

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

**CWP No. 6941 of 2017
DECIDED ON: SEPTEMBER 07, 2017**

CHAMAN LAL & ANOTHER

.....PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. A.S. Cheema, 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 count the services rendered by the petitioners in Government Aided Privately Managed Schools against the sanctioned posts duly sanctioned under the Grant-in-Aid Scheme for the purpose of qualifying service towards pensionary benefits in terms of CWP No. 4783 of 2009 decided on 27.11.2009 (Annexure P-3) and in terms of order dated 06.07.2009 (Annexure P-4) whereby, similar benefit has been granted by the respondents to similarly situated persons.

2. At the very outset of arguments, the question arose that the petitioner

No.1 stood retired on attaining the age of superannuation on April 30, 2007 as well petitioner No.2 stood retired on the attaining the age of superannuation on May 31, 2005 and the grouse with regard to the counting of their past services for the purpose of qualifying service towards pensionary benefits has been ventilated for the first time through the instant petition in the month of March, 2017 i.e. after more than a decade of their retirement. As such apparently, there is a delay and laches on the part of petitioners 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 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**. Learned counsel for the petitioner also relied 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 counting of their past services towards pensionary benefits. 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 have served a legal notice dated October 27, 2016 (Annexure P-5) upon the respondents but despite that fact a period of more than six 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 October 27, 2016 (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 October 27, 2016 (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 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 the petitioners still feel aggrieved of the order passed by the authorities concerned, they shall be at liberty to approach this Court.

SEPTEMBER 07, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*