been filed just to cover up the delay on the part of petitioner in filing the instant petition.

3. Thus, without expressing much with regard to the representations (P-4 and P-5), it is observed that the same appear to be brought in existence just to show that the petitioner had been in touch with the department with regard to the claim set out by him through the instant petition.

4. The petitioner stood retired from service on April 30, 2004 on attaining the age of superannuation. The grouse with regard to grant of service benefits on completion of 8 years of service and other consequential relief

accrued to the petitioner, has been ventilated for the first time through the instant petition in the month of February 2017, i.e. after a period of more than a decade. As such, apparently, there is a delay and laches on the part of petitioner in approaching the Court.

5. 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.”

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

7. Adverting to the facts of the case in hand, petitioner is seeking the grant of benefit annual increments w.e.f. July 04, 1990 to January 03, 1998 on completion of 8 years of service as well as arrears etc. 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.

8. Undisputably, petitioner served a legal notice dated August 20, 2016 (Annexure P-3) upon the respondents but neither any reply nor any action has been taken by the authorities concerned so far. Moreover, petitioner also feels 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 petitioner in the legal notice dated August 20, 2016 (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 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 petitioner still feels aggrieved of the order passed by the authorities concerned, he shall be at liberty to approach this Court.

AUGUST 02, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*